

Adoption : 28 March 2014  
Publication : 31 March 2014

**Public**  
**Greco RC-I/II (2009) 1E**  
**4th Addendum**

## **Joint First and Second Evaluation Round**

### **Fourth Addendum to the Compliance Report on Ukraine**

Adopted by GRECO  
at its 63<sup>rd</sup> Plenary Meeting  
(Strasbourg, 24-28 March 2014)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Ukraine at its 32<sup>nd</sup> 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. Since then, GRECO has, within the framework of its dedicated compliance procedure, adopted a Compliance Report and three Addenda thereto, based on information provided by Ukraine in the so called Situation Reports and discussions in GRECO's plenary meetings, as follows.
3. The Joint First and Second Round Compliance Report on Ukraine was adopted by GRECO at its 42<sup>nd</sup> Plenary Meeting (11-13 May 2009). The Compliance Report, 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.
4. In its first Addendum to the Compliance Report, adopted by GRECO at its 51<sup>st</sup> Plenary Meeting (23-27 May 2011), which was made public on 30 June 2011, GRECO concluded that recommendations i, ii, xi, xii, xiv and xviii-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.
5. The Second Addendum to the Compliance Report, adopted by GRECO at its 54<sup>th</sup> Plenary meeting (20-23 March 2012), was made public on 20 April 2012. In this Addendum, GRECO maintained its previous conclusions regarding all recommendations under review. Taking into account the fact that only just under half of the recommendations issued had been complied with and the need for further substantial progress on several fundamental issues, GRECO reiterated its call on the Ukrainian authorities for determined action and requested them to submit additional information on the outstanding recommendations.
6. In the Third Addendum to the Compliance Report, adopted by GRECO at its 59<sup>th</sup> Plenary Meeting (18-22 March 2013) and made public on 24 May 2013, GRECO concluded that recommendations ii and xxii had been implemented satisfactorily, recommendations i, iii, v, xi, xiv, xviii, xix, xx, xxi and xxiv had been partly implemented and recommendation xii had not been implemented. GRECO noted that just over half of the total number of recommendations had been complied with and that a majority of areas still under review had suffered for years from a lack of substantial progress. Taking into account the lack of crucial elements, such as an independent and operational anti-corruption body as well as the numerous remaining uncertainties in the legal framework governing the anti-corruption policy in Ukraine, GRECO urged the Ukrainian authorities to take determined action with a view to addressing the pending recommendations and requested further information. Additional information was submitted by the Ukrainian authorities on 31 December 2013.
7. The purpose of the current report, the Fourth 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 the still pending recommendations i, iii, v, xi, xii, xiv, xviii-xxi and xxiv in the light of the most recent information provided by the authorities of Ukraine.

## II. ANALYSIS

### **Recommendation i.**

8. *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.*
9. It is recalled that in the Compliance Report, GRECO welcomed the formal establishment of the Government Agent for Anti-corruption Policy. However, pending the implementation in practice 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. In the Addendum to the Compliance Report, GRECO noted that a new National Anti-corruption Committee (hereafter NAC) 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 NAC was sufficiently independent in its monitoring function. In the Second Addendum to the Compliance Report, GRECO noted that the NAC was comprised of public institutions, including governmental bodies, law enforcement agencies, the judiciary and Parliament. Civil society was also represented to some extent. GRECO therefore took the view that the NAC appeared to have been given functions and a composition in line with the requirements of the recommendation. However, following a transfer of the executive functions of the National Committee to the Secretary of the National Council of Security and Defence, some organisational measures were still needed before the NAC could operate as intended. GRECO therefore concluded that recommendation i remained partly implemented. In the Third Addendum to the Compliance Report, GRECO noted, as in its previous reports, that the NAC's mandate appeared to be in line with the requirements of the recommendation, but that its composition remained unclear and that it reflected a very low representation in practice of civil society; GRECO furthermore noted that one of the members representing civil society had resigned in protest. GRECO maintained its doubts as to the NAC's level of independence and concluded that recommendation i remained partly implemented.
10. The authorities of Ukraine now refer to the Law "On the National Security of Ukraine" (Article 1), according to which the fight against corruption is a component of national security. Taking this into consideration, and given the need to debate the issue of corruption at the highest state level, a meeting of the National Security and Defence Council is planned to be conducted in the "nearest future". The work of the National Anti-Corruption Committee is therefore postponed until further notice.
11. GRECO has already accepted that the mandate of the NAC is in line with the requirements of the recommendation. It notes, however, that the uncertainties raised in the Third Addendum to the Compliance Report remain and that further developments in respect of the final composition of the NAC in order to make this body fully operational as intended, are still expected. GRECO

recalls the importance of keeping the National Anti-Corruption body sufficiently independent in its monitoring function and, to this end, that its factual composition, including a well-balanced broad range of public bodies and representatives of civil society, is critically important.

12. GRECO concludes that recommendation i remains partly implemented.

**Recommendation iii.**

13. *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.*
14. GRECO recalls that no substantial progress had been reported until the Third Addendum to the Compliance Report, in which GRECO welcomed that changes were underway within the framework of the “*State Programme on Prevention and Counteraction Corruption 2011-2015*” with the overall purpose of bringing various corruption offences under the Criminal Code. A draft law “*On Amendment of Certain Legislative Acts of Ukraine as regards the Improvement of Legislation in the Area of Prevention and Counteraction to Corruption*” had been submitted to Parliament in January 2013. According to the draft, Articles 172.2 on “breach of restriction on the use of service position” and 172.3 on “proposal or offer of illegal benefit” of the Code of Administrative Offences (hereafter CAO) were to be deleted in order to enable only criminal liability for active and passive bribery. Moreover, in respect of Article 172.5 of the CAO on “violations of legally imposed restrictions on receiving gifts”, the authorities stated that this article would not be abolished, but that Article 8 of Law 3206 “*On Principles of Preventing and Counteracting Corruption*” provides for a clear-cut distinction between cases giving rise to criminal liability of the offender and cases entailing administrative liability. According to this Article, all cases containing the elements of bribery are to be subject only to criminal liability under the bribery provisions of the Criminal Code. The only offence subject to administrative liability under Article 172.5 CAO is the violation of a legal ban on gifts, without a specific purpose. The authorities also referred to a Decree of the President of 30 May 2012 (No. 98) establishing a working group on the reform of the legislation on administrative offences and the introduction of the institution of criminal misdemeanour, aiming at the full criminalisation of the liability for all corruption offences. GRECO concluded that the recommendation had been partly implemented.
15. The authorities of Ukraine now report that the Law “*On Amendments to Certain Legislative Acts of Ukraine to bring national legislation into conformity with the standards of the Criminal Law Convention on Corruption*” was adopted by Parliament on 18 April 2013. It entered into force on 18 May 2013 and provides for the deletion from the Code of Administrative Offences of Articles 172.2 and 172.3 (see above).
16. GRECO welcomes the legislative amendments that have been adopted by Parliament. The abolishment of Articles 172.2 and 172.3 from the CAO means that bribery is now an offence under the Criminal Code only. This fundamental change is in line with the objective of the recommendation as the law now makes it clear that corruption is a criminal offence which shall be dealt with under the criminal justice process.
17. GRECO concludes that recommendation iii has been implemented satisfactorily.

## Recommendation v.

18. 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.
19. GRECO recalls that following some attempts at legislative reform which had failed, the Prosecutor's Office still 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 Working Group on Issues of Reforming the Prosecutors' Office and the System of Legal Advocacy was established, in November 2011, to draft a new law on the Prosecutor's Office in the light of international standards and, in particular, to fulfil what is required by Council of Europe standards. In the Second Addendum to the Compliance Report, GRECO acknowledged that some new initiatives had been taken to reform the Prosecutor's Office, but that they had not produced any tangible results. In the Third Addendum to the Compliance Report, GRECO noted that the adoption, in March 2012, of the law "On Amendments to Particular Legislative Acts of Ukraine on Issues of Improving the Activity of the Prosecutor's Office", *inter alia*, narrowing prosecutorial general supervision over application of the law and abolishing the power to issue orders with suspensive effects ("submissions") reduced slightly the broad powers of prosecutors outside the criminal justice process and that the new Criminal Procedure Code, which entered into force in November 2012, gives the Prosecution Service a greater role within the criminal justice process. However, GRECO considered these measures as insufficient to fulfil the core objectives of the recommendation and pointed to the need to introduce changes to the law "On the Prosecutor's Office" and possibly to the Constitution.
20. The authorities of Ukraine now report that a draft law "On Amendments to the Constitution of Ukraine to strengthen the guarantees of independence of judges" was submitted to Parliament in July 2013 (register № 2522 dated 04.07.2013). The draft foresees, *inter alia*, that the five-year term of office of the Prosecutor General is to be deleted (Article 122 paragraph 2 of the Constitution). The authorities submit that the draft is based on opinions of the European Commission for Democracy through Law ("Venice Commission") (CDL-AD (2010) 040 dated 3 January 2011, paragraph 37) and CDL-AD (2013) 014, dated 15 June 2013). The draft, which has also been subject to an opinion of the Constitutional Court in September 2013, is currently pending before Parliament.
21. The authorities also report that a draft law "On the Prosecutor's Office" was submitted to Parliament in November 2013 (register № 3541 dated 05.11.2013). The draft law, *inter alia*, aims at reducing prosecutorial functions with regard to supervision of observance and application of the laws (the so-called "general supervision") and other powers of the Prosecution Service not related to the criminal justice process, are foreseen to be considerably limited. Moreover, the draft contains amendments in respect of recruitment of prosecutors, in particular, to establish minimum requirements for applicants (e.g. work experience in the legal field for at least two years) as well as transparent competition procedures for the selection of candidates as well as for promotions, including, competitive examinations in the form of anonymous testing and performing of practical tasks. Special training for new recruits at the National Academy of Prosecution is also foreseen. Furthermore, the draft law regulates the procedure for appointing prosecutors for administrative positions and it deals with disciplinary measures and procedures as well as hierarchical matters, such as orders and instructions by superior prosecutors and a right of lower prosecutors to receive written confirmations when to control the legitimacy of such decisions. The authorities add

that the draft law envisages that the main body of the prosecutorial authorities is the National Conference of Prosecutors and that this body is to address issues related to the internal activities of the Prosecution Service; the Conference is to appoint members of qualification and disciplinary commissions, which, in turn, will carry out the particular functions of selecting candidates for vacant posts and disciplinary proceedings etc.

22. GRECO takes note of the information provided by the Ukrainian authorities. The reform process, which now includes draft amendments to the Constitution as well as the law "On the Prosecutor's Office", has progressed since the adoption of the Third Addendum to the Compliance Report. It would appear that the authorities to some extent have been guided by European standards in this endeavor and many of the measures reported would, if adopted and implemented, appear to be for the benefit of a more independent Prosecution Service. That said, the reform initiatives are still in the form of draft legislation and GRECO is therefore not in a position to assess the details of it. GRECO maintains its previous conclusion.
23. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation xi.**

24. *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).*
25. It is recalled that in the Third Addendum to the Compliance Report, this recommendation was considered partly implemented as draft legislation amending the Criminal Code and the Criminal Procedure Code addressing parts of the Recommendation was pending before Parliament.
26. The authorities of Ukraine now report the Law of Ukraine "On Amendments to the Criminal and Criminal Procedure Codes", Chapter XIV, Articles 96.1 and 96.2 (adopted on 18 April 2013 and entered into force on 16 December 2013, No 222-VII) has introduced a procedure for compulsory confiscation and seizure by a court of law in respect of money, property and other valuables, subject to the commission of a crime. The law provides that confiscation is possible in respect of the proceeds and instrumentalities of a crime, in respect of direct and indirect valuables and that value confiscation and seizure are possible. Moreover, the law allows for special confiscation from third parties. In particular, it is established that money, valuables and other property transferred by the person who committed the crime to another person or legal entity are subject to confiscation, if the person who holds the property knew or should have known that such property had been obtained as a result of a crime.
27. GRECO welcomes the adoption of comprehensive legislation, which introduces a new regime of confiscation and seizure of proceeds and instrumentalities of crime in line with European standards and the requirements of the current recommendation.
28. GRECO concludes that Recommendation xi has been implemented satisfactorily.

#### **Recommendation xii.**

29. *GRECO recommended 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.*

30. It is recalled that the main reason for this recommendation was that there were no effective means in practice in Ukraine to handle seized property the value of which is diminishing rapidly. In the Third Addendum to the Compliance Report, the Recommendation was considered not implemented as Resolution No. 1104 of 19 November 2012 (“*On the Implementation of Particular Provisions of the criminal procedure Code*”) of the Cabinet of Ministers, was not seen to go beyond the pure storage of seized property and there were no rules to cover all types of property and therefore did not adequately respond to the purpose of the Recommendation.
31. The Ukrainian authorities now stress, *inter alia*, that Article 100.6 of the Code of Criminal Procedure regulates the disposition of seized perishable goods or products property, the value of which is diminishing. Such property can be put on sale, subject to consent by its owner or, by court decision. The Resolution of the Cabinet of Ministers (No. 1104) regulates the procedures for storage of seized property and evidence, their realisation, technological processing, destruction, costs related to their storage transmission and safety during criminal proceedings. The authorities add that the Resolution regulates in detail the storage and management of physical property and evidence, including vehicles or securities. They furthermore add that the Ministry of Justice has drafted some amendments to the Resolution in order to make it more complete in terms of the storage of particular property and to better ensure the safety of its value.
32. GRECO takes note of the information provided. This issue is regulated in Article 100 of the Code of Criminal Procedure and the further management of seized property is regulated by Resolution No. 1104 of 2012. GRECO welcomes this new information which indicates that there are means available to deal with seized property, including in a way as to avoid unnecessary value losses. However, it would appear that this area is still subject to the drafting of further provisions in the Ministry of Justice in order to complete the regulations in this area. GRECO would expect a complete recapitulation of the statutory situation once the drafting is finalised. Nevertheless, the authorities have shown real progress in this area.
33. GRECO concludes that Recommendation xii has been partly implemented.

#### **Recommendation xiv.**

34. *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.*
35. GRECO recalls that, at the time of adoption of the Compliance Report, a draft *Administrative Procedure Code* was pending before Parliament and that the law “*On Normative Legal Acts*”, regulating, *inter alia*, 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 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. At the time of adoption of the Second Addendum to the Compliance Report, the authorities explained that the draft *Administrative Procedure Code* was being re-worked by the Ministry of Justice. The draft law “*On Normative Legal Acts*” had been through a first reading in Parliament and was being prepared for a second reading some time in 2012. GRECO assessed recommendation xiv as partly implemented. In the Third Addendum to the Compliance Report, GRECO welcomed the adoption of the Law “*On Administrative Services*”, which, *inter alia*, defines procedures and time-limits for the provision of administrative services, such as public documents, as a positive step towards

implementation of the Recommendation. However, no tangible results regarding the draft Administrative Procedure Code and the issue of hierarchy of legal norms and standards had been reported and the recommendation remained partly implemented.

36. The authorities of Ukraine now report that following criticism of the draft *Administrative Procedure Code* from a number of stakeholders a new working group was established in July 2013 by the Ministry of Justice (Order № 675 /7 on July 11, 2013, as amended by order № 758/ 7 on 31 July 2013) to revise the draft Code. This work is currently on-going. They also report that a draft law “On Normative Legal Acts” and the Parliamentary Committee on Legal Policy is dealing with the preparation for further consideration by Parliament.
37. GRECO notes that the reform of the administrative process is still on-going, despite the setbacks reported. The current situation where the legal framework governing administrative decisions is still not finalised, makes it difficult for the public officials to carry out their functions in a coherent way as well as for the larger public to know their rights and obligations in all respects of public administration which is a huge apparatus in Ukraine affecting millions of people. It may be difficult to apply the Rule of Law principle in this situation and it is likely to pave the way for widespread corruption in Ukraine. This recommendation, which has been dealt with to some extent, needs further urgent attention.
38. GRECO concludes that recommendation xiv remains partly implemented.

#### **Recommendation xviii.**

39. *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.*
40. 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. In the Second Addendum to the Compliance Report, the authorities explained that a new central executive body, the State Finance Inspection, had been created to carry out financial control and audits. GRECO criticised this development, stating that this new body, like the former State Control and Revision Office which existed at the time of the adoption of the Evaluation Report, was an arm of the executive power. In the Third Addendum to the Compliance Report, GRECO was pleased that the powers of the Accounting Chamber to control the revenues and expenses of local budgets were again being considered and that amendments to Article 98 of the Constitution were envisaged to this end; the issue had been considered by the Constitutional Assembly and, on 18 January 2013, the President of Ukraine had submitted to Parliament a draft law “*On Amendments to Article 98 of the Ukrainian Constitution on powers of the Accounting Chamber*”.
41. The Ukrainian authorities now report that the Law No. 586 - VII of 19 September 2013 has introduced amendments to Article 98 of the Constitution, which provides that the Accounting Chamber is to exercise control on behalf of the Verkhovna Rada of Ukraine on the flow of funds



of the State Budget and their use. The same law provides that the organisation, powers and procedures of the Accounting Chamber shall be determined by law. The authorities add that the “*Strategy of public financial management systems*” adopted by the Cabinet of Ministers (No. 774 -p dated 1 August 2013) foresees the drafting of a new law on the Accounting Chamber to clarify its status as the supreme body of the external audit of public finances, including the state budget and the receipt and use of local budgets etc.

42. GRECO takes note of the information provided. However, it is not convinced that the new Article 98 of the Constitution allows the Accounting Chamber also to audit local authorities in respect of all their activities/funding as foreseen in the recommendation. Further clarifications in this respect are needed. In any event, the necessary further amendments foreseen in respect of the particular law on the Accounting Chamber are still to be drafted.
43. GRECO concludes that recommendation xviii remains partly implemented.

#### **Recommendation xix.**

44. *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.*
45. 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 new legislation had been initiated. In the Addendum to the Compliance Report, GRECO welcomed the law “*On Public Procurements*” which 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 at preventing corruption. GRECO considered this as 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 application of the law, *inter alia*, procurement in the energy area. In the Second Addendum to the Compliance Report, GRECO noted an improvement to the public procurement legislation, thanks to amendments to the law “*On Public Procurements*” adopted in July 2011. However, it pointed out the need for further alignment of certain issues with European norms (EU directives), for example, the definition of “*procuring entities*” in relation to state owned enterprises and enterprises of public interest. The recommendation was therefore concluded as partly implemented. In the Third Addendum to the Compliance Report, GRECO welcomed the measures that had been taken and/or were underway, *inter alia*, the adoption of amendments to the law “*On Public Procurements*” and to the law “*On the Introduction of the Procedure of Electronic Reverse Auction*” and the adoption of the law “*On Peculiarities of Conducting Procurement in Particular Spheres of Economic Activity*”, aiming at a gradual integration of Ukrainian public procurement legislation into conformity with EU directives on public procurement. Further efforts in this respect were underway and the recommendation was partly implemented.
46. The authorities of Ukraine now submit that regulations necessary to implement the provisions of the law “*On the Introduction of the Procedure of Electronic Reverse Auction*”, are currently being developed; on 1 August 2013, the Cabinet of Ministers adopted a decree “*On the Strategy of development of public financial management*”, to which the Strategy of the public procurement system is included in a separate section. The strategy includes measures to be taken for further development and improvement of the public procurement system, including the rules of the EU Directives. In particular, the strategy envisages further amendments to the law “*On Public Procurements*”. The authorities also inform about a new draft law “*On Public Procurement*”,

aiming at establishing a competitive procurement environment and to counteract corruption through more transparency. On 27 March 2014, the Cabinet of Ministers submitted the draft law to Parliament (#4587).

47. GRECO takes note of the process of alignment of Ukrainian public procurement legislation with European norms, in particular EU directives. Although some further progress has been reported, it would appear – as before – that legislative reforms are still on-going.
48. GRECO concludes that recommendation xix remains partly implemented.

#### **Recommendation xx.**

49. *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.*
50. 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*”, then pending before Parliament together with other draft laws concerning the status of certain public servants (i.e. medical and pharmaceutical employees). In the Second Addendum to the Compliance Report, the authorities indicated that the draft law “*On Civil Service*” had been adopted and would enter into force on 1 January 2013. It was also reported that the Cabinet of Ministers had submitted to Parliament a draft law “*On Service in Self-Government Bodies*”, aiming at reforming areas such as the recruitment, legal status and social security of officers in local authorities. GRECO noted that the reform of public administration had been largely limited to the drafting of new legislation and regulations and that the process had been slow. It stressed that reform of public administration needs to go beyond legislative measures and to tackle practice, for example, by training staff and concluded that this Recommendation was partly implemented. In the Third Addendum to the Compliance Report, GRECO noted that the entry into force of the law “*On Civil Service*” was postponed by Parliament until 1 January 2014, due to budgetary reasons and to the necessity of coordinating the introduction of new versions of this law with the draft law “*On Service in Self-Government Bodies*” (No. 9673 of 11 January 2012), which was meanwhile sent back to the Cabinet of Ministers for further revision. GRECO also noted that a draft law “*On Amendments to Certain Laws of Ukraine in Connection with the Adoption of the Law of Ukraine on Civil Service*” had been submitted to Parliament. In order to implement the amended law “*On Civil Service*”, the National Agency of Ukraine on Civil Service had developed seven draft decrees of the Cabinet of Ministers and adopted 11 procedural orders. Moreover, on 1 February 2012, the President of Ukraine had approved the *Strategy of State Personnel Policy for 2012-2020* (Decree No.45) and, on 20 July 2012, an action plan for the implementation of the Strategy (Decree No. 453), and massive training of various categories of personnel was reported. Finally GRECO welcomed the legislative measures taken on the reform of the public service which did not apply only to civil servants, but also to other personnel of the public sector. For instance, the Law “*On Principles of Prevention and Counteraction to Corruption*” applies to all public sector employees. Nevertheless, GRECO regretted that the legislative reforms had suffered further setbacks and that the law “*On Civil Service*” had still not entered into force (it had meanwhile been amended). The lack of progress was considered detrimental to the implementation of a legal framework that is still not fixed and

GRECO questioned the pertinence of providing training on a legal framework that is constantly undergoing change. It concluded that the recommendation was only partly implemented.

51. The authorities of Ukraine now submit that the entering into force of the law “*On Civil Service*” has been postponed to 1 January 2015 (instead of 1 January 2014 as earlier decided), subject to the approval of the President. The reason given for the postponement is to ensure coherent implementation of the administrative reform, including the simultaneous and coordinated entry into force of the revised laws “*On Civil Service*” and “*On Service in Local Government*”, and to coordinate this with the State Budget of 2015. The authorities also announce that following some cooperation with civil society, the Ministry of Justice foresees further amendments to the law “*On Civil Service*”, aiming at taking into account recommendations of the EU and OECD (SIGMA).
52. GRECO can only regret that the reforms in the public and civil service have again suffered from setbacks since the entering into force of basic legislation, the law “*On Civil Service*”, has been further postponed. It is noteworthy that the reforms in this area, which are crucial elements of anti-corruption measures within public administration, have not made better progress more than seven years after adoption of the Evaluation Report.
53. GRECO concludes that recommendation xx remains partly implemented.

#### **Recommendation xxi.**

54. *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.*
55. GRECO recalls that in the Second Addendum to the Compliance Report, it noted the adoption and entry into force on 1 July 2011 of the law “*On the Principles of Preventing and Combating Corruption*”. It welcomed in this law the introduction of a clear duty upon public officials to report suspicions of corruption and the stipulation that persons who report are to be protected from any adverse consequences. However, as subsequent provisions for the practical implementation of the law still had to be adopted and no concrete arrangements had been taken for the actual protection of whistleblowers, it considered that Ukraine had not complied in full with the recommendation. In the Third Addendum to the Compliance Report, GRECO noted that in May 2012 the Ukrainian Parliament adopted amendments to the law “*On the Principles of Preventing and Combating Corruption*”, introducing several sectorial laws and regulations<sup>1</sup>, according to which persons who report suspicions of corruption cannot be dismissed, forced to resign or subject to disciplinary liability in connection with their reporting. They may also appeal disciplinary decisions or decision of dismissal, according to the relevant legal procedures. The Ministry of Justice had also prepared a draft law “*On amendments to particular laws of Ukraine on the improvement of financial control and resolution of conflicts of interest*” prescribing, *inter alia*, that the law “*On the Principles of Preventing and Combating Corruption*” be supplemented with general provisions according to which no person may be dismissed or forced to resign, brought to disciplinary liability or subject to negative means of influence (transfer, formal evaluation, change of working conditions etc.) as a result of whistle-blowing. GRECO requested further measures to be taken in this respect, such as the introduction of systems allowing for anonymous reporting or

---

<sup>1</sup> Laws of Ukraine “On Security Service of Ukraine”, “On the State Penitentiary Service of Ukraine”, “On the State Special Transport Service”, Disciplinary Regulations of the Armed Forces of Ukraine, Prosecutor’s Office of Ukraine, Customs Service of Ukraine, Internal Affairs Bodies of Ukraine, State Service for Special Communication of Information Protection of Ukraine, Civil Defence Service.

the reversal of the burden of proof in case a person is subject to retaliation measures; welcomed the intention to further increase the protection of whistleblowers in the Law “*On the Principles of Preventing and Combating Corruption*” and concluded that the recommendation remained partly implemented.

56. The authorities of Ukraine now report that on 14 May 2013, Parliament adopted the law “*On Amendments to Certain Legislative Acts of Ukraine on Implementation of the State Anti-Corruption Policy*”. This law, which entered into force on 9 June 2013, is aimed at strengthening the safeguards of persons who assist in preventing and combating corruption, such as a prohibition to use retaliatory means against whistleblowers (dismissal, disciplinary action, transfer, attestation, changes in working conditions etc.). Furthermore, the draft law “*On Amendments to Certain Legislative Acts of Ukraine in the area of state anti-corruption policy on the implementation of the Visa Liberalisation Action Plan*” is pending before Parliament (registration № 4556 dated 25 March 2014). This draft foresees further guarantees of protection of whistleblowers, such as a reversed burden of proof in such cases.
57. GRECO welcomes the progress reported in respect of setting up safeguards and protection of whistleblowers as a necessary complement to the rules on reporting suspicions of corruption. GRECO is pleased to note the principles introduced so far, in particular to prohibit various forms of retaliation against whistleblowers, but the reforms are still not finalised. In this connection, GRECO wishes to refer to the on-going process to establish a Council of Europe recommendation on the protection of whistleblowers, currently under the responsibility of the European Committee on Legal Co-operation (CDCJ), the work of which may serve as guidance for the Ukrainian authorities.
58. GRECO concludes that Recommendation xxi remains partly implemented.

#### **Recommendation xxiv.**

59. *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.*
60. It is recalled that a draft law “*On Responsibility of Legal Person for Committing Corruption Offences*” was pending before Parliament at the time of adoption of the Compliance Report, that this draft was subsequently adopted and then abrogated by Parliament on 5 January 2011. The issue of liability of legal persons was later established as a priority under the *National Anti-corruption Strategy 2011-2015*. In the Third Addendum to the Compliance Report, GRECO welcomed the new draft law “*On Amendments to Particular Legal Acts of Ukraine on Establishment of Measures having Criminal-Legal Character in respect of Legal Persons*” which had been submitted to Parliament in January 2013. The draft law included amendments to the Criminal Code providing for criminal liability for legal persons when corruption had been committed in the interest or on behalf of the legal person by their founders, directors, members or any authorised person. The sanctions contained in the draft were fines, prohibition on pursuing certain activities, confiscation of property and liquidation. GRECO noted, however, that the draft did not cover liability of the legal person in case of a lack of supervision or control, as required by Article 18.2 of the Criminal Law Convention on Corruption (ETS 173) and urged the authorities to address this issue before adopting the law. GRECO also noted that no considerations were reported in respect of the establishment of a registration system for legal persons subject to sanctions and concluded that the recommendation had been partly implemented.

61. The Ukrainian authorities now report that on 23 May 2013, the law "On Amendments to Certain Legislative Acts of Ukraine on implementation of the Action Plan for the liberalisation of the EU visa regime for Ukraine on the liability of legal persons" was adopted (N314-VII). It will enter into force on 1 September 2014. The authorities explain that the law introduces a mechanism for applying criminal means to legal persons for criminal offences related to bribery (first and second parts of Articles 368.3 and 368.4, Article 369 of the Criminal Code of Ukraine), undue influence (Article 369.2 of the Criminal Code), laundering of proceeds from crime (Articles 209 and 306 of the Criminal Code) and terrorism (article 258-2585 of the Criminal Code). The Law provides for criminal law sanctions and measures (fines, confiscation of assets and liquidation of legal persons). The offences that are the basis for sanctioning a legal person, must have been committed by one or more of its "authorised persons", on behalf of, or in the interests of, the legal entity (e.g. officials of legal persons, employees or other persons acting on its behalf under the law). The authorities add that criminal law measures against a legal person can be applied regardless of the role of the authorised person (actual doer, organiser, instigator or accomplice), the main thing being that the person acted in the interests of a legal person. The authorities add that a draft law "On amendments to certain legislative acts of Ukraine in the area of state anti-corruption policy on implementation of the Visa Liberalisation Action Plan" which was submitted to Parliament on 25 March 2014 (#4556) will, if adopted, extend the liability of legal persons also to cover situations where there is a lack of supervision in accordance with Article 18.2 of the Criminal Law Convention on Corruption.
62. The authorities also report that in accordance with the *State Program on Preventing and Combating Corruption for 2011-2015*, the Ministry of Justice is preparing regulations for the registration of legal entities, to which measures of criminal law for corruption have been applied.
63. GRECO takes note of the information reported. It appreciates that Ukraine, with the adoption of the new legislation referred to above, has introduced liability for legal persons in respect of corruption offences as required by the current recommendation. Furthermore, GRECO notes that measures are underway to extend the liability also to cover situations where the criminal offence has been possible due to a lack of supervision by a natural person under its authority, as required by Article 18.2 of the Criminal Law Convention. As far as the last part of the recommendation is concerned, GRECO accepts that the Ukrainian authorities have considered establishing a registration system for legal persons which would be subject to corporate sanctions as requested in the recommendation. It urges the authorities to make planned improvements a reality.
64. GRECO concludes that recommendation xxiv has been partly implemented.

### **III. CONCLUSION**

65. **With the adoption of this Fourth Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the twenty-five recommendations issued to Ukraine, in total sixteen recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.**
66. 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 iii and xi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, v, xii, xiv, xviii, xix, xx, xxi and xxiv have been partly implemented.

67. GRECO welcomes the legislative changes adopted which provide that bribery is an offence under the Criminal Code only and that corruption, in all its forms, is to be treated as a crime which ought to be dealt with by the criminal justice system. Moreover, Ukraine has also put in place modern regulation concerning confiscation and seizure of proceeds of crime, including the possibilities to cover direct as well as indirect proceeds, and in respect of proceeds held by a third party as well as value confiscation. It should also be highlighted that liability of legal persons has been introduced under the Criminal Code in Ukraine. These measures bring Ukraine's criminal legislation more in line with European standards and broaden the country's possibilities to fight corruption effectively.
68. GRECO regrets, however, that the overall response to the recommendations is insufficient as a number of areas under review have been affected for years by a lack of substantial progress. The initiatives taken since the Third Addendum to the Joint First and Second Round Compliance Report, however, modify this overall picture to some extent. Since the adoption of GRECO's Compliance Report in 2009, numerous and sometimes contradictory measures have been taken. The legal framework as regards such fundamental areas as the Prosecutor's Office, public administration and civil service reform and public procurement procedures is still not fixed, leading to a lack of legal security and rendering the necessary implementation measures difficult. Above all, GRECO reiterates its previously expressed concern about the National Anti-Corruption Committee, its independence and the representation of civil society therein, in order to be able to carry out a meaningful monitoring function of anti-corruption policies. The establishment and operation of such a mechanism is yet to be seen; GRECO is mindful of the current situation in Ukraine, which makes this work particularly demanding upon the authorities concerned.
69. In view of the above, GRECO urges the Ukrainian authorities to take determined action with a view to addressing its pending recommendations. In accordance with Rule 31, paragraph 9.1 of its Rules of Procedure, it requests the Ukrainian authorities to submit additional information on the implementation of recommendations i, v, xii, xiv, xviii, xix, xx, xxi and xxiv by 31 January 2015.
70. Finally, GRECO invites the Ukrainian authorities to authorise, as soon as possible, the publication of the Fourth Addendum, to translate it into the national language and to make the translation public.