



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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 27 May 2011

Public
Greco RC-I/II (2009) 2E
Addendum

Joint First and Second Evaluation Round

Addendum to the Compliance Report on Ukraine

Adopted by GRECO
at its 51st Plenary Meeting
(Strasbourg, 23-27 May 2011)

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 and 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). This last report was made public on 9 June 2009. The Compliance Report (Greco RC-I/II (2009) 1E) concluded that recommendations viii, xvi and xvii had been implemented satisfactorily and recommendations iv, ix, x, xiii and xxiii had been dealt with in a satisfactory manner. 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. This information was provided on 6 December 2010 and subsequent information was provided on 3 February 2011 and 12 May 2011.
3. The purpose of this 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-vii, xi, xii, xiv, xv, xviii-xxii, xxiv and xxv in the light of the additional information referred to in paragraph 2.

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 RC-report, it welcomed the establishment of the Government Agent for Anti-corruption Policy, which opened up the development of a genuine 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, it assessed recommendation i as partly implemented.
6. The Ukrainian authorities indicate that a new National Anti-Corruption Committee was created by Presidential Decree No. 275/2010 of 26 February 2010. This Committee is established directly under the authority of the President of Ukraine and its members are appointed by him/her upon the advice of the Anti-Corruption Committee's Executive Secretary – who is the Minister of Justice – among senior officers of law enforcement and other public bodies, representatives of relevant committees of the Verkhovna Rada (Parliament), leading scientists and other specialists. The Secretariat of the Committee is provided by a special unit of the Ministry of Justice, composed of 11 persons. The authorities explain that the mission of the Committee is to analyse the phenomenon of corruption in Ukraine, as well as measures taken to prevent and counteract it, to develop anti-corruption measures and strategies and provide advice to the President of the Republic on matters related to corruption, including legislation. The composition of the Committee was approved by Presidential Decree No. 454/2010 of 26 March 2010 and it held its first meeting

on 22 April 2010. The authorities also indicate that the position of the Government Agent for Anti-corruption Policy has been vacant since February 2011, further to a reform in the administrative sector and pending a decision of the President of Ukraine on the institutional arrangements in this area. According to the Law “*On basic principles of prevention and counteraction of corruption*”, adopted by Parliament on 7 April 2011, the President namely has to create or define the body responsible for the co-ordination and monitoring of the National Strategy on Prevention and Counteraction to Corruption for 2011-2014. It is indicated that this decision will occur after the entry into force of the law on 1 July 2011.

7. GRECO takes note of the information provided and of the establishment of the National Anti-Corruption Committee. This body, although it is distinct from law enforcement authority and it has a fairly broad composition, which includes 34 persons, including a number of senior representatives of law enforcement authorities and other bodies of public administration, three members of the Verkhovna Rada, as well as a few academics and one representative of non-governmental organisations, does not appear to offer sufficient guarantees of independence, since it is established directly under the President of Ukraine, who appoints its members and chairs its meetings. GRECO therefore takes the view that this body does not appear to be in a position to perform an effective, independent monitoring of anti-corruption strategies and policies, as required by the recommendation. It also notes that the institutional arrangements in this area may still be subject to changes, further to the adoption of the Law “*On basic principles of prevention and counteraction of corruption*”, which has yet to be signed by the President in order to enter into force. It urges the Ukrainian authorities to take due account, in this connection, to the requirements of the recommendation.
8. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

9. *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.*
10. GRECO recalls that at the time of the adoption of the RC-report, an Action Plan on the Implementation of the Concept Paper of the President “*On the Road to Integrity*”, which had been subject to assessment by experts appointed by the Council of Europe, was under revision and awaiting its final adoption. Moreover, the details of the Plan had not been submitted to GRECO. For these reasons, recommendation ii was assessed as partially implemented.
11. The Ukrainian authorities report that the revised Action Plan on the Implementation of the Concept Paper of the President was adopted by an Order of the Government of 26 August 2009 (No. 1013-p) and its term was extended until 2011. On that basis, the Ministry of Justice prepared a draft decree of the President of Ukraine “*On the National Strategy on Prevention and Counteraction to Corruption for 2011-2014*” based, *inter alia*, on proposals of the members of the National Anti-Corruption Committee and the use of international experience, which aims at reducing the level of corruption in Ukraine by implementing preventive measures and developing an understanding of corruption as a phenomenon harmful to society. This draft Strategy comprises several lines of actions, among which the reform of state administration and administrative procedures, reduction of administrative pressure on entrepreneurs, training of judges, prosecutors and law enforcement authorities, improvement of the conditions of access to

public information, development of international cooperation, etc. This proposed Strategy will be carried out through the elaboration, by the Cabinet of Ministers, of a State Programme on Prevention and Counteraction to Corruption for 2011-2014, which will include a list of measures, expected results, sources of financing, implementing authorities and partners.

12. GRECO takes note of the adoption of the revised Action Plan, the details of which have not been presented to it and which, as a consequence, it has not been in a position to assess. It also notes the preparation of the new "National Strategy on Prevention and Counteraction to Corruption for 2011-2014". This Strategy however, has not yet been adopted and its lines of action appear fairly general. Indeed, the information provided indicates that the corresponding detailed plan of action, accompanied by necessary elements for its implementation, will only be prepared at a later stage. In view of the fact that, at no point in time, has GRECO had an opportunity to form an opinion about the concrete content of the revised Action Plan which, furthermore, appears now outdated, it cannot conclude that there has been full compliance with recommendation ii.
13. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

14. *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.*
15. GRECO recalls that in the RC-report, it took note of the preparation of a draft law "On Amending some Legislative Acts of Ukraine concerning Liability for Corruption Offences" (No. 0875 of 23 November 2007). Pending adoption of this draft law, GRECO assessed the recommendation as partly implemented, while expressing some doubt that the measures reported would lead to a clear cut distinction between the requirements for applying either criminal or administrative procedures, as the distinction between administrative and criminal procedures was to be based on the amount of the undue benefit.
16. The Ukrainian authorities inform GRECO that the above-mentioned draft law was adopted by the Verkhovna Rada on 11 June 2009 and that it entered into force on 1 January 2011, together with the Laws "On Fundamentals of Prevention and Counteraction to Corruption" and "On Responsibility of Legal Persons for Corruption Offences". However, on 21 December 2010, further to a decision of the Constitutional Court according to which some aspects of the adopted texts were contrary to the Constitution, the Parliament adopted a law abrogating the above-mentioned three legislative acts (the "anti-corruption package") which took effect on 5 January 2011. On 17 December 2010, the President of Ukraine submitted new draft legislation to Parliament which was based on two of the three laws included in the package (provisions of the Law "On Responsibility of Legal Persons for Corruption Offences" were not included). The Law No. 7487 "On the Principles of Preventing and Combating Corruption" and the Law "On amendments to several legislative acts concerning liability for corruption offences" were adopted on 7 April 2011 but have yet to be signed by the President of Ukraine in order to enter into force, as planned, on 1 July 2011. The latter amends provisions of the Criminal Code and the Code of Administrative Offences (CAO). In particular, it introduces a new chapter 13-A on "administrative corruption offences" (articles 172.2 to 172.9) into the CAO which includes, *inter alia*, provisions on "breach of legal restrictions concerning the use of official position" followed by the acceptance of an illegal benefit or of an offer or a promise of such a benefit (article 172.2 CAO), on "offering or

giving an illegal benefit” (article 172.3 CAO) and on “breach of legal restrictions on the receipt of gifts” (article 172.5 CAO). Articles 172.2 and 172.3 CAO do not apply if the illegal benefit exceeds the tax-free minimum income by more than 100 times (approximately 4,200 EUR). According to the authorities, active bribery is thus considered as a criminal offence only when the amount of the illegal benefit (bribe) exceeds the ceiling of 100 times the tax-free minimum income. In other cases, it will constitute an administrative offence. By contrast, passive bribery will always constitute a criminal offence and the administrative corruption provisions will only apply when elements of the crime – in particular an (intended or real) act or omission by the public official in return for the benefit – are absent. The sanctions foreseen by the new CAO provisions are fines ranging from 25 to 50 times the tax-free minimum income¹ (article 172.5, paragraph 1 CAO) to 150 to 500 times the tax-free minimum income² in specified aggravated cases (article 172.2, paragraph 2 and 172.3, paragraph 2 CAO), as well as forfeiture of the benefit or gift.

17. GRECO notes that the Law “*On amendments to several legislative acts concerning liability for corruption offences*”, which was adopted by Parliament but has not yet entered into force, introduces a new chapter 13-A on “administrative corruption offences” (articles 172.2 to 172.9) into the Code of Administrative Offences, but takes the view that this law does not meet the requirements of the recommendation. It maintains its previously expressed concerns about the existence of two parallel systems of corruption offences, i.e. the criminal and the administrative system, which affords opportunities for manipulation, for example, to escape from the justice process. GRECO also recalls its position that corruption as a main rule should be treated as a criminal offence and it is concerned that the system of administrative corruption offences has been developed even further by the new legislation. Even if the authorities state that under the new legislation, passive bribery will always constitute a criminal offence, GRECO takes the view that the mere existence of similarly worded offences in the CAO leads to uncertainties and to the risk that in practice, the administrative corruption provisions will be applied. Moreover, GRECO is strongly concerned about the further explanations given by the authorities according to which active bribery will be considered as a criminal offence only if the economic value of the benefit exceeds the – very high – threshold of approximately 4,200 EUR.

18. GRECO concludes that recommendation iii has not been implemented.

Recommendation v.

19. *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.*

20. GRECO recalls that at the time of the adoption of the RC-report, it assessed recommendation v as partially implemented on account of reforms initiated to modernise the Prosecutor’s Office, as well as wider legislative and constitutional changes underway at the time in Ukraine, aiming at giving the Prosecutor’s Office a central role in pre-trial investigations, while limiting in the Constitution its “supervisory” role to criminal procedural functions.

21. The authorities of Ukraine report that they are pursuing their efforts to reform the Prosecutor’s Office, as an integral part of the reform of criminal procedural legislation. As a result of a 2004 law amending the Constitution being declared unconstitutional by the Constitutional Court and being subsequently abrogated, Ukraine currently operates under the previous version of the

¹ Approximately 1,500 to 2,100 EUR.

² Approximately 6,300 to 24,000 EUR.

Constitution of 1996, according to which the Prosecutor's Office 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. The Prosecutor's Office is no longer competent to supervise human rights and civil liberties in the implementation of laws by the executive power, however it still carries out this task during the transitional period. A new version of the draft law "On the Public Prosecutor's Office" is 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. The authorities add that a Working Group on Issues of Criminal Proceedings was established by Presidential Decree No. 820 of 17 August 2010 and that it will discuss issues related to the reform of the Prosecutor's Office as part of its main task of reforming the Criminal Procedure Code.

22. GRECO takes note of the information provided. While acknowledging, as it already did in the RC-report, that fundamental reforms of the prosecution service take time and need to be placed in a wider context than that of corruption fighting, it regrets that no meaningful progress has been made in this area since the adoption of the RC-report. The initiatives taken to comply with this recommendation are still at a very preliminary stage and have not yielded any tangible result.
23. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

24. *GRECO recommended that the law enforcement staff and prosecutors are provided uniform training on a regular, rolling and permanent basis with regard to detecting and investigating corruption offences and to establish specialised training for those directly involved in the fight against corruption.*
25. In the RC-report, GRECO took stock of the numerous training initiatives undertaken by the Ukrainian authorities, many of which in cooperation with international organisations and highlighted the need to translate the information acquired in the Ukrainian context, so as to develop specialised permanent training curricula on detection and investigation of corruption for police and prosecutorial staff concerned. On that basis, it assessed the recommendation as partly implemented.
26. The Ukrainian authorities now refer to the following training activities carried out by various institutions involved in the fight against corruption and organised crime. The Academy of Management of the Internal Affairs of Ukraine and the Training and Research Institute of professional training of criminal militia (police) of the Kyiv National University of Internal Affairs provide ongoing training to officers of organised crime squads of the Ministry of Internal Affairs who are involved in combating corruption and other corruption-related offences. Several courses and training sessions on the prevention of corruption have been introduced at all levels of Internal Affairs staff training and it is reported that, in 2010, over a period of 9 months, the Academy of Management of the Ministry of Internal Affairs trained 615 officers of state and local-government authorities on the prevention of corruption.
27. In-service training on the subject "Prosecutor's supervision over observance of the Law of Ukraine "On Combating Corruption"" is also provided to prosecutors at the Institute of professional training of the National Academy of Prosecution, which provides training to 950 prosecutors annually. In order to implement the recommendation, a permanent training

course on “legal measures in combating corruption” was introduced for the students of the Institute.

28. The authorities also report that the National Academy of Security Service, in cooperation with the General Department on Fighting Corruption and Organised Crime of the Security Service, reviewed the content of its initial and in-service training courses and introduced new courses on corruption-related matters, such as legal means of preventing and combating corruption, investigations, cooperation with other law-enforcement authorities, foreign partners and international organisations.
29. Moreover, the National Academy of Security Service prepared, in cooperation with the National Security and Defence Council, a new training programme for state officials and officials of local self-government on the prevention and combat of corruption. A pilot course was held for 32 trainers from the prosecution, customs, tax and civil services in November 2010 and a book on the fight against corruption was published.
30. GRECO welcomes the numerous training activities reported. Although some of these activities appear to have a wider scope and audience than staff directly involved in the fight against corruption, it considers that those activities, along with those mentioned in the RC-report, show that due attention has been given to the requirements of the recommendation. GRECO invites the authorities to pursue their efforts and to organise, on a regular basis, further training activities for law enforcement staff and prosecutors with regard to detecting and investigating corruption offences and also taking into account the current legislative changes introduced by the law “*On the Principles of Preventing and Combating Corruption*”.
31. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

32. *GRECO recommended that the independence of the judiciary is further enhanced and that the transparency of the judicial recruitment process is increased; that the independence of the High Council of Justice vis-à-vis the executive and legislative powers is strengthened and that it be composed of a higher proportion of judges; and that improvements to the material conditions of judges, including fair remuneration, necessary to provide for their independence and compatible with their level of responsibility, are considered.*
33. GRECO recalls that in the RC-report, it assessed this recommendation as partly implemented on account of legislative reforms underway to improve the selection and recruitment of judges, to raise their remuneration and to increase the proportion of judges in the High Council of Justice, thus enhancing this body’s independence from executive and legislative powers.
34. The Ukrainian authorities indicate that the Law “*On the Judicial System and the Status of Judges of Ukraine*”, previously reported on in the RC-report was adopted on 7 July 2010 and came into force on 30 July 2010. This law introduces a new mechanism for the selection of judges based on a transparent and competitive recruitment procedure according to objective criteria, supervised by the High Qualification Commission of Judges of Ukraine, a permanent body of the judicial system. The law also modifies the system of remuneration of judges, in order to enhance their independence.

35. As regards the enhancement of the independence of the High Council of Justice (HCJ), amendments to the Law “*On the High Council of Justice*” adopted on 7 July 2010 increase the proportion of judges among the members of this body, which is composed of 20 members. The Parliament and the President each appoint three members of the HCJ, two of whom must be judges. One of three members appointed respectively by the Congress of Judges, the Congress of Advocates and the Congress of Representatives of Legal Higher Education Institutions and Research Institutions also have to be appointed from the ranks of judges. The All-Ukrainian Conference of Prosecutors appoints two members of the HCJ, one of whom must be appointed from among the judges. Finally, the Chairman of the Supreme Court, the Minister of Justice and the Prosecutor General are *ex officio* members of the HCJ, according to the Constitution.
36. GRECO welcomes the adoption of the Law “*On the Judicial System and the Status of Judges of Ukraine*”, which takes into account most of the concerns expressed in the recommendation. It welcomes the new mechanism for the initial selection of judges, which appears to allow for a transparent and fair recruitment process, under the supervision of the High Qualification Commission of Judges of Ukraine, which seems to offer adequate guarantees of independence. It observes, however, that the High Council of Justice may disagree with the recommendations of the High Qualification Commission of Judges on the recruitment of candidates and that no similar objective criteria are set out for its decision. As regards the amendments to the Law “*On the High Council of Justice*”, GRECO welcomes the fact that the proportion of judges in this body has been increased. Yet it regrets that judges still do not form a majority of the HCJ members and that most of them are not elected by their peers. Finally, GRECO appreciates that improvements in the remuneration of judges have not only been considered, but have apparently been adopted..
37. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendations xi and xii.

38. *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).

39. GRECO recalls that in the RC-report, it assessed recommendations xi and xii as partially implemented, as a reform of the criminal process to address the shortcomings raised in the recommendations was at an advanced stage of preparation.
40. The Ukrainian authorities refer to a draft law “*On Amendments to the Criminal and the Criminal Procedure Codes of Ukraine on improvement of confiscation measures*”, which has been prepared by the Ministry of Justice in order to comply with the recommendations of the Committee of Experts of the Council of Europe on Evaluation of the Anti-Money Laundering Measures (MONEYVAL). This draft law aims at improving and harmonising the norms and procedures of confiscation of the proceeds of crime. Regarding recommendation xi, it foresees the possibility to confiscate the illegally acquired property, including its proceeds, when it was 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 expenditure. This draft law was submitted for appraisal by experts appointed by the Council of Europe in July 2010 and, after being revised further to the experts' comments, was approved by the National Anti-Corruption Committee on 20 October 2010 which recommended to submit it without undue delay to the Verkhovna Rada for top-priority consideration, as part of a package of anti-corruption draft laws.

41. GRECO takes note of the information provided and cannot but note that not much progress seems to have been made on the adoption of the draft law, since this draft, or one with a similar content, was already announced as pending for adoption by Parliament at the time of adoption of the RC-report. 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.
42. GRECO concludes that recommendations xi and xii remain partly implemented.

Recommendation xiv.

43. *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.*
44. GRECO recalls that, at the time of the adoption of the RC-report, a draft Administrative Procedure Code was pending before the Verkhovna Rada. A draft law “*On Normative Legal Acts*” regulating among other things the hierarchy of norms had also been adopted by the Verkhovna Rada on 1 October 2008, but had been vetoed by the President of Ukraine. GRECO therefore assessed this recommendation as partly implemented.
45. The Ukrainian authorities now report that another draft Administrative Procedure Code has been submitted by the Ministry of Justice to the Cabinet of Ministers. It intends to improve the regulation of the relations between individuals and state authorities, which are currently either unregulated or dealt with in sub-legal regulatory acts. It will become the basic legal text to regulate the decision-making and administrative process of state and local government authorities, their officials and civil servants, as well as other persons entitled to carry out administrative functions. It will also establish the principles of administrative procedure and regulate issues of evidence, administrative expenses and terms. It will contain a new chapter on the validity of administrative acts and its termination and will deal with questions of appeal, execution and general issues of administrative responsibility.
46. The authorities also indicate that a draft law “*On Normative Legal Acts*”, has been submitted to the Parliament by one of its members on 1 December 2010. This draft law aims at regulating issues of law drafting and hierarchy of legal norms.
47. GRECO takes note of the information provided and regrets that no meaningful progress appears to have been made to comply with this recommendation. It regrets that the draft Administrative Procedure Code referred to in the RC-report, which was pending before Parliament, has not been adopted and work on this issue appears to have fallen back to the stage of consultations between government authorities on a(nother) draft Code. GRECO also takes note of the new draft law “*On Normative Legal Acts*”, but in the absence of more specific information, it is not in a position to assess whether it meets the requirements of the recommendation. In any case, this law has not

yet been adopted by Parliament. GRECO urges the Ukrainian authorities to devote more vigorous efforts to dealing with the important matters raised in this recommendation, which are fundamental for the smooth and efficient functioning of public administration and the legal certainty of the legal relations between the individuals and legal persons on the one hand and the administration on the other hand.

48. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

49. *GRECO recommended to enhance the public's right to access to official information; to introduce less cumbersome request procedures; to emphasise the authorities' obligation to assist the public in obtaining information within a reasonable time and to consider the introduction of an independent special (pre-court) review mechanism for decisions refusing access to official information.*
50. GRECO recalls that in the RC-report, it assessed recommendation xv as partly implemented, since a draft law on access to public information (Reg. No. 2763 of 11 July 2008) was pending before Parliament and the Ministry of Justice had established a service to provide advice free of charge to the public.
51. The Ukrainian authorities inform GRECO that the Verkhovna Rada adopted the Law "On access to public information" referred to in the previous paragraph, along with another Law "On amendments to the Law on Information" and that both texts entered into force on 10 May 2011. The first of these laws in particular sets out the principle of free access to public information and the obligation of public authorities to provide such access on a free of charge basis. To this end, the authorities have to appoint persons or units in charge of receiving and processing requests for information. The law also simplifies the procedure for requesting such information, notably by introducing a possibility to introduce a request online on the relevant entity's website. Deadlines for answering requests are also established by law, along with the obligation to give reasons in case of access refusal and to inform the author of the request about the possibility to appeal against the refusal. The review and appeal procedures are to be dealt with in another law, but the Law "On access to public information" does state the principle that access refusals or inaction by the relevant entity "may be appealed to the head of the providing entity, higher authority or the court".
52. GRECO welcomes the entry into force of the Law "On access to public information", which largely meets the concerns of the recommendation, in particular by establishing a clear obligation for the authorities to grant access to official information in a timely manner and by facilitating access requests. It notes however that the law in its Article 15 seems to give an exhaustive list of information which has to be disclosed, as opposed to restricted information, which appears listed in a more open manner. While GRECO recognises that access to information may be limited by legitimate concerns, it recalls that such limitations are to remain exceptions, and not the rule. As to the introduction of a review mechanism against access refusals, GRECO notes that it is to be regulated in a special law. However, the principle set out in the Law "On access to public information" that decisions may be appealed to a higher authority or the court does seem to indicate that the matter has been considered by the Ukrainian authorities, as requested by the recommendation. GRECO invites them to pursue their work on this issue, in order to give effect to the principle of a pre-court review mechanism.

53. GRECO concludes that recommendation xv has been dealt with in a satisfactory manner.

Recommendation xviii.

54. *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.*
55. GRECO recalls that the Ukrainian authorities had indicated in the RC-report that an extension of the powers of the Accounting Chamber required changes to Article 98 of the Constitution. Because of the complicated procedure of enacting amendments to the Constitution, the government had resorted instead to other actions, such as various legislative initiatives on budget discipline, which were underway at the time of adoption of the report. For this reason, GRECO considered that recommendation xviii was partly implemented.
56. The Ukrainian authorities now report that the Accounting Chamber is currently working on draft amendments to the Constitution, including its Article 98, in order to allow it to control local authorities. It submitted its proposals to the Committee on economic reforms, a consultative authority under the President of Ukraine.
57. GRECO takes note of the information provided. It regrets that compliance with this recommendation does not appear to have made much progress, if any at all, since the RC-report. Constitutional changes, which were not thought opportune at the time of adoption of the RC-report, are now the option chosen but they are still at an early stage of preparation.
58. GRECO concludes that recommendation xviii remains partly implemented.

Recommendation xix.

59. *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.*
60. GRECO recalls that it assessed this recommendation as partly implemented in the RC-report, as a former law on procurement had been abolished and the process of preparation of new legislation had been initiated.
61. The Ukrainian authorities indicate that a law “*On the State Procurements*” was adopted by Parliament on 1 June 2010, which entered into force 30 days after its publication. It regulates public procurements so as to ensure a fair competitive environment, to prevent corruption and ensure an effective use of state funds. The authority responsible for the implementation of this law is the Ministry of Economy and the appeal authority is the Antimonopoly Committee of Ukraine. The authorities add that this law has been assessed by the World Bank and the European Union as a first step in the performance of reforms of a more systematic character.
62. GRECO welcomes the adoption of the law “*On the State Procurements*”, which is a step in the right direction and improves regulations in this field, allowing for more fairness and transparency in the process. However, GRECO is concerned that, since the adoption of the law, a number of amendments have been introduced to exclude significant areas from its scope of application, such as procurements aimed at preparing the Euro 2012 football championship and

procurements in the energy area. These amendments, which demonstrate a worrying trend towards attempts at circumventing the provisions of the Law “*On the State Procurements*,” clearly have a negative impact on compliance with European standards in this field.

63. GRECO concludes that recommendation xix remains partly implemented.

Recommendation xx.

64. *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.*

65. GRECO recalls that at the time of adoption of the RC-report, a draft law “*On Civil Service*” was pending before Parliament and several other draft laws aiming at modernising public administration, including as regards public officials and other employees who are not civil servants, were being prepared. GRECO therefore assessed this recommendation as partly implemented.

66. The Ukrainian authorities now report that, as a result of the change of government in March 2010, it was decided to postpone the adoption of the draft law “*On civil service*” by Parliament, in order to prepare a new version of this draft after further consultation with interested parties. The new draft law “*On Civil Service*” passed the first reading at the Verkhovna Rada on 7 April 2011. It aims 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.

67. The authorities also indicate that two draft laws amending existing legislation (Reg. No. 3155 of 16 September 2008 and Reg. No. 3155 of 3 February 2010) are currently pending before Parliament. They foresee the granting of the status of public servant to medical and pharmaceutical employees, pedagogical and scientific pedagogical employees of state-owned medical and educational establishments. They add that the Law of Ukraine “*On Fundamentals of Prevention and Counteraction to Corruption*” stipulates the application to public servants of legal entities of public law, who are paid from the state budget, of several provisions relating to the prevention of and fight against corruption, regarding *inter alia* the acceptance of gifts, the work of close relatives in direct subordination, financial control and *pantouflage*.

68. GRECO takes note of the information provided and of the fact that in this area too, little progress – if any – has been made. It acknowledges that some provisions of the Law “*On Fundamentals of Prevention and Counteraction to Corruption*” seem to apply to public officials who are not civil servants. Yet, it recalls that the Evaluation Report (see paragraph 207) called for a much broader reform, which would also take into account the majority of public officials who are not part of the civil service. Planned changes in this respect are still at an initial stage and, if granting the status of civil servants to employees in the medical sector – provided the relevant laws are adopted – would be a step in the right direction, GRECO stresses that other sectors of public administration also employ persons who do not have the status of civil servant. Yet, nothing in the information submitted indicates that a reform of their status is planned, nor that they would be covered in the new draft law “*On Civil Service*”.

69. GRECO concludes that recommendation xx remains partly implemented.

Recommendation xxi.

70. *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.*
71. GRECO recalls that it had considered this recommendation as partly implemented, since a draft law “*On Integrity of Behaviour of Persons Authorised to Perform Functions of the State and Local Government*”, which appeared to cover both aspects of the recommendation, was pending before Parliament.
72. The Ukrainian authorities now indicate that the Law “*On the Principles of Preventing and Combating Corruption*” which was 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 who come across information relating to a corruption offence committed by one of their colleagues, to report it immediately in writing to the authorised agency in the area of counteracting corruption. 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 have to take the necessary measures in that regard.
73. Furthermore, the authorities refer to a new version of the General Rules of conduct for public servants, approved on 4 August 2010, which contains a provision requiring public servants, who become aware of a conflict of interests affecting other public servants, to report to their direct manager. If they consider that s/he did not take appropriate action, they may then inform the head of their authority.
74. GRECO takes note of the information provided and welcomes that the new Law “*On the Principles of Preventing and Combating Corruption*” introduces a clear duty upon public officials to report suspicions of corruption and stipulates that those persons have to be protected from adverse consequences of their report. Yet, GRECO recalls that this law has not yet been signed by the President. Similarly, concrete arrangements for the actual protection of whistleblowers are not yet in place. As regards the other measures reported, the provision on reporting suspicions of conflicts of interest does not adequately respond to the concerns of the recommendation, as it has a broader object and scope.
75. GRECO concludes that recommendation xxi remains partly implemented.

Recommendation xxii.

76. *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).*
77. GRECO recalls that it assessed this recommendation as partly implemented, as it noted some progress regarding the second part of the recommendation (to enhance regular rolling training) in the form of training courses organised. Yet, it noted the lack of a comprehensive approach in order to establish a regular rolling training on anti-corruption measures that would apply to public

officials in a systematic way. As to the first part of the recommendation (to establish a model code of conduct/ethics), GRECO expressed doubt on the effectiveness of using legislation, which was the intention of the Ukrainian authorities at the time of adoption of the RC-report, for establishing codes of conduct, which should rather be “soft law”, living and evolving instruments.

78. As to the first part of the recommendation (establishing a model code), the Ukrainian authorities report that the Main Department of Civil Service, which is responsible for implementing action for the prevention of corruption among civil servants and officials of local government, approved by an Order of 4 August 2010 a new version of the General Rules of conduct for public servants, which regulates issues of ethical conduct, prevention and settlement of conflicts of interest. They also state that the Law “*On the Principles of Preventing and Combating Corruption*”, which was adopted by Parliament on 7 April 2011, contains rules requiring public officials to report suspicions of corruption, limiting the acceptance of gifts, as well as rules concerning working relations with relatives and authorising administrative and local government authorities to establish special codes of conduct. They add that separate rules of conduct exist for judges and court staff (Code of professional ethics of judges of 2002 and Rules of conduct for employees of the court of 2009), prosecutors (Disciplinary statute of 1991), officials of internal affairs authorities (Law of 2006), staff of tax administration (Order of 2006) and staff of the mediation services (Order of 2005).
79. Regarding the second part of the recommendation (enhancing the training), the authorities report that the Academy of Management of the Ministry of Internal Affairs of Ukraine - which is part of Kyiv’s National University of Internal Affairs - and the Academy of Governance under the President of Ukraine provide regular training for civil servants and officials of local government at managerial level. This training concerned 596 persons in 2008, 1000 in 2009 and around 1500 in 2010, on topics such as “*Administrative and legal instruments of fighting against corruption*”, “*State administration in sphere of prevention of corruption*”, “*Offences in activity of legal entities of private law and professional activity, connected with public services*”, “*Mechanisms of prevention and settlement of conflicts of interest*”, etc. Staff below managerial level and newly recruited staff are provided with training on ethics, rules of conduct and anti-corruption legislation by the Ministry or entity which employs them. For example, within the Ministry of Justice, 909 newly appointed staff were trained on such matters in 2010. All training curricula are prepared by the relevant entities in a coordinated manner, under the supervision of the Main Department of Public Service.
80. GRECO takes note of the information provided. As far as the first part of the recommendation is concerned (establishing a model code), GRECO welcomes the progress made in the form of the adoption, in 2010, of the General Rules of conduct for public servants as a soft law document (Order of the Main Department of Civil Service). Information provided indicates that this document appears to offer useful instructions and guidance regarding the prevention of conflicts of interest. GRECO also welcomes the duty set out in the Law “*On the Principles of Preventing and Combating Corruption*” for public officials to report suspicions of corruption, but recalls that this law has yet to be signed by the President and to enter into force. It also recalls that the recommendation called for such matters as the prevention of corruption and proper assistance of the public, to be dealt with in the form of soft law instruments, rather than in law, as part of a pedagogical approach (see Evaluation Report, paragraph 210). Yet, nothing in the information submitted indicates that the above-mentioned General Rules of conduct for public servant also deal with such issues. As to the other codes mentioned, they do not represent new developments, with the exception of the one concerning court staff which was adopted in 2009.

81. With respect to the second part of the recommendation (enhancing the training), GRECO welcomes the information provided, which indicates that training activities seem to be available to a higher number of officials, that the topics related to anti-corruption measures and ethical conduct have apparently been further developed and that these training activities appear to form part of a systematic and comprehensive approach, as intended in the recommendation.

82. GRECO concludes that recommendation xxii remains partly implemented.

Recommendation xxiv.

83. *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.*

84. GRECO recalls that, as a draft law “*On Responsibility of Legal Person for Committing Corruption Offences*” was awaiting a second reading in Parliament at the time of adoption of the RC-report, it had assessed recommendation xxiv as partly implemented.

85. The Ukrainian authorities indicate that the above-mentioned draft law was adopted by the Verkhovna Rada on 11 June 2009, as part of the “anti-corruption package” which entered into force on 1 January 2011 but was abrogated by Parliament with effect on 5 January 2011 (see recommendation iii above). The “anti-corruption package” was replaced by new draft legislation submitted by the President of Ukraine to Parliament on 17 December 2010 and adopted by Parliament on 7 April 2011 (Law No. 7487 “*On the Principles of Preventing and Combating Corruption*”). However, Law No. 7487 does not include provisions of the Law “*On Responsibility of Legal Persons for Corruption Offences*” and does not address corporate liability for corruption offences.

86. GRECO takes note of the information provided, according to which the law “*On Responsibility of Legal Person for Committing Corruption Offences*”, which reportedly contained the basis for criminal responsibility of legal persons, was abrogated shortly after its entry into force. GRECO is very much concerned that the new Law “*On the Principles of Preventing and Combating Corruption*” excludes the issue of corporate liability for corruption offences and that no further legislative measures in this respect have been reported. This development is clearly a step backwards compared to the situation at the time of the adoption of the RC-report. GRECO urges the authorities to put this issue high on the agenda again, without further delay.

87. GRECO concludes that recommendation xxiv has not been implemented.

Recommendation xxv.

88. *GRECO recommended to take adequate measures, including of a legal/regulatory nature, in order to actively involve accountants and auditors in detecting/reporting money laundering offences.*

89. GRECO recalls that in the RC-report, it assessed this recommendation as partly implemented, since a draft law “*On Amendments to Some Laws of Ukraine Related to Prevention of Legalisation of Revenue Received in a Criminal Manner, or for Financing Terrorism*” had passed first reading in Parliament and was being prepared for second reading.

90. The Ukrainian authorities now indicate that the Verkhovna Rada adopted, on 18 May 2010, a law “*On Amendments to the Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of the Proceeds From Crime or Financing of Terrorism”*”, which entered into force on 21 August 2010. This law which, according to the authorities, includes the requirements of international standards relating to the fight against money laundering and the fight against terrorism, expands the list of persons under reporting obligations to auditors, audit firms and private individuals or entrepreneurs providing legal and accounting services. These persons and entities have a duty to report suspicious transactions which they come across on the occasion of the sale or purchase of real estate, assets management, bank accounts or securities accounts management, management of funds relating to the establishment, running and sale/purchase of legal persons. On the basis of this law, the reporting regime was also modified in respect of the risk indicators to be considered for reporting.
91. GRECO takes note of the information provided and welcomes the adoption of the law “*On Amendments to the Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of the Proceeds From Crime or Financing of Terrorism”*”, which appears to satisfy the requirements of the recommendation.
92. GRECO concludes that recommendation xxv has been implemented satisfactorily.

III. CONCLUSION

93. 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 vii and xxv have been implemented satisfactorily and recommendations vi and xv have been dealt with in a satisfactory manner. Recommendations i, ii, xi, xii, xiv, xviii and xix-xxii remain partly implemented and recommendations iii, v and xxiv have not been implemented.
94. With the adoption of this Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 25 recommendations issued to Ukraine, in total only 12 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner.
95. Ukraine has organised a number of training activities on corruption-related issues required by some of the recommendations and has reported a few legislative changes, in order to introduce a more transparent recruitment process of judges, to enhance the public’s right of access to official information and to involve accountants and auditors more actively in the detection and reporting of money laundering offences. However, even though GRECO acknowledges that steps have been taken to address all recommendations, the vast majority of recommendations requiring the adoption of legislation have registered no progress since the adoption of the RC-report. While aware that the change of government that took place in March 2010 has delayed progress on some issues, GRECO is concerned that elements of such paramount importance as the establishment of an independent body in charge of monitoring effectively anti-corruption policies and the adoption of a detailed plan of action for the implementation of the national anti-corruption strategy have still not been addressed satisfactorily. The lack of meaningful progress also affects such important areas as the enhancement of the independence of the Procuracy, the modernisation and professionalisation of public administration and a review of confiscation and public procurement procedures. In some areas even, namely the review of the system of administrative liability for corruption offences and the introduction of corporate liability, the situation is worse than at the time of adoption of the RC-report, as a result of the abrogation of

the “anti-corruption package” of laws shortly after its adoption. GRECO very much regrets this state of affairs, which seems due for a good part to an extremely complicated legislative procedure, in which the work on an extensive number of draft laws, which are constantly subject to new changes results in draft laws remaining on the agenda of Parliament for an extended period of time without being adopted and laws, such as the “anti-corruption package” being abrogated shortly after their adoption, creating legislative gaps.

96. In view of the lack of such crucial elements as an overall, independent anti-corruption body and of a detailed plan of action for the implementation of the National Anti-corruption Strategy and also in view of the uncertainty of the legal framework governing the anti-corruption policy in Ukraine, GRECO urges the Ukrainian authorities to take determined action with a view to addressing the outstanding recommendations. Therefore, in accordance with Rule 31 paragraph 9.1 of its Rules of Procedure, it asks Ukraine to submit additional information on the implementation of recommendations i-iii, v, xi, xii, xiv, xviii, xix-xxii and xxiv by 31 December 2011.
97. Finally, GRECO invites the Ukrainian 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.