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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Germany

Adopted by GRECO
at its 43rd Plenary Meeting
(Strasbourg, 29 June – 2 July 2009)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Germany at its 24th Plenary Meeting (1 July 2005). This report (Greco Eval II Rep (2004) 10E) was made public by GRECO, following authorisation by the authorities of Germany, on 6 July 2005.
2. Germany submitted the Situation Report required under the GRECO compliance procedure on 29 December 2006. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on Germany at its 33rd Plenary Meeting (1 June 2007). This last report was made public on 7 June 2007. The Compliance Report (Greco RC-II (2007) 3E) concluded that recommendations i and v had been implemented satisfactorily and recommendations iv and vi had been dealt with in a satisfactory manner. Recommendations ii and iii had been partly implemented; GRECO requested additional information on their implementation. This information was provided on 28 November 2008.
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 recommendations ii and iii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO recommended to introduce clear rules/guidelines for situations where public officials move to the private sector before they retire, in order to avoid conflicts of interest.*
5. GRECO recalls that in the Second Round Compliance Report on Germany note was taken of draft legislation including rules for situations where civil servants move to the private sector. Firstly, the draft Bill to Regulate the Law governing the Status of Civil Servants in the *Länder* (Civil Servants Status Act or *Beamtenstatusgesetz*, hereafter *BeamtStG*) contained a draft provision – similar to an already existing provision of the Act on Federal Civil Servants (*Bundesbeamtengesetz*, hereafter *BBG*) – obliging retired civil servants and former civil servants who receive pension payments to report, during a period of 3 to 5 years, any employment they intend to engage in if such employment is related to their former duties in the civil service; if there is any reason to fear that official interests will be compromised by this employment, such employment is prohibited. Secondly, both the aforementioned draft bill concerning the level of the *Länder* and a (clarifying) draft amendment to section 70 *BBG*, concerning the federal level, provided that “a civil servant may not, even after termination of his/her employment as a civil servant, request, receive, or accept the promise of any rewards, gifts or other advantages, either for him/herself or a third party, in relation to his/her official position”, and according to the authorities an employment contract would also be considered to be an advantage within the meaning of this provision; pursuant to the draft legislation, (former) civil servants who violate these regulations would be required to hand over to their (former) public sector employer that which was obtained in violation of this provision. In addition to these draft provisions, note was taken of reported similar provisions – already in force – applicable to public officials who do not have the civil servants’ status (in section 3 of the Collective Agreement for the Public Service, *TVöD*).
6. GRECO furthermore recalls that it concluded on only partial implementation of the recommendation, as it was not convinced that the above-mentioned (draft) legislation sufficiently

addressed actual or potential conflicts of interest arising from situations where civil servants move to the private sector, and as it considered that a more tailored and – as required by the recommendation - clear regulation would be appropriate. In particular, GRECO had doubts about the enforceability of the (draft) provision in the *BBG* and *BeamtStG* prohibiting (former) civil servants from accepting advantages in relation to their official position, and whether this indeed covered employment in the private sector, as the stipulation that - in case the (former) civil servant breaches this provision - s/he is to hand over that what was obtained to his/her (former) public service employer, suggests an advantage of a more tangible nature than an offer of employment or an employment contract.

7. The German authorities now indicate that the above-mentioned draft legislation has entered into force concerning the reporting obligation – at the level of the *Länder* – on retired civil servants and former civil servants who receive pension payments (section 41 *BeamtStG*, entered into force on 1 April 2009) and concerning – both at the federal level and at the level of the *Länder* – the prohibition on (former) civil servants from accepting advantages in relation to their official position (section 42 *BeamtStG*, in force since 1 April 2009, and section 71 *BBG* as amended, in force since 12 February 2009).
8. GRECO acknowledges the reported entry into force of the provisions obliging retired civil servants and former civil servants with pension entitlements to report on certain employments outside the public service, and prohibiting (former) civil servants from accepting advantages in relation to their official position. Nevertheless, GRECO recalls its position expressed in the Compliance Report, namely that such regulations do not sufficiently address actual or potential conflicts of interest arising from situations where civil servants move to the private sector. GRECO also maintains its position that a more tailored and – as required by the recommendation - clear regulation would be appropriate.
9. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

10. *GRECO recommended to ensure that public officials, in addition to the existing system of reporting suspicions of corruption in public administration to the hierarchical superior or to the “contact persons for corruption prevention”, have also the possibility to report suspicions of corruption directly to the competent law enforcement authorities – i.e. even without previously informing their superior.*
11. In the Compliance Report, GRECO concluded that the recommendation had only been partly implemented because the draft legislation enabling civil servants at both the federal level and the level of the *Länder* to report suspicions on corruption directly to law enforcement authorities had not yet been enacted – whereas other employees in the public service (who do not have the civil servants’ status) already had this possibility, on the basis of existing regulations in the labour law, in particular sections 626 and 612a of the civil code, section 1 of the termination protection law (*Kündigungsschutzgesetz*) and section 2 (1), in connection with article 20 (3) of the constitutional law, as interpreted by the Federal Labour Court and the Federal Constitutional Court.
12. The authorities now indicate that the above-mentioned draft legislation entered into force, in respect of civil servants at both the federal level (section 67, paragraph 2, No. 3 *BBG*, in force since 1 April 2009) and the level of the *Länder* (section 37, paragraph 2, No. 3 *BeamtStG*, in force since 12 February 2009). These new provisions make a specific exception to the obligation of

confidentiality of civil servants in cases of suspicions of corruption, permitting civil servants to report a suspicion of a criminal corruption offence substantiated by facts not only to their superior and to the competent superior official authority, but also directly to the competent law enforcement authority.

13. GRECO takes note of the information provided and welcomes the fact that legislation has been enacted which gives civil servants the possibility to report suspicions of corruption directly to the competent law enforcement authorities, in addition to the possibility of reporting within the administrative hierarchy.
14. GRECO concludes that recommendation iii has been implemented satisfactorily.

III. CONCLUSION

15. In addition to the conclusions contained in the Second Round Compliance Report on Germany and in view of the above, GRECO concludes that recommendation iii has been implemented satisfactorily. Recommendation ii remains partly implemented.
16. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 6 recommendations addressed to Germany, in total 5 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. As regards the partly implemented recommendation, GRECO welcomes the reported entry into force of provisions prohibiting (former) civil servants from accepting advantages in relation to their official position, but it urges the authorities to introduce clearer rules/guidelines specifically for situations where public officials move to the private sector before they retire, in order to avoid conflicts of interest.
17. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Germany. The authorities of Germany may, however, wish to inform GRECO of further developments with regard to the implementation of recommendation ii.
18. Finally, GRECO invites the German authorities to translate the Addendum into the national language and to make the translation public.