



Strasbourg, 8 October 2009

Confidential
Greco RC-II (2007) 7E
Addendum

Second Evaluation Round

Addendum to the Compliance Report on the Netherlands

Adopted by GRECO
at its 44th Plenary Meeting
(Strasbourg, 6-8 October 2009)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on the Netherlands at its 25th Plenary Meeting (14 October 2005). This report (Greco Eval II (2005) 2E) addressed 6 recommendations to the Netherlands and was made public 10 November 2005.
2. The Netherlands submitted the Situation Report required under the GRECO compliance procedure on 2 May 2007. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC Report) on the Netherlands at its 34th Plenary Meeting (19 October 2007). This last report was made public on 20 November 2007. The Compliance Report (Greco RC-II (2007) 7E) concluded that recommendations i and vi had been implemented satisfactorily and recommendation iv had been dealt with in a satisfactory manner. Recommendations ii, iii and v had been partly implemented; GRECO requested additional information on their implementation. This information was provided on 26 March 2009.
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, iii and v in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation ii.

4. *GRECO had recommended to increase the level of the fine in relation to articles 177a and 178 paragraph 1 of the Criminal Code from fourth to fifth category in order to place these provisions within the overall system of provisional measures, special criminal financial investigation and, subsequently, confiscation.*
5. GRECO recalls that, according to the information contained in the Second Round Compliance Report, the Dutch authorities intended to implement this recommendation, as well as recommendation iv examined hereinafter, in the context of the partial revision of the Criminal Code, the Criminal Procedure Code and certain other laws. The draft act concerning this revision was to be submitted to the Council of Ministers in October 2007 and eventually to the Council of State for advice.
6. The authorities of the Netherlands now state that the legislative proposal to increase the level of the fine in relation to articles 177a and 178 paragraph 1 of the Criminal Code from a fine in the fourth to a fine in the fifth category (from a maximum fine of 18 500 EUR to a maximum fine of 74 000 EUR), has been submitted to parliament (*Kamerstukken II 2007/08, 31 391, nr. 2*). The Lower House of Parliament has adopted the proposal of law on 16 June 2009 and the Senate will shortly discuss it.
7. GRECO takes note of the information provided which shows that there is some progress in the adoption of measures aimed at implementing this recommendation. However, the situation has not significantly evolved since the adoption of the Compliance Report.
8. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

9. *GRECO had recommended to issue guidelines for use by civil servants when confronted with situations where personal/financial interests or activities may lead to a question of conflict or partiality with regard to the civil servant's actual duties and responsibilities.*
10. GRECO recalls that in the Compliance Report it was noted that the obligation to report financial interests and security transactions had been further clarified (for civil servants employed by the central government) in the Civil Servants Regulation. It was also indicated that the authorities were still in the process of establishing guidelines on conflicts of interest and that more detailed information on their content would have been appreciated, as they were the focus of this recommendation. GRECO concluded that the recommendation had only been partly implemented.
11. The authorities of the Netherlands now report that the finalisation of the guidelines has been delayed. A concept of the guidelines should shortly be ready for discussion with relevant stakeholders. It is expected that the guidelines can be made available to civil servants at the end of 2009. The authorities also indicate that the guidelines focus on the responsibility of public bodies in general, including the police, to identify relevant types of conflict of interests and on developing policies so that management and civil servants know how to respond to a possible conflict of interests. It will remain the responsibility of public bodies to adapt these guidelines into their policies.
12. GRECO takes note of the delays in the process of adoption of above-mentioned guidelines on conflicts of interest. It appears that the idea is to introduce standard guidelines and to leave it to the various governmental institutions and local and regional authorities to take the appropriate measures to implement and adapt these to their area of activity. GRECO encourages the central authorities to ensure that, once these standard guidelines adopted, a mechanism will be in place to review the adequate implementation of these guidelines by the broadest range of public entities.
13. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

14. *GRECO had recommended to ensure that the regime of disqualification from exercising specific professions is effective in practice in respect of persons acting in a leading position in legal persons.*
15. In the Compliance Report, GRECO welcomed the planned clarification of the disqualification sanction in article 28 of the Criminal Code as well as the specific references to this article to be made in the relevant offence provisions in the Criminal Code; this was to happen in the context of the adoption of an Act on the (partial) revision of the Criminal Code, the Criminal Procedure Code and certain other laws (which is still pending – see paragraph 5 above). Although GRECO had not been provided with the text of the planned amendments, it considered that these changes would at least remedy the lack of clarity of the existing provision, which was cited by the Dutch authorities as one of the problems and reasons why it had never been used in practice to disqualify persons holding managerial positions in legal persons. GRECO also recalled another lacuna identified during the evaluation visit, namely that there were no specific regulations to ensure the effective application of the disqualification sanctions. Finally, the Dutch authorities had

indicated their plans to take additional measures (such as training and new guidelines for practitioners, such as the prosecutors) to support the implementation of the amended regime of disqualification and this was welcome by GRECO. However, GRECO considered that further measures may be taken upon entry into force of the amended article 28 of the Criminal Code and concluded that the recommendation v had only been partly implemented.

16. The authorities of the Netherlands confirm that the legislative proposal to broaden the scope of the professional disqualification regime is still part of the legal package that is pending in parliament for adoption (*Kamerstukken II 2007/08, 31 391, nr. 2*). As indicated under recommendation ii, the Lower House of Parliament has already adopted the proposal on 16 June 2009 and the Senate will shortly discuss it. Policy documents have, reportedly, already been prepared to draw the attention of various practitioners and other persons on the wider use of the existing possibilities for professional disqualifications (*Kamerstukken II 2007/08 29 911, nr. 10 annex 2 and Aanhangsel II 2007/08, nr. 1623*) ; destinees will include i.a. judges, prosecutors and possibly civil administrators – the full list has not been decided yet, since a legislative proposal has been tabled to include also a civil professional disqualification regime.
17. GRECO takes note of the information provided which shows that there is some progress in the implementation of this recommendation; however, the situation has not significantly evolved since the adoption of the Compliance Report.
18. GRECO concludes that recommendation v remains partly implemented.

III. CONCLUSION

19. In addition to the conclusions contained in the Second Round Compliance Report on the Netherlands and in view of the above, GRECO concludes that there have been no further decisive changes to the situation since the adoption of the Compliance Report. Therefore, recommendations ii, iii and v remain partly implemented.
20. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the 6 recommendations issued to the Netherlands, in total 3 recommendations have been implemented satisfactorily or dealt with in a satisfactory manner. Bearing in mind the overall limited number of improvements recommended to the Dutch authorities in the Second Evaluation round, GRECO regrets the delays in the adoption of those outstanding measures aimed at facilitating the use of interim and confiscation measures in respect of active bribery offences, introducing guidelines on conflicts of interest and improving the system of professional disqualifications. It is true that two of these sets of measures are part of a broader reform package, and this probably requires extensive debate and consultation. GRECO notes that the Lower House of Parliament has already adopted the legislative proposal and it encourages the authorities of the Netherlands to complete these outstanding reforms as soon as possible and adopt the appropriate implementing measures needed in cooperation with the practitioners and public authorities concerned.
21. The adoption of the present Addendum to the Compliance Report terminates the Second Evaluation Round compliance procedure in respect of the Netherlands. The Dutch authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations ii, iii and v.

22. Finally, GRECO invites the authorities of the Netherlands to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.