



Strasbourg, 23 June 2006

Public
Greco RC-I (2004) 1E
Addendum

First Evaluation Round

Addendum to the Compliance Report on Germany

Adopted by GRECO
at its 29th Plenary Meeting
(Strasbourg, 19-23 June 2006)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Germany at its 8th Plenary Meeting (4-8 March 2002). The report (Greco Eval I Rep (2001) 12E), which contains 6 recommendations addressed to Germany was made public on 29 April 2002.
2. Germany submitted the Situation Report required by GRECO's compliance procedure on 18 December 2003. On the basis of this report and a Plenary debate, GRECO adopted the First Round Compliance Report (RC-report) on Germany at its 18th Plenary meeting (14 May 2004) which was made public on 9 June 2004. The Compliance Report (Greco RC-I (2004) 1E) concluded that recommendation ii had been implemented satisfactorily. Recommendations i and iv had been dealt with in a satisfactory manner. Recommendations iii, v and vi had been partly implemented; GRECO requested additional information on the implementation of the latter. The additional information requested was submitted on 25 November 2005.
3. Pursuant to Rule 31, paragraph 9.1 of GRECO's Rules of Procedure the objective of the present Addendum to the First Round Compliance Report is to appraise the implementation of recommendations iii, v and vi in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation iii.

4. *GRECO recommended that the possibility of using interception of communications should be extended so as to apply to serious corruption offences.*
5. The Compliance report indicated that although steps had been taken by the German authorities with a view to assessing and defining serious corruption offences and to ensuring that appropriate procedural safeguards were in place, the recommendation had only been partly implemented.
6. The German authorities now report that the comprehensive review of the system of criminal procedure rules with regard to interception of telecommunications (sections 100a and 100b Code of Criminal Procedure – StPO) is still underway. A draft bill on this matter has not yet been drawn up. Meanwhile, however, within the scope of the overall revision of the covert investigation measures, new rules for surveillance of residential premises (section 100c StPO) were introduced on 24.6.2005 and took effect on 1.7.2005. The decision regarding the reform of the rules on surveillance of residential premises was made necessary by the Federal Constitutional Court, which had set the deadline of 1.7.2005 for a new regulation. The amendment continues to provide that the scope of application of section 100c StPO also covers aggravated cases of active and passive bribery. The Federal Government is aware of the necessity of employing covert investigative measures – which includes interception of telecommunications – to deal with corruption offences. The authorities consider that at least aggravated cases of active and passive bribery need to be included in the list of offences for which interception of telecommunications may be ordered in order to harmonise it with section 100c StPO. A corresponding draft law is currently under preparation.
7. GRECO welcomes the fact that the Federal Government shares the view that is necessary to have the possibility to use special investigative means such as interception of telecommunications at least with regard to serious corruption offences and trusts that active

consideration of this matter by the Government and the Parliament will continue with a view to a full implementation of the recommendation.

8. GRECO concludes that recommendation iii has been partly implemented.

Recommendation v.

9. *GRECO recommended that disciplinary measures should not apply to an official who – in breach of internal reporting duties – reports directly a grounded suspicion of corruption to the police or prosecution.*
10. GRECO recalls that recommendation v had been partly implemented and Germany was requested to submit, when finalised, the additional exceptions from the responsibility to conform to secrecy, which was to be incorporated into the Federal Civil Service Act and the Framework Act on the Law Applicable to Civil Servants as a means of ensuring that disciplinary measures would not be applied to officials who do not follow the guidelines, and report a suspicion of corruption directly to law enforcement authorities.
11. The German authorities now state that the German law applicable to civil servants will be extensively revised. To that end, the draft of a statute for structural reform (*Strukturreformgesetz*) of the civil service was approved by the Federal Cabinet on 15.6.2005. This reform project also includes regulations which allow civil servants to directly report suspicions of corruption offences to the law enforcement authorities. Drafts of the revision of section 60 of the Federal Civil Service Act (*Bundesbeamtengesetz – BBG*) and section 41 of the Framework Act on the Law Applicable to Civil Servants (*Beamtenrechtsrahmengesetz – BRRG*) have been made available to GRECO. If there are indications of bribery offences pursuant to sections 331 et seqq of the Penal Code (StGB), there is to be no obligation of confidentiality for civil servants pursuant to section 60 subsection 1, 3rd sentence BBG-E (draft). Civil servants will thus have the possibility of turning directly to the police or public prosecution office. Section 41 sub-section 3 BRRG-E (draft) strives to broaden the lawmaking competence of the *Länder*, so that they may include similar rules in their respective civil service acts. However, it was not possible to carry through the reform project due to the expiration of the parliamentary term. However, the revision of the regulations dealing with the obligation of confidentiality has been taken up again. A new whistleblower regulation was approved by the Federal Cabinet on 17.5.2006 and it is intended that it will come into force after the legislative procedure is completed, no later than by the end of 2006.
12. GRECO welcomes the progress reported at Federal level and very much hopes that similar efforts will also be made at *Länder* level so as to fully implement recommendation v.
13. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

14. *GRECO recommended to better enforce the rules on public procurement, including in cases which fall below the threshold for EU-wide competition, and to adopt legislative measures to establish at Federal level a central register ('blacklist') of companies which have previously been found untrustworthy in bids for public contracts.*

15. GRECO recalls that recommendation vi had been partly implemented, in particular, because of the absence of additional safeguards to ensure an improvement in the enforcement of the rules on public procurement.
16. The German authorities now state that at both federal and *Länder* level, several formal regulations of substantive procurement law as well as a series of protective measures ensure that public contracts, including those that fall below the EU threshold, are awarded without unlawful influence being exercised. For instance, all public contractors are in principle obliged to issue public tenders, even if the total amount involved is below the EU threshold. At federal as well as at *Länder* and municipal levels, comprehensive administrative regulations have been adopted to secure compliance with substantive procurement regulations, such as the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration of 30.6.2004.
17. The establishment of a central register on companies that have been disqualified from participating in public tenders due to corruption-related offences is still under preparation at federal level. As mentioned in the Compliance Report, a number of *Länder* have already introduced such registers and others are in the process of establishing such registers as well.
18. GRECO welcomes the adoption of the Federal Government Directive concerning the Prevention of Corruption in the Federal Administration and trusts that active consideration of this matter (further enforcement of public procurement rules and establishment of a comprehensive system for listing untrustworthy companies) by the *Länder* will continue
19. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

III. CONCLUSION

20. In addition to the conclusions contained in the First Round Compliance Report on Germany and in view of the above, GRECO concludes that Germany has dealt with recommendation vi in a satisfactory manner. Germany is invited to bring to completion the legislative initiatives referred to in this report with a view to fully implementing recommendations iii and v as well, which – for the time being – remain partly implemented.
21. The adoption of the present Addendum to the Compliance Report terminates the First Evaluation Round compliance procedure in respect of Germany.