

Strasbourg, 11 June 2010

**Greco RC-I/II (2008) 1E**  
**Addendum**

## **Joint First and Second Evaluation Rounds**

### **Addendum to the Compliance Report on the Republic of Serbia**

Adopted by GRECO  
at its 47<sup>th</sup> Plenary Meeting  
(Strasbourg, 7-11 June 2010)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on the Republic of Serbia at its 29<sup>th</sup> Plenary Meeting (19-23 June 2006). This report (Greco Eval I-II Rep (2005) 1E Revised), which contains 25 recommendations addressed to the Republic of Serbia, was made public on 9 October 2006
2. The Republic of Serbia submitted the Situation Report required under the GRECO compliance procedure on 20 and 27 May 2008. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC-Report) on the Republic of Serbia at its 38<sup>th</sup> Plenary Meeting (13 June 2008). This last report was made public on 10 July 2008. The Compliance Report (Greco RC-I+II (2008) 1E) concluded that recommendations iii, v, vi, vii, ix, xi, xiii, xiv, xvi and xx had been implemented satisfactorily and recommendations i and xv had been dealt with in a satisfactory manner. Recommendations ii, iv, viii, x, xii, xvii, xviii, xix, xxi, xxii, xxiii, xxiv and xxv had been partly implemented. GRECO requested additional information on their implementation. This information was provided on 30 December 2009 and on 24 May 2010, respectively.
3. The purpose of this Addendum to the Joint First and 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, iv, viii, x, xii, xvii, xviii, xix, xxi, xxii, xxiii, xxiv and xxv in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### Recommendation ii.

4. *GRECO recommended that ways should be found to render the procedure for appointing and promoting judges and prosecutors more transparent, in order to foster the public's confidence in the complete independence of prosecutors and judges from any improper political influence and their impartiality in exercising their functions.*
5. GRECO recalls that in the RC-report it took stock of the reform under way of the judiciary and the public prosecutor's office. Pending adoption of the new legislative package, and awaiting further details on its effective application in practice, GRECO assessed recommendation ii as partly implemented.
6. The authorities of Serbia indicate that the National Assembly adopted, in December 2008, a set of laws on the reform of the judiciary and the public prosecutor's office, including the Law on Judges, the Law on the High Judicial Council, the Law on the Public Prosecutor's Office, the Law on the State Prosecutorial Council and the Law on Organisation of Courts. Two new bodies, i.e. the High Judicial Council and the State Prosecutorial Council were established in April 2009; they are responsible for the election and promotion of judges and prosecutors. In July 2009, criteria and standards for the evaluation of the qualifications, competence and worthiness of candidates to become judges and prosecutors were adopted<sup>1</sup>. The general appointment procedures for the judiciary (which applied to all candidates, including serving judges and prosecutors) started in September 2009 and were concluded in December 2009. The High Judicial Council and the State

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<sup>1</sup> Criteria and Standards for the Election of Judges and Court Presidents in Serbia. Rules of Procedure on Criteria and Standards for the Evaluation of the Qualification, Competence and Worthiness of Candidates for Bearers of Public Prosecutor's Function of Serbia.

Prosecutorial Council are in the process of providing individual decisions to those applicants who have not been elected (as of May 2010, 200 decisions have been provided to judges and 60 to prosecutors, respectively). Appeals by non-elected candidates are being lodged before the Constitutional Court in a parallel process.

7. In January 2010, the project "Support to the Reform of the Judiciary in Serbia in the light of the Council of Europe Standards" was launched (joint project Council of Europe - World Bank). The project is aimed at developing a roadmap, by June 2010, for future reform of the judiciary to enhance its independence, efficiency and transparency (through stock taking of measures taken to date, impact analysis of results achieved, as well as identification of legislative gaps and implementation challenges).
8. GRECO takes note of the information provided. While acknowledging the vast number of reforms introduced to strengthen the appointment and promotion procedures within the judiciary, it has concerns about their implementation in practice. These concerns also apply to the recent general appointment procedure in the judiciary, which has entailed the termination of office of a significant number of serving judges and prosecutors who did not pass the new appointment procedure; this deviates from the principle of irremovability<sup>2</sup>. Moreover, GRECO notes that, while the appointment and promotion criteria are fairly detailed and comprehensive, it would appear that the method for assessing such criteria, i.e. the manner in which the various skills are evaluated and balanced against each other, is not sufficiently transparent (the assessment method is not clearly spelled out in the applicable rules). GRECO also observes that nothing is said in the relevant rules on appointment and promotion of judges/prosecutors concerning the available legal remedies/course of action to challenge the decisions of the High Judicial Council or the State Prosecutorial Council, as adequate. As a result, numerous complaints have been lodged before the Constitutional Court since, pursuant to Article 170 of the Constitution, it is the responsible body which ultimately decides on individual general acts or actions performed by State bodies violating human rights, if other legal remedies for their protection have already been applied or are not specified by law. The complaint process is currently ongoing. In the context described above, GRECO, a body established under the aegis of the Council of Europe, cannot disregard the concerns already expressed by other bodies of the Council of Europe, in particular, the Parliamentary Assembly<sup>3</sup>, the Venice Commission<sup>4</sup> and, more recently, the Consultative Council of European Judges (CCJE)<sup>5</sup> concerning the general appointment process of judges and prosecutors, as effected in Serbia, and the way in which this process may affect the public's trust in the judicial system.
9. While GRECO understands that important efforts have been made to restructure the judiciary in order to rationalise its functioning and generally improve its efficiency, it takes the view that it remains crucial to keep under close review the measures underway to achieve the intended reform of the judiciary, so that the independence and transparency of the process are at all times preserved. GRECO trusts that the roadmap for future reform of the judiciary, which is to be developed in the context of an ongoing joint Council of Europe - World Bank project, will further assist in achieving such goals.

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<sup>2</sup> Recommendation (94) 12 on the independence, efficiency and role of judges. Opinion no 1 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on standards concerning the independence of the judiciary and the irremovability of judges.

<sup>3</sup> Honouring of obligations and commitments by Serbia. Parliamentary Assembly, 9 April 2009. Doc. 11701 Addendum.

<sup>4</sup> Opinion No. 528/2009 on the Draft Criteria and Standards for the Election of Judges and Court Presidents of Serbia, adopted by the Venice Commission at its 79<sup>th</sup> Plenary Session (Venice, 12-13 June 2009). CLD-AD(2009)023.

<sup>5</sup> Declaration of the Consultative Council of European Judges (CCJE) on the Reform of the Judiciary in Serbia. Strasbourg, 20 April 2010. CCJE(2010)1.

10. GRECO concludes that recommendation ii has been partly implemented.

**Recommendation iv.**

11. *GRECO recommended that the term of office of the Special Prosecutor for Organised Crime and of his/her deputies be extended.*
12. GRECO recalls that, in the RC-report, it welcomed the draft amendments to the Law on the Public Prosecutor's Office to extend the term of office of the Special Prosecutor for Organised Crime and of his/her deputies; however, pending adoption of the relevant draft provisions, it assessed recommendation iv as partly implemented.
13. The authorities of Serbia inform GRECO that the Law on the Public Prosecutor's Office was adopted in December 2008. According to its provisions (i.e. Articles 55 and 56), the term of office of the Special Prosecutor for Organised Crime and his/her deputies follows the criteria established for all public prosecutors. In particular, the Special Prosecutor for Organised Crime is to be elected for a six-year period (instead of two years, as was previously the case); his/her deputies work on the basis of permanent tenure (instead of nine months, as was previously the case), with the exception of newly appointed persons who are to undergo a probationary period of three years.
14. GRECO welcomes the extension of the term of office of the Special Prosecutor for Organised Crime and his/her deputies; this move should facilitate the development of the expertise and experience necessary for dealing with the often complex and sensitive corruption cases.
15. GRECO concludes that recommendation iv has been implemented satisfactorily.

**Recommendation viii.**

16. *GRECO recommended to adopt legislative and other measures to establish an efficient system of special investigative techniques and to provide the competent agencies with appropriate means and training in order to make the system of special investigative techniques work efficiently in practice.*
17. GRECO recalls that in the RC-report it concluded that, pending enforcement of the new Criminal Procedure Code regulating, *inter alia*, the application of special investigative techniques, the recommendation was partly implemented.
18. The authorities of Serbia now indicate that, on 31 August 2009, the National Assembly adopted the Law on Amendments to the Criminal Procedure Code by which the Criminal Procedure Code which was presented to and analysed by GRECO in the RC-report ceased to be in force. The Law on Amendments to the Criminal Procedure Code provides for the use of special investigative techniques in connection to organised crime, corruption (including abuse of office, bribery and trading in influence offences) and other serious crimes, (Article 504a). In particular, it is possible to use the following techniques to uncover corruption offences: secret audio and video surveillance of suspects (Article 504g-504h), concluding simulated legal transactions (Article 504j-504l), controlled delivery (Article 504m), and automated computer search of personal data (Article 504n). In addition, for corruption offences committed by an organised criminal group, it is also possible to use undercover agents (Articles 504o-504q) and cooperative witnesses (Articles 504r-504w).

19. The authorities further report that targeted training on special investigative techniques has been provided to prosecutors, judges and police officers in 2008 and 2009. Much work in this area has been carried out in the context of an EU Twinning Project aimed at strengthening the capacity of the Ministry of the Interior. Likewise, additional resources have reportedly been provided to the Special Investigative Techniques Service, within the Ministry of the Interior, in the form of an increased staff complement, new premises, purchase of equipment, setting-up of (currently two) regional centres, etc.
20. GRECO welcomes the possibility provided by the Law on Amendments to the Criminal Procedure Code to apply special investigative techniques to all corruption offences, as well as the practical steps taken to facilitate their use in practice (e.g. through training activities, increased allocation of technical and human resources).
21. GRECO concludes that recommendation viii has been implemented satisfactorily.

#### **Recommendation x.**

22. *GRECO recommended that the legal provisions regarding temporary freezing of suspicious transactions be extended in order to cover all corruption offences.*
23. In the RC-report, GRECO analysed the relevant provisions of the Criminal Procedure Code, which had been adopted, but not yet enforced. It is recalled that these provisions extended the possibility to temporarily freeze suspicious transactions to all corruption offences. Pending effective enforcement of the provisions analysed, GRECO assessed recommendation x as partly implemented.
24. The authorities of Serbia now report that the provisions in force, following adoption of the Law on Amendments to the Criminal Procedure Code (CPC) in August 2009, allow for the temporary freezing of suspicious transactions in respect of criminal offences (1) punishable by at least 4 years' imprisonment, as well as (2) money laundering (in conjunction with the relevant provisions of the Law on the Prevention of Money Laundering and the Financing of Terrorism) and (3) when there is evidence that a criminal offence committed was a result of organised crime (Chapter XXIXa CPC). The 4-year threshold was maintained reportedly to reconcile the need to promptly gather evidence when serious offences occur with that of due protection of individual rights; in the case of corruption offences, the possibility provided by Article 234 CPC to freeze suspicious transactions, applies to most of the corruption offences. Furthermore, Article 234 of the Criminal Procedure Code was amended to provide for swifter action in this area, in particular, by allowing the prosecutor directly (and not through the investigative judge, which was the case before) to order the freezing of any suspicious transaction, conduct inspections of business activities and order Government authorities, banking or other financial institutions to hand over all documents that may serve as evidence of a criminal offence.
25. GRECO takes note of the update provided which departs from the situation assessed at the time of the RC-report. In particular, GRECO notes that, at present, it is possible to temporarily freeze suspicious transactions for criminal offences punishable by at least 4 years' imprisonment (i.e. virtually all corruption offences with just a few exceptions of less serious forms of bribery and trading in influence), as well as in cases where there are elements of money laundering or an organised crime component. GRECO acknowledges the measures taken to allow for swifter decisions concerning the temporary freezing of suspicious transactions, notably, by vesting prosecutors with a leading role to this effect. This can constitute a valuable measure, in practice,

to better gather evidence and to prevent asset dissipation at the very early stages of the investigation.

26. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

**Recommendation xii.**

27. *GRECO recommended to keep under careful review the range of reporting institutions, pursue enhanced training initiatives to increase awareness of suspicious transaction reporting and monitor progress. GRECO also recommends that guidelines be issued containing money laundering indicators, for all obliged entities.*
28. GRECO recalls that, in the RC-report, it acknowledged the legislation adopted, as well as the training provided, to improve the detection and reporting of suspicious transactions. However, further efforts were required to develop guidelines containing money laundering indicators for all obliged entities (other than financial institutions). Likewise, further details were requested with respect to the measures taken to check that all obliged entities were effectively reporting suspicious transactions in practice. For these reasons, recommendation xii was assessed as partly implemented.
29. The authorities of Serbia state that a National Strategy to improve the legislative, institutional and operational framework against money laundering and terrorism financing was adopted in September 2008. Moreover, a new Law on the Prevention of Money Laundering and the Financing of Terrorism entered into force in March 2009. Some of the new features of the aforementioned Law reportedly relate, for example, to the extension of the list of obliged entities in order to cover new forms of financial entities (e.g. voluntary pension fund management companies), legal and natural persons providing money transfer services and guarantees and organisers of games of chance operated on the internet, by telephone or via other telecommunication networks. Under the recently adopted Law on the Prevention of Money Laundering and the Financing of Terrorism obliged entities are also required to provide regular training to their personnel in order to increase awareness of suspicious transaction reporting. A vast number of training events have been reported in this respect: a series of 19 seminars, conducted in the period July 2009 – March 2010 in Serbia's four largest cities (Belgrade, Novi Sad, Kragujevac and Nis), attended by over 700 professionals from the private and public sectors, including accountants, broker-dealers, insurance companies, bank compliance officers, leasing companies and real estate agents, as well as officials from the tax administration, Ministry of Trade and Services – Trade Inspectorate, and the National Bank of Serbia – Insurance Supervision Sector. Guidelines and indicators<sup>6</sup> to identify persons and transactions possibly related to money laundering or terrorist financing have been developed for banks, brokers, exchange offices, insurance companies and real estate agents.
30. GRECO acknowledges the valuable legislative and practical measures reported to improve the detection and reporting of suspicious transactions. It notes, however, that no information has been provided as to the establishment of a review/monitoring mechanism to assess whether all obliged entities are effectively reporting suspicious transactions, as provided by law. GRECO recalls its remark in the Joint First and Second Evaluation Report highlighting the fact that almost all reports received by the Administration for the Prevention of Money Laundering were submitted

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<sup>6</sup> Indicators are available at the website of the Administration for the Prevention of Money Laundering: [http://www.apml.org.rs/index.php?option=com\\_remository&Itemid=10&func=select&id=17&lang=rs](http://www.apml.org.rs/index.php?option=com_remository&Itemid=10&func=select&id=17&lang=rs)

by financial institutions<sup>7</sup>. Nothing has been added in the information submitted by the authorities concerning the level of implementation of the reporting requirements by non financial businesses and professions (e.g. lawyers, accountants, auditors). Finally, it appears that guidelines containing money laundering indicators have only been developed with respect to a limited range of obliged entities.

31. GRECO concludes that recommendation xii remains partly implemented.

**Recommendation xvii.**

32. *GRECO recommended to expand the application of the Law on the Prevention of Conflicts of Interest in the Discharge of Public Office so that it would include all public officials who perform public administration functions without excluding those indicated in Article 2 paragraphs 2 and 3 of the Law (i.e. judges and public prosecutors and "officials appointed to organs of institutions and other organisations whose founder is the Republic of Serbia, the autonomous province, the municipalities, the towns and the City of Belgrade").*
33. GRECO recalls that, pending adoption of the Law on the Anti-corruption Agency providing for a wider coverage of the term "public official", this recommendation was considered partly implemented.
34. The authorities of Serbia now report that the Law on the Anti-corruption Agency was adopted in late October 2008; it entered into force on 1 January 2010. It expands the application of the measures provided for by the Law on the Prevention of Conflicts of Interest to all public officials (including judges, public prosecutors and appointed officials) performing public administration functions. In particular, the notion of "public official" covers *every person elected, appointed or nominated to the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of public enterprises, institutions and other organisations established by the Republic of Serbia, autonomous province, local self-government unit and other person elected by the National Assembly. The term "public function" is defined as a function in the bodies of the Republic of Serbia, autonomous province, local self-government unit, bodies of the public enterprises, institutions and other organizations established by the Republic of Serbia, autonomous province, local self-government unit as well as functions of other persons elected by the National Assembly and implies managing, decision-taking and enactment of general and individual acts authority.*
35. GRECO notes that the Law on the Anti-corruption Agency provides for a wider scope of the term "public official", which now covers the different categories of persons performing public administration functions, as recommended.
36. GRECO, therefore, concludes that recommendation xvii has been implemented satisfactorily.

**Recommendation xviii.**

37. *GRECO recommended to introduce clear rules/guidelines for situations where public officials move to the private sector ("pantouflage") in order to avoid situations of conflicts of interest.*

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<sup>7</sup> Paragraph 68, Joint First and Second Round Evaluation Report.

38. GRECO recalls that, in the RC-report, it acknowledged the reported plans of the authorities to further regulate the move of public officials to the private sector through the draft Law on the Anti-corruption Agency. However, since the draft had not been adopted, GRECO could not anticipate its final result and, therefore, considered the recommendation as partly implemented.
39. The authorities of Serbia indicate that, pursuant to Article 38 of the Law on the Anti-corruption Agency, public officials are banned, in the two-year period after they leave public service, from taking up employment or entering into any sort of business relation with a legal entity, entrepreneur or international organisation engaged in an activity relating to the office the official held. This general ban can be lifted through authorisation of the Anti-corruption Agency. Failure to seek approval of the Anti-corruption Agency entails fines for both the official and the private entity concerned (Article 75, Law on the Anti-corruption Agency). Officials elected on direct elections (President, Members of State, autonomous province and local Parliament/assemblies) do not fall under the aforementioned post-employment regime.
40. GRECO takes note of the positive developments reported in this field, notably, through the introduction of statutory rules for situations where public officials move to the private sector ("pantouflage"), in the framework of the Law on the Anti-corruption Agency. The authorities may find it useful to complement the legal provisions on "pantouflage" with further guidance to public officials on practical cases involving the ethical dilemma which may appear in situations where they move into a similar, linked or even competing private entity, directly or shortly after leaving the public service. GRECO is also hopeful that elected officials (including at local level) consider similar steps to prevent conflicts of interest as a public signal of their commitment to high integrity.
41. GRECO concludes that recommendation xviii has been dealt with in a satisfactory manner.

#### **Recommendation xix.**

42. *GRECO recommended to lower the value of any gifts that may be accepted by public officials (i.e. gifts whose value does not exceed half the average monthly salary) to levels that clearly do not raise concerns regarding bribes or other forms of undue advantage.*
43. GRECO recalls that, in the RC-Report, it assessed the recommendation as partly implemented since further criteria on what constituted an "appropriate" gift were to be introduced in the draft Law on the Anti-corruption Agency.
44. The authorities of Serbia stress that the Law on the Anti-corruption Agency includes a general ban on gifts: public officials must not accept any gift in connection with the performance of their public functions, other than protocol or other "appropriate" presents and solely as long as these are not in the form of money or securities. The criteria for determining which gifts are deemed "appropriate" is to be established by the Anti-corruption Agency (criteria have been drafted and are planned to be adopted in the last quarter of 2010; training for public officials concerning the applicable rules on gifts is expected to occur thereafter), but, in any case, the maximum acceptable value of a single gift cannot be over 5% of the average net monthly salary (approximately 17 EUR), or more than one average net monthly salary (around 335 EUR) if several gifts are received in one year (whether by the same or different donors). All received gifts are to be reported to the Anti-corruption Agency, which is to publish a record of all gifts received each calendar year. Failure to respect the ban on gifts is punished with fines ranging from 10,000 to 50,000 dinars (100 to 500 EUR).



45. GRECO acknowledges the steps taken by the authorities to further regulate gifts, limit their acceptance and increase transparency of the system. GRECO encourages the authorities to develop further guidance on gifts, including by adopting criteria on their “appropriateness”, as planned.
46. GRECO concludes that recommendation xix has been dealt with in a satisfactory manner.

#### **Recommendation xxi.**

47. *GRECO recommended to ensure that civil servants who report suspicions of corruption in public administration in good faith (whistleblowers) are adequately protected from retaliation when they report their suspicions.*
48. GRECO recalls that, in the RC-report, it took stock of the different proposals in the pipeline to address whistleblower protection. However, pending adoption/effective implementation of such measures, GRECO assessed recommendation xxi as partly implemented.
49. The authorities of Serbia emphasise that, apart from the appeal mechanisms available (judicial/administrative review channels), the Law on Civil Servants was amended in 2009 to provide for a specific obligation to report corruption to the official’s immediate superior or any other manager, to enjoy protection from that moment, and to prohibit retaliatory measures in such cases. Criminal law measures are also in place to ensure the protection of witnesses involved in criminal proceedings (Article 109, Criminal Procedure Code). In addition, amendments to the Law on Free Access to Information of Public Importance were introduced, in 2009, to relieve public officials disclosing public information (other than that considered as restricted/confidential information under Articles 9 and 14 of the Law on Free Access to Information of Public Importance) of his/her confidentiality/loyalty vis-à-vis public service obligations if s/he has suspicions of corruption on condition that (1) reporting occurs in good faith and suspicions are grounded; (2) the competent person in the public authority concerned has been informed of the suspected irregularities and has not taken corrective action. In such cases, whistleblowers must be protected from retaliatory measures or/and compensated/rewarded in the event of damage (Article 38, Law on Free Access to Information of Public Importance, as amended). The recently adopted Law on Mobbing is also a key legal text regulating this area of concern. Whistleblowers can also report on corruption suspicions through external channels, e.g. to the Anti-Corruption Agency, the Ombudsperson, the Commissioner for Information of Public Importance, etc; such a possibility is provided by the respective laws governing the functioning of the aforementioned institutions.
50. GRECO takes note of the measures reported. With respect to the amendments introduced into the Law on Free Access to Information of Public Importance, GRECO notes its limited scope: protection only refers to the disclosure of information to which public access is not restricted; therefore, instances where public officials report in good faith on corruption suspicions based on confidential information, of which they learn in the course of performing their official duties, would not be covered. This limitation entails a contradiction between the obligation to report (under the Law on Civil Servants) and the disclosure of facts which the official is required to keep confidential. Moreover, the existing rules, which are dispersed in multiple legal instruments as described in paragraph 49, fail to provide specific guidance to whistleblowers on how reporting can be done in practice (e.g. internal/external reporting lines, confidentiality assurances, degree of suspicion) and the relevant mechanisms to protect them from retributive action (e.g. authorities and systems for enforcing protection, forms of compensation); more needs to be done in this respect.

51. GRECO considers that the legislative measures taken so far merely represent an initial step which, if properly followed-up, could lead to a more comprehensive/detailed protection framework for civil servants reporting suspicions of corruption in good faith.
52. GRECO concludes that recommendation xxi remains partly implemented.

**Recommendation xxii.**

53. *GRECO recommended to limit licenses and permits to those that are indispensable, to reduce the turnaround time required for obtaining them and to encourage the compilation and editing of guidelines both for civil servants handling licenses and permits and for the general public.*
54. GRECO recalls that, in the RC-report, it welcomed a number of legislative and practical arrangements in the pipeline to limit licenses and permits to those indispensable, as well as to reduce the turnaround time required for obtaining them. The proposed measures, nevertheless, still had to be effectively adopted/implemented. Furthermore, in respect of the last part of recommendation xxii, no steps had been taken to develop guidance in this field for civil servants handling licenses and permits and for the general public. For these reasons, GRECO deemed recommendation xxii as partly implemented.
55. The authorities of Serbia indicate that, in 2008, the Government, in cooperation with the World Bank, adopted the Regulatory Reform Strategy (2008-2011) and its Action Plan. The goal of the Strategy is to increase transparency and simplify the administrative procedures to issue permits/licenses (e.g. by establishing a "one-stop shop" system, by introducing the principle of consent equals silence when public administration delays its action, etc.). Moreover, a new Law on Planning and Construction entered into force in September 2009. It includes several features aimed at improving the system, e.g. by shortening the number of documents to be furnished and the deadlines for administrative action, increasing sanctions in the event of non-response by the responsible officer; disclosing a full list of construction site permits issued, etc. Draft criteria have been prepared to develop some of the key aspects of the Law on Planning and Construction (e.g. establishment of fees, content of technical documentation required, etc.). Further implementing regulations are expected to be adopted in 2010 (the Law on Planning and Construction provides for the development of 26 by-laws and 2 decrees); once these instruments are in place, they should assist both civil servants and the general public to better understand the applicable rules and procedures in this field.
56. GRECO welcomes the progress reported to streamline the licensing/permit system in Serbia. In this context, the ongoing Regulatory Reform Strategy is promising. Likewise, GRECO is pleased to note the legislative measures taken to simplify the steps and documents required, as well as to reduce the turnaround time, to obtain licenses and permits in the planning and construction sector, in line with the first two components of recommendation xxii. In GRECO's view, it is now crucial to ensure that the new policy/legislative measures are effectively implemented in practice; GRECO understands that this is an ongoing process.
57. With respect to the last part of the recommendation, i.e. to encourage the compilation and editing of guidelines both for civil servants handling licenses and permits and for the general public, GRECO notes the intention of the authorities to pursue this matter through the adoption of a series of implementing regulations in 2010. Therefore, this part of the recommendation can only be assessed, at present, as partly implemented. Notwithstanding the particular content of the planned implementing regulations in this field, GRECO is doubtful that a set of over 28 pieces of

legislation will help to fully meet the ultimate aim of the last part of the recommendation, i.e. to clarify, and provide for easier access to, the relevant licensing/permitting requirements. In GRECO's opinion, such an aim could best be met through the development of guidelines which should serve as a practical toolkit for officials responsible for handling licenses and permits and for the general public to better understand their legal rights and obligations in this area.

58. GRECO concludes that recommendation xxii has been partly implemented.

#### **Recommendation xxiii.**

59. *GRECO recommended adopting the necessary legislation to speedily implement liability of legal persons for offences of corruption providing for sanctions – including monetary sanctions – that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption (ETS No 173).*
60. In the RC-report, GRECO concluded that, pending adoption of draft legislation concerning corporate criminal liability, the recommendation was partly implemented.
61. The authorities of Serbia now report that the Law on Liability of Legal Entities for Criminal Offences entered into force in November 2008. In particular, legal persons are held liable for crimes committed, on their behalf or for their benefit, by any natural person, who has a leading position within the legal person, based on a power of representation of the legal person; or the authority to take decisions on behalf of the legal person; or the authority to exercise control within the legal person. Corporate criminal liability also applies in those cases where lack of supervision within the legal person makes it possible to commit the offence. Liability of the legal person does not exclude criminal liability of the physical perpetrator. Sanctions for corruption-related offences include fines (ranging from a maximum of approximately 5,000,000 EUR to a minimum of 1,000 EUR), dissolution of the legal person, professional bans, confiscation of assets and publication of the conviction judgment.
62. GRECO welcomes the adoption of legislation providing for corporate (criminal) liability, in line with the requirements of Articles 18 and 19, paragraph 2 of the Criminal Law Convention of Corruption (ETS 173) and concludes that recommendation xxiii has been implemented satisfactorily.

#### **Recommendation xxiv.**

63. *GRECO recommended encouraging private auditors, accountants and other advisory professionals to report suspicions of corruption to the public prosecutor and to organise training on the detection and reporting of corruption.*
64. GRECO recalls that, in the RC-report, it concluded that greater efforts were still needed in this area and the recommendation was, therefore, deemed as partly implemented. In particular, the authorities were encouraged to pursue a more active training policy with respect to private auditors, accountants and other advisory professionals.
65. The authorities of Serbia indicate that the Administration for the Prevention of Money Laundering organised, in cooperation with the Association of Accountants and Auditors, seminars on the detection and reporting of criminal offences for the purpose of combating corruption and money laundering. Training has also been provided to lawyers. Plans are underway to hold similar seminars in 2010.

66. GRECO takes note of the information provided. GRECO would have welcomed more details concerning the frequency of the training sessions provided to private auditors, accountants and lawyers, as well as concerning the number of professionals having benefited from such training in order to be able to better assess whether the training provided could be considered as sufficient. Moreover, no information has been added as to whether the number of reports of suspicions of corruption from the aforementioned categories of professionals has indeed increased since the adoption of the Joint First and Second Round Evaluation Report. In GRECO's view, more can still be done in this area.

67. GRECO concludes that recommendation xxiv remains partly implemented.

#### **Recommendation xxv.**

68. *GRECO recommended to speed up the introduction of a national auditing authority.*

69. In the RC-report, GRECO concluded that, pending operability of the State Audit Institution, the recommendation was partly implemented.

70. The authorities of Serbia report on a series of measures that have been taken since the adoption of the RC-report to render the State Audit Institution operative, including by increasing human and material resources, by strengthening the expertise of the staff, etc. In this context, technical assistance projects have been carried out/are underway to enhance the expertise of the personnel working in the State Audit Institution (e.g. training provided by the Office of the Auditor General of Norway; UNDP project on "Strengthening responsibility mechanisms in public finances"). The first audit of the 2008 State budget was completed in November 2009. Finally, the State Audit Institution became a full member of the International Organisation of Supreme Audit Institutions INTOSAI (in mid-November 2009), as well as the European Organisation EUROSAI (in June 2009).

71. GRECO welcomes the ongoing progress reported and encourages the authorities to continue securing the necessary resources to the State Audit Institution so that it can perform its functions efficiently.

72. GRECO concludes that recommendation xxv has been implemented satisfactorily.

### **III. CONCLUSION**

73. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on the Republic of Serbia and in view of the above, GRECO concludes that recommendations iv, viii, x, xvii, xviii, xix, xxiii and xxv have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations ii, xii, xxi, xxii and xxiv remain partly implemented. With the adoption of this Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 25 recommendations issued to the Republic of Serbia, 20 of them have been implemented or dealt with in a satisfactory manner.

74. The Republic of Serbia has made important progress in virtually all areas where GRECO issued recommendations. In particular, significant efforts have been made to enact legislation which will assist in the fight against corruption (for example, by introducing corporate criminal liability; allowing for the use of special investigative techniques to uncover corruption-related offences; promoting integrity in the public sector through, *inter alia*, the development of conflict of interest

and deontological rules and principles, as well as the establishment of a specialised Anti-corruption Agency which is to provide monitoring and guidance on their implementation; strengthening the public procurement and licensing regulatory frameworks, etc.); it is now time to ensure that this legislation is adequately implemented. Moreover, it is essential to guarantee that recently created implementation/monitoring bodies – e.g. the Anti-corruption Agency, the State Audit Institution – operate effectively. Further initiatives are also required to couple newly established legal obligations with targeted guidance regarding their enforcement, e.g. with respect to whistleblower reporting channels and protection mechanisms, conflicts of interest (including the acceptance of gifts), issuing of permits/licences, etc. Likewise, while important efforts have been made to restructure the judiciary in order to rationalise its functioning and generally improve its efficiency, it remains crucial to keep under close review the measures underway to achieve the intended reform of the judiciary, so that the independence and transparency of the process are at all times preserved. In the private sector, additional steps are required to involve legal professionals, accountants and auditors in the detection and reporting of possible corruption offences.

75. The adoption of this Addendum to the Compliance Report terminates the Joint First and Second Evaluation Rounds compliance procedure concerning the Republic of Serbia. The authorities of Serbia may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations ii, xii, xxi, xxii and xxiv.
76. Finally, GRECO invites the authorities of Serbia to authorise, as soon as possible, the publication of the Addendum; to translate it into the national language and to make the translation public.