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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Moldova

Adopted by GRECO
at its 48th Plenary Meeting
(Strasbourg, 27 September – 1 October 2010)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Moldova its 30th Plenary Meeting (13 October 2006). This report (Greco Eval II Rep (2006) 1E), which contained 15 recommendations to Moldova, was published on 17 November 2006.
2. Moldova submitted the Situation Report required under GRECO's compliance procedure on 15 July and 7 August 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Moldova at its 40th Plenary Meeting (5 December 2008). The latter was published on 12 December 2008. The Compliance Report (Greco RC-II (2008) 8E) concluded that recommendations iv, vi, xiv and xv had been implemented satisfactorily and recommendations i, ii, vii, viii and xi had been dealt with in a satisfactory manner. Recommendations iii, v, ix, x, xii and xiii had been partly implemented; GRECO asked for further information on their implementation. This information was supplied on 28 June 2010.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, the purpose of this Addendum to the Second Round Compliance Report is to assess the implementation of recommendations iii, v, ix, x, xii and xiii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended to bring the legislation on special investigative techniques in line with the provisions of the Criminal Law Convention on Corruption (ETS no. 173).*
5. In the Compliance Report, GRECO took note of the draft amendment aimed at improving the legislative framework with a view to expressly regulating the use of certain special investigative techniques in the Code of Criminal Procedure and allowing evidence obtained by such means in trials. It noted that the draft legislation amending and supplementing the Code of Criminal Procedure and Law no. 45-XIII of 12 April 1994 on operational investigation activities had been approved by the government and transmitted to Parliament. However, it concluded that the recommendation had only been partly implemented because the amendments had not yet been passed by Parliament.
6. The Moldovan authorities report that the amendments are currently still pending before Parliament.
7. GRECO regrets that the amendments to the Code of Criminal Procedure and to Law no. 45-XIII of 12 April 1994 on operational investigation activities and special investigative techniques are still before Parliament and wishes to draw attention to the concerns expressed in the Evaluation Report relating to the prejudicial effects of the current state of affairs – which does not allow evidence obtained by special investigative techniques in trials in cases involving ordinary corruption, trading in influence or accounting offences – to the quality of the proceedings and the trial. GRECO urges the institutions concerned to redouble their efforts to secure the enactment of the above-mentioned draft amendments as soon as possible.
8. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

9. *GRECO recommended to make every effort to ensure that the links between organised crime and money laundering are taken into account in all aspects of the fight against corruption, especially by making it easier to identify the existence of such links and by strengthening the contribution of the anti-money laundering arrangements to the fight against corruption and by ensuring that institutions and professions required to declare their suspicions receive instructions and training to assist the detection and reporting of acts of corruption.*
10. In the Compliance Report GRECO concluded that, despite some progress and certain planned positive initiatives, whose results would have to be monitored, the recommendation had only been partly implemented since the money laundering typologies of the Centre for Combating Economic Crimes and Corruption (CCECC) and the November 2007 guide distributed to the entities bound by reporting requirements to prevent money laundering did not take corruption into account. Nor did there appear to be any training activities aimed at those entities.
11. The Moldovan authorities state that the projects referred to in the Compliance Report have been completed: a. the preparation by the anti-corruption prosecutor's office of a practical guide for investigators on methods of investigating corruption cases, including a section on identifying the links between organised crime and corruption – the guide has just been published in the form of a brochure and will be distributed to the criminal prosecution authorities on the orders of the Prosecutor general; b. the joint signature on 20 February 2009 by the Prosecutor general's office, the Customs service, the Ministry of Internal Affairs, the CCECC and the Intelligence and Security Service of joint order no. 21/33/147/111-0/25 on the application of a common set of instructions on the need to investigate links between organised crime, money laundering and corruption.
12. In addition to these projects, the authorities state that during the period 2008-2010, the CCECC's anti-money laundering department identified new forms of money laundering – associated with predicate and underlying bribery offences – which have been described in the centre's annual reports published on the Internet. In addition, on 10 August 2009, the Ministry of Finance issued order 63¹ on the application by audit companies and professional auditors of guidelines on measures to prevent and combat money laundering and the financing of terrorism. Finally, the authorities mention several training activities which were organised, after the adoption in November 2007 of the two guides concerning the detection and reporting of suspicious transactions, for entities bound by reporting requirements to the financial intelligence unit (FIU) located within the CCECC. In particular, the FIU organised in collaboration with the Association of banks, the Association of notaries and the Association of auditors several training activities and workshops for 300 persons (brokers, representatives of banks, exchange offices, estate agencies, casinos etc.) in 2008, 240 persons in 2009 and 89 persons in 2010. On this occasion, the provisions and recommendations of the two guides as well as the money laundering typologies were presented, including the links with acts of corruption.
13. GRECO notes that several measures have been taken to ensure that the links between corruption and organised crime and money laundering are taken into account, *inter alia*, the finalisation by the anti-corruption prosecutor's office of a practical guide for investigators on methods of investigating corruption cases and of an order concerning the need to investigate links between organised crime, money laundering and corruption; the issuing by the Ministry of Finance of an order on the application by audit companies and professional auditors of guidelines on measures to prevent and combat money laundering and the financing of terrorism; and

¹ Published in the Official Journal of 10 August 2009.

training activities organised for entities required to declare their suspicions. Although GRECO regrets that the money laundering typologies of the Centre for Combating Economic Crimes and Corruption (CCECC) and the November 2007 guide distributed to the entities bound by reporting requirements to prevent money laundering still fail to take corruption into account, it considers that the reported measures are clearly moving in the right direction and have the potential to stress the links between organised crime and money laundering in the fight against corruption.

14. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation ix.

15. *GRECO recommended to adopt suitable legislation on conflicts of interest, including situations where public officials move to the private sector, and to set up an efficient system for monitoring public officials' declarations of assets and interest.*
16. In the Compliance Report, GRECO noted that Law no. 16-XVI on conflicts of interest had been passed on 15 February 2008 and that it took account of various situations, including the departure of public officials for the private sector. However, since it could not be concluded that efficient monitoring systems had been introduced for both conflicts of interest and declarations of assets, GRECO found that the recommendation had only been partly implemented.
17. The Moldovan authorities now refer to the establishment, by Minister of Justice order no. 151 of 25 April 2010, of a joint ministerial working group to assess the law on conflicts of interest and declarations of assets and make proposals to amend it. The group, comprising representatives of the finance and justice ministries, the CCECC and civil society, has considered the establishment of effective machinery for monitoring declarations of interest and assets, the relevant monitoring bodies' right of access to the data of public departments, such as the tax inspectorate, the land registry and the means of transport and business undertakings registers, the arrangements for challenging supervisory bodies' decisions, the penalties for breach of the obligation to lodge accurate declarations and the right to carry out checks *ex officio* or following reports by individuals or legal persons. The authorities state that the working group has produced draft legislation to amend and extend the Criminal Code, Law no. 1264 on the declaration and verification of incomes and assets, Law no. 16-XVI on conflicts of interest and the Infringements Code, as well as a draft law on a principal ethics commission. The last named is concerned with the structure of the commission, and its operating methods, powers and responsibilities, including those concerned with checking declarations of assets and interests and identifying offences. As regards the Law no. 1264 on the declaration and verification of incomes and assets, the authorities indicate that the proposed amendments complete, *inter alia*, the list of persons obliged to submit such declarations as well as the list of assets and incomes to be declared and also that they require more detailed declarations. The joint ministerial working group has just analysed the objections and propositions made by the relevant authorities in relation to the above-mentioned draft legislation, before submitting them – together with its comments – to the government.
18. GRECO welcomes the new draft legislation to establish supervisory machinery to deal with conflicts of interest and declarations of assets. However, since the legislation has not yet been passed and come into force GRECO cannot consider that an effective monitoring system has been put in place.
19. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

20. *GRECO recommended to introduce clear rules that encourage all public officials to report cases of corruption and an appropriate system for protecting whistleblowers, and to review the manner in which reports are processed by the authorities, to ensure that the appropriate procedures are set rapidly in motion.*
21. The Compliance Report found that this recommendation had been partly implemented. Although the third part of the recommendation (the manner in which reports were processed by the authorities) had been dealt with satisfactorily, GRECO considered that relevant measures concerning the first two parts (encouraging public officials to report cases of corruption and protecting whistleblowers) were still necessary or had not yet been adopted. In particular, the system of reporting whereby officials still had to go through their superiors, who then decided on the action to be taken, had not been altered, and the provisions of the anti-corruption law of 2008 and those foreseen in the draft law on the civil service were still insufficient to ensure adequate protection for whistleblowers.
22. In connection with the first part of the recommendation, on the reporting of cases of corruption by public officials, the Moldovan authorities state that article 314 of the new Infringements Code, which was enacted on 24 October 2008 and came into force on 31 May 2009, introduced penalties for senior officials of public bodies who concealed information about corruption or nepotism or who failed in their duty to take action against subordinates who were guilty of such acts. In addition, draft legislation has been approved by the government on 11 August 2010 and submitted to Parliament which would make it an offence for public officials, as defined in section 4 of the 2008 anti-corruption law, no. 90-XVI, to fail to report acts of corruption or nepotism that have come to their attention in the course of their duties. Finally, the authorities report the adoption of government order no. 1461 of 19 December 2008 establishing the regulations on reporting and monitoring arrangements concerning the level of corruption in the public authorities. This regulation gives civil society a greater role in identifying corruption among public officials, based on a questionnaire completed by ordinary citizens. This external reporting system was introduced for the first time in 2009 by the CCECC –, but the regulation also provides for internal reporting machinery. The latter consists of a monitoring of public officials by non-governmental organisations or private agencies, the results of which are submitted to the internal security services and may, in a given case, lead to reporting to the public prosecutor or to the CCECC.
23. In connection with the second part of the recommendation, on the protection of whistleblowers, the authorities state that new draft legislation on this subject has been submitted to the government. This takes account of GRECO's conclusions in the Compliance Report and section 7 incorporates practical measures to protect persons who report acts of corruption in good faith, *inter alia*, the presumption of good faith, the confidentiality of personal data during the verification of the information provided by the public official, the possibility to propose another post to the whistleblower as well as the obligation on the authorities to nullify any sanctions imposed on whistleblowers who have reported in good faith.
24. GRECO notes that steps are being taken to introduce penalties for public officials who fail to report corruption, and that in the case of senior officials of public bodies such penalties have already been incorporated into the new Infringements Code. It also notes that civil society has been given a more active role in identifying corruption through a system of external reporting, which is to be welcomed. However, it regrets that action has still not been taken to deal with the concern expressed in the Evaluation Report that in no circumstances can public officials report

their suspicions of corruption directly to the law enforcement authorities, for example in the event of senior officials' complicity or failure to act. With regard to whistleblowers, draft legislation that would incorporate practical forms of protection has reportedly been submitted to the government but given the fact that these proposals have not yet been adopted, GRECO cannot conclude that this part of the recommendation has been implemented satisfactorily.

25. GRECO concludes that recommendation x remains partly implemented.

Recommendation xii.

26. *GRECO recommended to provide for the liability of legal persons for active corruption offences and trading in influence, in accordance with the Criminal Law Convention on Corruption; to clarify the application of the criminal liability of legal persons in money laundering offences; to plan more training sessions on criminal liability of legal persons for judges and prosecutors in order to ensure its practical implementation; to provide for effective, proportionate and dissuasive sanctions; and to consider as soon as possible the establishment of a criminal record registry for legal persons.*
27. In the Compliance Report GRECO found that there had been some progress on this recommendation but that it had only been partly implemented because the amendments extending the liability of legal persons to active corruption and trading in influence offences were still to be adopted, there was no report of awareness-raising/training for judges and the sanctions applicable to corruption offences had yet to be specified.
28. The Moldovan authorities state that new draft legislation, amending and replacing the draft law referred to in the Compliance Report ², has been considered by the government and was submitted to Parliament on 19 May 2010. This would amend a number of statutes, including the Criminal Code, the Code of Criminal Procedure and the Law on the civil service code of conduct, and would introduce, *inter alia*, liability for legal persons for the offences of corruption and trading in influence – including in situations where a lack of control within the legal person made possible the commission of the offence – and penalties including fines of 3 000 to 10 000 conventional units (currently MDL 60 000 to 200 000 / about € 3 900 to 13 000), disqualification from performing a specific activity and enforced liquidation of the legal person.
29. With regard to judicial training, the authorities state that – although the draft legislation prepared so far has not yet been adopted – on 18 and 19 March 2010, as part of their in-service training, 45 judges attended courses on "the criminal liability of legal persons: theory and practical application", run by the national institute of justice.
30. GRECO notes that new draft legislation on the criminal liability of legal persons for corruption and trading in influence offences has been prepared and that training has been organised for judges. It invites the institutions concerned to redouble their efforts to secure the enactment of the amendments as rapidly as possible and to ensure that the penalties available are effective, proportionate and dissuasive, also with regard to major economic entities (given that the maximum amount of fines foreseen is not more than € 13 000).
31. GRECO concludes that recommendation xii remains partly implemented.

² Draft law no. 1642 of 3 May 2007, see paragraph 68 of the Compliance Report.

Recommendation xiii.

32. *GRECO recommended to establish as a criminal offence misrepresentation of accounting data associated with acts of corruption, in accordance with Article 14 of the Criminal Law Convention on Corruption (ETS no. 173), to provide for effective, proportionate and dissuasive sanctions and to improve the training of judges and prosecutors in this area.*
33. The Compliance Report found that this recommendation had been partly implemented. A draft legislative amendment to remedy a number of shortcomings concerning accounting offences identified in the Evaluation Report had not yet been enacted. GRECO therefore encouraged the authorities to push this draft through and to provide for adequate sanctions and relevant training for judges and prosecutors.
34. The Moldovan authorities now state that the new draft legislation referred to in paragraph 27 of this report, which will amend and replace the draft legislation referred to in the Compliance Report³, will make it an offence to produce or use an invoice or any other accounting document containing false or incomplete information, or to fail maliciously to enter a payment into an account in order to conceal or disguise an offence. The penalties for these offences are fines of up to 1 000 conventional units (currently MDL 20 000 / about € 1 300) or up to three years' imprisonment, and disqualification from occupying certain posts or performing certain activities for up to five years. For legal persons, the penalties are fines of 1 000 to 2 500 conventional units (currently MDL 20 000 to 50 000 / about € 1 300 to 3 250) and disqualification from performing certain activities.
35. The authorities also state that article 295 of the new Infringements Code, which was enacted on 24 October 2008 and came into force on 31 May 2009, introduces penalties for certain violations of the rules governing accounting procedures and the preparation and presentation of financial reports. The fines range from 15 to 25 conventional units (currently MDL 300 to 500 / about € 20 to 32) and may also be imposed for failure to comply with the accounting rules governing the recording of financial movements, regular reporting and monitoring and the supporting documentation relating to economic activities.
36. GRECO notes that there is new draft legislation on accounting offences. It also notes that certain accounting offences have been introduced into the new Infringements Code, but the range of these offences appears to be insufficiently complete and the penalties laid down in the code insufficiently severe to meet the requirements of the recommendation. GRECO therefore urges the authorities to redouble their efforts to expedite the enactment of the aforementioned draft legislation and to organise relevant training for judges and prosecutors.
37. GRECO concludes that recommendation xiii remains partly implemented.

³ See paragraph 76 of the Compliance Report.

III. CONCLUSION

38. In the light of the foregoing, GRECO concludes that recommendation v has been dealt with in a satisfactory manner. Recommendations iii, ix, x, xii and xiii remain partly implemented.
39. Following adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that of the 15 recommendations addressed to Moldova, 10 have been implemented satisfactorily or dealt with in a satisfactory manner. It notes that since the adoption of the Compliance Report Moldova has made further efforts to achieve the practical implementation of several recommendations, but that for the time being the vast majority of measures introduced have still not been brought to fruition. The situation has not changed much therefore; practically no conclusive progress has been achieved and GRECO greatly regrets that Moldova has not made use of the additional 18 months to bring about significant improvements. GRECO understands that the political crisis in 2009 made this a difficult task to comply with but it urges the authorities to redouble their efforts to implement the various proposals that have been made, in particular regarding the amendments to the legislation concerning special investigative techniques, conflicts of interest and declarations of assets, protection of whistleblowers, the criminal liability of legal persons for corruption and trading in influence offences and accounting offences.
40. The adoption of this Addendum to the Second Round Compliance Report terminates the Second Evaluation Round in respect of Moldova. However, the Moldovan authorities may wish to keep GRECO informed of any relevant developments concerning the implementation of recommendations iii, ix, x, xii and xiii.
41. Finally, GRECO invites the Moldovan authorities to authorise publication of this report as soon as possible, to translate it into the national language and to make the translation public.