



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

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
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Addendum

Second Evaluation Round

Addendum to the Compliance Report on Estonia

Adopted by GRECO
at its 40th Plenary Meeting
(Strasbourg, 1-5 December 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Estonia at its 19th Plenary Meeting (28 June-2 July 2004). This report (Greco Eval II Rep (2006) 3E), which contains fifteen recommendations addressed to Estonia, was made public on 6 July 2004.
2. Estonia submitted the Situation Report required under the GRECO compliance procedure on 28 December 2005. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC-Report) on Estonia at its 30th Plenary Meeting (19-23 June 2006). This last report was made public on 18 October 2006. The Compliance Report (Greco RC-II (2006) 3E) concluded that recommendation xiv had been implemented satisfactorily and that recommendations ii, iv, v, vi, vii, viii, ix, xi and xv had been dealt with in a satisfactory manner. Recommendations i, iii and x had been partly implemented and recommendations xii and xiii had not been implemented. GRECO invited the Head of the Estonian delegation to submit additional information regarding the implementation of recommendations i, iii, x, xii, and xiii by 31 May 2008. The information was provided on 22 August 2008.
3. The purpose of this Addendum to the Second Round Compliance Report is to appraise the implementation of recommendations i, iii, x, xii, and xiii in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended to introduce practical means for the management of temporarily seized property, such as company shares, in order to facilitate seizure of such property.*
5. GRECO recalls that in the Second Round Compliance Report on Estonia note was taken of a draft law amending the Code of Criminal Procedure, making the sale of seized property possible without the consent of the owner in order to retain the value of the property and authorising the government to enforce a decree prescribing further rules for managing seized property to make confiscation possible. As the draft law had not yet been submitted to Parliament and practical means for the management of seized property had not yet been introduced, GRECO concluded that the recommendation had been partly implemented.
6. The authorities of Estonia now report that following legal amendments, entered into force on 1 February 2007, section 126, paragraph 2.1 of the Code of Criminal Procedure stipulates that property seized in order to secure confiscation may be transferred without the consent of the owner if this is necessary for preventing a decrease in the value of the property. Moreover, the authorities state that a governmental decree on assessing, transferring, referral and destruction of confiscated and seized property was adopted on 14 October 2007 and will possibly be further amended in 2009 in order to include further practical measures for the management of temporarily seized property, on the basis of an analysis currently under preparation.
7. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation iii.

8. *GRECO recommended to develop, at the level of the police and prosecution, a harmonised policy and training for targeting the proceeds of crime, including of corruption-related offences, and to encourage a more systematic use of the provisions on seizure and confiscation as well as the collection and analysis of statistics on the use of such measures.*
9. GRECO recalls that the Compliance Report indicates that in spite of reported measures to implement the recommendation on the basis of the information provided, the development of a harmonised policy for targeting the proceeds of crime at the level of the police and prosecution could not be ascertained and that it could not be assessed whether sufficient training specifically for targeting the proceeds of crime had been provided. Furthermore, it was stressed in the Compliance Report that additional measures such as guidelines and training could be adopted to encourage the effective use of seizure and confiscation. GRECO concluded that the recommendation had only been partly implemented.
10. The authorities of Estonia now indicate that in March 2007, a sub-unit specialised in proceeds of crime was established as part of the Financial Intelligence Unit (FIU) within the Central Criminal Police, whose current five officials are tasked to track down proceeds of crime and produce evidence, to assist police and prosecutors in proving the existence of proceeds of crime and to coordinate the operations. They further state that since June 2008, in each police prefecture there are officials with coordinating and advisory functions related to targeting proceeds of crime.
11. Moreover, the authorities report on the holding of 10 training sessions on confiscation with regard, *inter alia*, to money laundering and corruption offences, which have been attended by altogether 280 officials (police / security police officers, prosecutors, tax and customs officials) since the entry into force of the new confiscation regime in March 2007. Additionally, in spring 2008 the Police Board launched the German-Estonian twinning project "Support of the Creation of a National Monitoring Centre of Criminal Proceeds", aimed at training some 40 police officials, 10 border guards, tax and Security Police officials, 12 judges and 20 prosecutors and publishing a manual on how to handle proceeds of crime. The authorities also make reference to two directives of the National Police Commissioner, i.e. directive No. 144 of 12 May 2008, which contains rules for identifying, assessing and recording of property subject to extended confiscation, and directive No. 184 of 11 September 2007 on the procedure of handling of evidence, other objects and confiscated property, which provides technical rules for the management of seized property.
12. GRECO takes note of the reported additional measures for targeting the proceeds of crime, including more particularly the proceeds of corruption offences, namely the establishment of a specialised unit within the Central Criminal Police, the assignment of coordinating and advisory functions to local officials in each police prefecture, the organisation of a number of training activities as well as the establishment of common rules by way of directives of the National Police Commissioner. GRECO considers that all these initiatives taken together represent a coherent policy which has the clear potential to contribute to a more systematic use of the provisions on seizure and confiscation as required by the recommendation.
13. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation x.

14. *GRECO recommended to extend the duty to report corruption beyond bribery, and to establish institutionalised protection for those who report in good faith.*
15. GRECO concluded in the Compliance Report that the recommendation had only been partly implemented because the measures reported in respect of the second part of the recommendation, namely the protection of the identity of those who report in good faith, were not sufficient to fully protect whistleblowers from retaliatory acts.
16. The authorities of Estonia now state that the new Anti-Corruption Strategy for the period 2008-2012 includes an analysis of the need for a whistleblower protection system to be conducted in 2009.¹ They add that during the current preparation of a new Anti-Corruption Act, the introduction of civil sanctions with shared burden of proof as a possible measure for whistleblower protection is being considered, but that this law will probably not enter into force before the end of 2009 or early 2010.
17. GRECO takes note of the information provided and welcomes the fact that further measures aimed at the protection of whistleblowers are under active consideration, in the framework of the Anti-Corruption Strategy 2008-2012 and in the preparation of a new Anti-Corruption Act. GRECO urges the authorities to persist in their efforts to adopt the necessary measures with a view to a full implementation of the recommendation.
18. GRECO concludes that recommendation x has been partly implemented.

Recommendation xii.

19. *GRECO recommended to examine whether there is a need to redraft Section 14 of the Penal Code with a view to ensuring that it also applies to situations where corruption offences committed by legal persons are the result of a lack of supervision or control by a natural person.*
20. GRECO recalls that the recommendation had not been implemented because it was not entirely clear that a legal person could be held responsible for the crime committed by a natural person under its authority, where the lack of supervision or control by a leading official or a body had made the commission of the offence possible (Article 18, paragraph 2 of the Convention), and the Criminal Policy Department of the Ministry of Justice was planning to further examine Section 14 of the Penal Code in this respect.
21. The authorities of Estonia now report on current legal amendments to Section 14, paragraph 1 of the Penal Code, according to which a legal person is held responsible for acts committed by a broader range of persons, i.e. by one of its bodies, its members, senior officials or competent representatives, in the interest of the legal person concerned.
22. GRECO takes note of the reported widening of the range of persons for whose acts a legal person is to be held liable, but it must insist that the recommendation aimed at a clarification with regard to liability for corruption offences as a result of a lack of supervision or control - as required by Article 18, paragraph 2 of the Criminal Law Convention on Corruption (ETS 173) -, i.e. liability for the omission by persons in a leading position to exercise supervision over the acts committed

¹ <http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=35712/ANTI+CORRUPTION+STRATEGY+2008-2012.pdf>, p. 28, measure 7.3.

by any subordinate persons acting on behalf of the legal person.² In this respect no changes have been reported.

23. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

24. *GRECO recommended to raise the awareness (guidance notes etc.) among crime preventing/investigating/prosecuting authorities of the possibilities for applying the rules on criminal liability of legal persons, and of problems of corruption linked with legal persons; these topics should also be included in training programmes for the police, prosecutors, judges, tax inspectors and State auditors.*
25. GRECO concluded in the Compliance Report that the recommendation had not been implemented because prosecutors and police officers as well as other relevant authorities had not taken any measures to raise awareness with regard to criminal liability of legal persons and problems of corruption linked to legal persons.
26. The authorities of Estonia now report that the responsibility of legal persons is one of the topics discussed during round tables of prosecutors (held three times a year), that the police has consultations on the topic of legal persons when practical cases occur, that tax officials make use in this context of the tax auditor's manual for investigations, that the Public Prosecutor's Office held a training seminar on this topic, in November 2008, for 22 prosecutors and that the training material used during this seminar will serve as a manual for prosecutors. As concerns the practical application of the bribery provisions with regard to legal persons, the authorities indicate that in 2007 one criminal case was conducted (a legal person was accused, on the basis of section 297 of the Penal Code, of granting gratuities several times) and in 2008, two cases (suspected granting of gratuities, section 297, and giving a bribe, section 298 of the Penal Code).
27. GRECO takes note of the information provided by the authorities, including *inter alia* round table discussions of prosecutors on the subject of responsibility of legal persons. It would thus appear that some efforts have been applied in order to raise awareness among crime preventing/investigating/prosecuting authorities in respect of criminal liability of legal persons, and of problems of corruption linked with legal persons. However, as regards specific activities, notably training for the police, prosecutors, judges, tax inspectors and State auditors as required by the recommendation, only one training seminar for 22 prosecutors has been reported. GRECO is concerned that the application of corruption offences with regard to legal persons, which is reportedly very rare (only three criminal cases in 2007/2008), may still suffer from a lack of experience among the practitioners concerned, as ascertained at the time of the evaluation visit. Therefore, GRECO urges the authorities to step up their efforts in this area.
28. GRECO concludes that recommendation xiii has been partly implemented.

III. CONCLUSION

29. In addition to the conclusions contained in the Second Round Compliance Report on Estonia and in view of the above, GRECO concludes that recommendations i and iii have been implemented satisfactorily. Recommendations x, xii and xiii remain partly implemented.

² Cf. Explanatory Report to the Criminal Law Convention on Corruption (ETS 173), paragraph 87.

30. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 15 recommendations addressed to Estonia, in total 12 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. As regards the partly implemented recommendations, GRECO welcomes the reported plan to take further action in the areas of whistleblower protection and urges the authorities to implement this project and, furthermore, to improve the skills of preventing/investigating/prosecuting and judicial authorities as regards the rules on criminal liability of legal persons as well as to further clarify section 14 of the Penal Code with regard to liability of legal persons for corruption offences which occur as a result of a lack of supervision or control.
31. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of Estonia. The authorities of Estonia may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations x, xii and xiii.
32. Finally, GRECO invites the authorities of Estonia to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.