



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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Addendum

Second Evaluation Round

Addendum to the Compliance Report on the United States of America

Adopted by GRECO
at its 49th Plenary Meeting
(Strasbourg, 29 November – 3 December 2010)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on the United States of America at its 30th Plenary Meeting (9-13 October 2006). This Report (Greco Eval II Rep (2005) 10E) addressed 8 recommendations to the USA and was made public on 17 October 2006.
2. The USA submitted the Situation Report required under the GRECO compliance procedure on 26 June 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on the USA at its 40th Plenary Meeting (1-5 December 2008). This last report was made public on 12 December 2008. The Compliance Report (Greco RC-II (2008) 5E) concluded that recommendations ii-v had been implemented satisfactorily and recommendations vi-viii had been dealt with in a satisfactory manner. Recommendation i had been partly implemented; GRECO requested additional information on its implementation. This information was provided on 29 June 2010.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendation i in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation i

4. *GRECO recommended to review the pertinent rules on confiscation/forfeiture and the use of interim measures, in order to ensure that all proceeds from acts of corruption and related instrumentalities are subject to confiscation, and to enable measures such as seizure and restraint orders, including in respect of substitute assets, to be taken as appropriate.*
5. GRECO recalls that this recommendation was assessed as partly implemented in the Compliance report as the shortcomings identified in the Evaluation report – namely that confiscation was not always available in respect of instrumentalities of crime and the lack of value based interim measures such as restraint orders – were being dealt with by the Department of Justice at the time and that draft legislation addressing both these issues was under way (Proceeds of Crime Act 2007).
6. The US authorities now report that the proposed amendments to the Proceeds of Crime Act presented to Congress in 2007 would have expanded the authority to forfeit the instrumentalities of crime and would have authorised the pretrial restraint of substitute assets. However, that legislation was not enacted. Subsequently, the Department of Justice drafted new legislation to accomplish the same purpose; that draft legislation is currently finalised and is about to be introduced to Congress for adoption. Nevertheless, the authorities stress that the United States does have authority to forfeit the instrumentalities of many offences, including foreign corruption offences, money laundering, etc.
7. GRECO takes note of the information provided. While recalling that the US legal system was considered generally solid in respect of the possibilities to use forfeiture and interim measures in most situations relating to corruption offences (Evaluation report, paragraph 47) and that forfeiture is much used in the USA, the shortcomings identified in respect of confiscation of instrumentalities and in relation to value based interim measures have not been remedied, as the draft legislation available at the time of the adoption of the Compliance report was not enacted.

However, there is an ongoing process to introduce new legislation to remedy the shortcomings identified. GRECO therefore maintains its previous conclusion.

8. GRECO concludes that recommendation i remains partly implemented.

III. CONCLUSION

9. In addition to the conclusions contained in the Second Round Compliance Report on the United States of America and in view of the above, GRECO concludes that recommendation i has not been implemented.
10. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 8 recommendations issued to the USA, in total 7 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner. GRECO encourages the US authorities to pursue their efforts in respect of recommendation i.
11. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of the USA. The authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendation i.
12. Finally, GRECO invites the authorities of the USA to authorise, as soon as possible, the publication of this Addendum.