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**Public**  
**Greco RC-I/II (2013) 1E**  
**Addendum**

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

### **Addendum to the Compliance Report on Liechtenstein**

Adopted by GRECO  
at its 69<sup>th</sup> Plenary Meeting  
(Strasbourg, 12-16 October 2015)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Liechtenstein at its 52<sup>nd</sup> Plenary Meeting (Strasbourg, 17-21 October 2011). This report (Greco Eval I/II Rep (2011) 1E ([Greco Eval I-II Rep \(2011\) 1E](#))) was made public by GRECO on 31 October 2012.
2. Liechtenstein submitted the Situation Report required under the GRECO compliance procedure on 30 April 2013. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC-Report) on Liechtenstein at its 61<sup>st</sup> Plenary Meeting (14-18 October 2013). This last report was made public on 31 October 2013. The Compliance Report ([Greco RC-I/II \(2013\) 1E](#)) concluded that recommendations i, iv, ix and xviii had been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations iii, vi, vii, viii and xvii had been partly implemented and recommendations ii, v and x to xvi had not been implemented. GRECO requested additional information on their implementation by 30 April 2015. This information was provided on 29 April 2015.
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, iii, v to viii and x to xvii in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

4. It is recalled that GRECO in its Joint First and Second Round Evaluation Report addressed 18 recommendations to Liechtenstein. Compliance with these recommendations is dealt with below.

### Recommendation ii.

5. *GRECO recommended to review the powers of the Prince, as enshrined in article 12 of the Constitution and other pieces of legislation, to block or discontinue criminal investigations and proceedings.*
6. GRECO recalls that this recommendation had not been implemented and Liechtenstein had justified the absence of amendments i.a. by the need to keep these special powers as a safeguard for exceptional situations. They explained that the right to block or discontinue criminal proceedings has been undisputed since the Constitution was enacted in 1921 and that these special powers had not been used by the Prince for many years. GRECO was of the view that this situation could nonetheless represent a threat to the independence of the justice system as expressed in the Evaluation Report. It also refuted the argument that the Council of Europe *Recommendation CM/Rec/(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibility of the Council of Europe*, would legitimise such interference in proceedings since the text actually states that "With the exception of decisions on amnesty, pardon or similar measures, the executive and legislative powers should not take decisions which invalidate judicial decisions".
7. The authorities of Liechtenstein do not report any new development and reiterate their earlier comments referring to the above Recommendation CM/Rec/(2010)12 which would allow for "similar measures" alongside decisions on amnesty and pardon. They also point out that the powers of the Prince are meant to safeguard the fundamental interests of the State in the sense

of an "ordre public" and that they constitute a logical counterweight to the risks of political influence by the government on the public prosecutor's office (especially where the public prosecutor's office conducts preliminary criminal proceedings). As further evidence for the fact that the right to quash proceedings is not misused in practice, they also refer to a case where a court had approached the Reigning Prince with the request to consider quashing the proceedings and that this request had been turned down.

8. GRECO cannot but note that article 12 of the Constitution and the legal situation based thereon have still not changed to date and concludes that recommendation ii remains not implemented.

**Recommendation iii.**

9. *GRECO recommended to ensure that the selection of judges, including temporary ad hoc judges, is effected in an impartial manner.*
10. GRECO recalls that this recommendation was considered partly implemented. The Judicial Selection Commission has since 2011 moved towards publicly announcing the vacancies of non-career judges, a step in the right direction; they also provided assurances that all vacancies concerning *permanent full time judicial* posts are always announced publicly. But the system appeared to be largely unchanged since the adoption of the Evaluation Report, including as regards the position of the Prince Regnant in the presiding of the Judicial Selection Commission (JSC) and the formal appointment of the elected candidate, and as regards the situation of ad hoc judges in Liechtenstein.
11. The authorities of Liechtenstein indicate that since the adoption of the Compliance Report, the Liechtenstein Government has launched a number of legislative initiatives, as part of a reform package which aims at increasing the efficiency of the justice system. Some of these initiatives have already been adopted by Parliament, some have been submitted to Government for approval and subsequent transmission to Parliament; the aim is to have the whole package adopted during the current legislature, which lasts until February 2017. These reforms take into account the need for changes in the judicial system, which were mentioned in the Evaluation Report. They entail, inter alia, a considerable reduction of the number of part-time non-career judges in favour of full-time professional judges at the Court of Appeal including the reduction of the boards from five to three judges and a consistent application of the principle of dual control by full-time judges (in their latest comments, the authorities point out that these changes have already been adopted). This significantly decreases the need for ad hoc judges at the Court of Appeal. Furthermore, all vacancies of non-career judges with Liechtenstein nationality (others than ad hoc judges) have been publicly announced in the national newspapers, following a decision by the Judicial Selection Commission (JSC) on the basis of article 9, paragraph 1 of the Judicial Appointment Act. This confirms the earlier practice and in their latest comments, the authorities point out that the JSC has recently decided to use public announcements for all vacancies including those involving foreign practitioners, with the exception of ad hoc judges, as this would inappropriately delay the trial which they are meant to deal with.
12. The independence and judicial expertise of the JSC has been further enhanced through the designation by the Prince of a judge from Switzerland, who is the President of the Court of the European Free Trade Association (EFTA Court), as a member of the Commission. The other members delegated by the Prince are two lawyers and a judge from Austria who is judge-emeritus of the Austrian Supreme Court of Justice and Honorary Life-time President at the International Association of Judges. The JSC is a constitutional body operating autonomously

from the legislative and executive powers, whose members perform their duties completely independently and on a personal basis. It cannot be concluded either from the legal provisions or from the practical procedures of the Judicial Selection Commission that its members are subject to any instructions or other influence when performing their duties. Since the creation of the JSC, the chairman has never made use of his casting vote, nor has he refused his assent to any decision by the Commission. The Head of State cannot appoint a judge of his own accord. The formal appointment by the Head of State requires the proposal by the JSC (with the assent of the Head of State) and election by Parliament. At the same time, the Head of State is bound by the Constitution to formally appoint a candidate who has been elected by Parliament, thereby ensuring a balanced interplay of the different State authorities (checks and balances). To strengthen the democratic principle, the rights of the Head of State and of Parliament in this regard are limited in the event of conflict by the right of the People to make the final decision on the candidate to be formally appointed by the Head of State. The (public) consideration of candidates in Parliament and, where applicable, before a popular vote ensures a high degree of transparency.

13. The authorities point out that in practice, the Head of State does not make use of the rights (casting vote, refusal to consent to the nomination of judges by the JSC) accorded to him by the constitutional revision of 2003. All judicial candidates proposed by the JSC for election by Parliament have, almost without exception and almost always unanimously so far, been heard by the Commission, elected by Parliament, and formally appointed by the Head of State. The authorities further point out that in its session of September 2015 the Parliament, for the first time, did not elect a candidate proposed by the JSC (in October, it will vote on an alternate candidate agreed together with the JSC) and they take the view that the system of checks and balance works effectively. Currently, about two thirds of the judges at courts in Liechtenstein have Liechtenstein nationality, one third of the judges are either Swiss or Austrian.
14. GRECO takes note of the above information, which largely reiterates earlier explanations given by Liechtenstein in the Compliance Report. It would appear that the situation deriving from the Constitution remains unchanged as regards the position of the Prince Regnant and the situation of ad hoc judges in Liechtenstein. GRECO is pleased that additional measures are being taken / planned to increase the efficiency of the courts, to generalise publicly announced recruitments including for the hiring of foreign practitioners, and to make a broader use of career-judges as opposed to temporary and ad hoc judges. But the exact implications of the reform under way are yet to be determined.
15. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation v.**

16. *GRECO recommended to ensure that adequate access to information and evidence is granted for the investigation of the various corruption-related offences.*
17. GRECO recalls that this recommendation had been considered as not implemented. The authorities of Liechtenstein had reported that the Ministry of Justice was preparing a "legal package"<sup>1</sup> entailing inter alia the revision of several provisions regarding corruption-related

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<sup>1</sup> The authorities have indicated the following main elements of the legal package: the criminalisation of active and passive bribery in the private sector and their inclusion as a predicate offence of money laundering, the expansion of the definition of "public official" to include members of Parliament and of local assemblies and the revision of Articles 304 to 309 of the Criminal Code on various corruption offences in order to also reflect respective developments in the Austrian Criminal Code

offences and enabling the ratification by Liechtenstein of the Council of Europe Criminal Law Convention on Corruption. As part of this package, the deletion of article 322 lit. 4 of the Code of Criminal Procedure was foreseen, which would allow for search of documents held by third persons as well as seizure and confiscation also in respect of offences which are only punishable with less than six months' imprisonment, thereby ensuring that in all corruption-related investigations information may also be obtained from information holders who are themselves not suspects. The draft legal amendments were meant to be agreed by the Government towards the end of 2013. GRECO considered that the legislative process was at an early stage and that its precise content could not be assessed.

18. The authorities now refer to the fact that the above draft package was finalised and approved by the Government, with the intended content referred to above. The document is publicly available on-line<sup>2</sup>.
19. GRECO takes note of the updated information provided and it reiterates its satisfaction with the fact that the intended amendment of the Criminal Procedure Code, if adopted, would appear to expand the possibilities of the police to access information. The action underway appears to address the issue at stake in the recommendation. Tangible proposals are at present available, which still require to be finally adopted by Parliament and promulgated.
20. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation vi.**

21. *GRECO recommended i) to introduce whistle-blower policies that would encourage public sector employees to report suspicions of corruption directly to criminal law bodies, including the setting up of hotlines and protective measures against unjustified retaliation; ii) to provide for adequate possibilities to appeal a decision where a public official is not allowed by his supervisors to serve as a witness; and iii) to introduce, as planned, measures for the protection of witnesses.*
22. GRECO recalls that this recommendation was considered partly implemented since the Government had prepared draft amendments to the Police Act and the Criminal Code dealing with witness protection, and decided to submit to Parliament for a first reading before the end of 2013 (third part of the recommendation). As for the first and second part of the recommendation, the Government was considering amendments to the State Personnel Act but no tangible measures had yet been taken.
23. The authorities of Liechtenstein indicate that on the first two elements of the recommendations, the Government has submitted a draft law to Parliament on amending the State Personnel Act and other laws. The main elements of this revision which are of relevance for this recommendations are the following: a) introduction of an obligation for public sector employees to report suspicions of corruption and other offences immediately to the director of their office (article 38a, paragraph 1); b) enhanced protection for reporting persons against unjustified retaliation (article 38a, paragraph 2 and article 38, paragraph 6); c) introduction of a new requirement of Government approval if a public official is not allowed by his supervisor to serve as a witness (article 38, paragraph 5). The possibility to call for external expert advice for an informed decision on reporting was not supported in the public consultation procedure leading to

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(on which the Liechtenstein Criminal Code is modelled). In addition, amendments to the Code of Criminal Procedure and the Tax Act are planned to take into account GRECO recommendations.

<sup>2</sup> [http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht\\_1.pdf](http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf)

the submission of the draft law. However, anonymous reporting by mail to the anti-corruption police unit is available to interested persons under article 55 of the Code of Criminal Procedure, which provides for the possibility to report knowledge of an offence directly to the police, the prosecution services or an investigating judge. The draft law amending the State Personnel Act was adopted by Parliament and entered into force on 1 July 2015<sup>3</sup>. As regards the third part of the recommendation, the revision of the Police Act which provides for the protection of witnesses entered into force on 1 July 2014<sup>4</sup>.

24. GRECO takes note of the above information. As regards the first part of the recommendation, it would appear that the new reporting mechanism for whistleblowing by public employees, still does not clearly encourage officials to report suspicions of illegal acts involving members of public bodies including – where necessary – of the employing service directly to criminal law bodies, as recommended. The logic of reporting under article 38a paragraph 1 is primarily designed to inform the management – who will subsequently inform the police or prosecution (under article 53 CPC) – in case the employee comes across criminal acts which must be prosecuted as they fall within the competence of the employee's agency or administrative office concerned<sup>5</sup>. The present recommendation pursues another, broader objective concerning the uncovering of corrupt practices even where the employing agency does not react (adequately) to these. In their latest explanations, the authorities pointed out that the report containing the *travaux préparatoires* for the amendments to the State Personnel Act refers to the possibility for a public official to use article 55 CPC where internal reporting could be jeopardised for instance by the fact that the manager him/herself is involved in criminal acts. However, this cannot be seen as a sufficient guideline since the State Personnel Act itself exclusively refers to a procedure aimed at internal reporting and subsequent denunciation by the institution along the lines of article 53 CPC. As for the protective measures provided for under the draft provisions of article 38 paragraph 6 of the Act, the person who reports a grounded suspicion to the management or who acts as a witness shall not suffer any disadvantage in his/her professional position and article 24 paragraph 2 introduces a right to compensation in case of dismissal. This is certainly a good starting point but overall, due to the absence of further incentives in the form of a hotline for reporting directly a matter to criminal law bodies, GRECO cannot consider that this part of the recommendation has been fully implemented. Liechtenstein may refer to the recently adopted Council of Europe Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers, which encompasses reporting within and outside the employing organisation and a broader scope of protection. As for the second part of the recommendation, it would appear that article 38 paragraph 5 actually provides for the duty of the manager to seek a concurring decision of the Government in case s/he intends not to grant permission for the public employee concerned to deliver a testimony<sup>6</sup>. The authorities explained

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<sup>3</sup> [https://www.gesetze.li/get\\_pdf\\_chrono.jsp?PDF=2015160.pdf](https://www.gesetze.li/get_pdf_chrono.jsp?PDF=2015160.pdf)

<sup>4</sup> [https://www.gesetze.li/get\\_pdf\\_chrono.jsp?PDF=2014109.pdf](https://www.gesetze.li/get_pdf_chrono.jsp?PDF=2014109.pdf)

<sup>5</sup> "Art. 38a - Notification of criminal acts

1) Where employees, in the course of their duties, have a grounded suspicion that an offence has been committed, which relates to the legal scope of the public office to which they belong and which is prosecutable *ex officio*, they shall immediately notify the office manager.

2) Those who in good faith file a report in accordance with para. 1 or who deliver a witness testimony shall not be discriminated against in their professional position."

<sup>6</sup> Article 38 of the State Personnel Act

(...)

3) employees may act as parties, witnesses or court experts for official matters subject to Service confidentiality only where they have been authorised in writing to do so, by office manager.

4) The authorisation shall be granted if the statement does not cause any significant disadvantages to the country and does not seriously compromise or complicate the performance of public duties.

5) Where the office manager intends to refuse the authorisation, s/he shall seek the prior approval of the Government.

that ultimately, this would become a governmental decision, which can then be appealed before the administrative court as a result of the general rules on appeals against administrative acts. GRECO welcomes this, since broad discretion is normally left to the Government as to when to grant the permission for an official to testify<sup>7</sup>. Overall, Liechtenstein has taken measures which address the second part of the recommendation. As for the third part of the recommendation, GRECO is pleased that Liechtenstein has now in place a set of measures such as a change of identity and special protection of data, which allow to protect “persons who in the context of judicial proceedings, assist in the resolution of a serious criminal act (*“schwere Straftat”*) and who are facing a danger because of this, including their relatives”. The authorities provide assurances that these measures can be applied in relation to proceedings concerning serious corruption-related offences, since the protection which can be afforded does not depend on the categorisation of offences but on the related threat. This part of the recommendation has thus been implemented.

25. GRECO concludes that recommendation vi remains partly implemented.

#### Recommendations vii and viii.

26. *GRECO recommended to consider i) providing that the valuation of “property benefits” must be based on the “gross” benefit; and ii) extending deprivation under article 20 paragraph 2 of the Criminal Code to proceeds from corruption-related offences committed repeatedly, whether they are felonies or misdemeanours.* (Recommendation vii)
27. *GRECO recommended to consider ensuring that the various private sector bribery offences are predicate offences of money laundering under article 165 of the Criminal Code.* (Recommendation viii)
28. GRECO recalls that these recommendations were considered partly implemented, since work had been initiated by the Government to implement the two recommendations and the Ministry of justice had mandated an external expert to propose concrete legislation.
29. The authorities now point out that the bill mentioned under recommendation v, which aims i.a. to amend the corruption-related incriminations and other provisions<sup>8</sup>, entails the introduction of a valuation of “property benefits” for the purposes of confiscation, which is based on the “gross benefit” in the draft new wording of article 20 of the Criminal Code (CC). It also provides for the extension of forfeiture under article 20b paragraph 3 CC to proceeds from corruption-related offences committed repeatedly, irrespective of their categorisation as felonies or misdemeanours (pages 32 and 55-57 of the explanatory report to the bill which was submitted to Parliament).
30. The bill also provides for new incriminations of the various private sector bribery offences under a new article 309 of the Criminal Code. It is foreseen to include them in the list of predicate offences of money laundering under article 165 of the Criminal Code.

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6) The official secrecy duty does not prevent disclosures made in accordance with article 38a [of the present law] and mandatory reports to be filed under article 53 of the Criminal Code.

7) The Government shall regulate the matter in greater detail in an ordinance, particularly on the grounds for refusal under para. 4.”

<sup>7</sup> Article 31 paragraph 2 reads as follows: 2) A reason for refusal according to Art. 38 para. 4 and 7 of the Act is present in **any case [emphasis added]**, if delivering the statement would run against the tactics of an investigation.

<sup>8</sup> [http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht\\_1.pdf](http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf)

31. GRECO takes note of the information above, and of the draft amendments announced, which would involve a complete redrafting of article 20 CC on “forfeiture” (*Verfall*; formerly: “Deprivation of enrichment” – *Abschöpfung der Bereicherung*) with its subsequent articles 20a on non-application of forfeiture, 20b on extended forfeiture and 20c on non-application of extended forfeiture. As regards the first part of the recommendation, GRECO welcomes that the intended wording of paragraph 1 of article 20 CC does not refer anymore to the condition that the offender has obtained an actual benefit through the offence, for the confiscation mechanism to apply; thus, it is irrelevant whether the offender has spent part of the criminal benefit, incurred expenses in relation to the profit, or made arrangements to be partly insolvent. The explanatory report confirms that in principle, forfeiture would be applicable in future to the gross benefit i.e. assets which originated from the crime without subsequent deduction. On the second part of the recommendation, GRECO is also pleased that Liechtenstein is making the necessary changes for deprivation measures to apply also to misdemeanours and not just felonies since currently, several offences of bribery and trading in influence are categorised as misdemeanours. The draft wording of article 20b CC explicitly refers to the (various) offences of bribery and trading in influence of articles 304 to 309 CC, in addition to those concerning money laundering, organised crime and terrorist financing. This would ensure that all relevant offences are captured in future, including the draft new offences on taking/granting an advantage of articles 306, 307 and 307a CC (see below recommendation xvi), and active and passive bribery offences in the private sector of the future article 309 CC. The latter clearly addresses the specific objectives of recommendation viii and more globally, the intended changes go in the direction of the underlying concerns which had led to recommendation viii. Liechtenstein has thus given adequate consideration to the content of these two recommendations.
32. GRECO concludes that recommendations vii and viii have been implemented satisfactorily.

#### **Recommendation x.**

33. *GRECO recommended to clarify the scope of the State Personnel Act and the State Personnel Ordinance and to ensure that contractual personnel as well as other specific categories of public officials are subject to requirements concerning gifts, incompatibilities and other possible corruption preventive measures similar to those contained in these Acts.*
34. GRECO recalls that this recommendation was considered not implemented. The authorities had stated that in order to ensure that regulations on incompatibilities of functions and gifts such as those contained in the State Personnel Act and the State Personnel Ordinance are also to be complied with by contractual personnel, a draft Code of Conduct covering this category of personnel was under preparation (see also recommendation xii). They also pointed out that article 74 paragraph 4 of the Criminal Code continues to apply and that it extends the coverage of the criminal law provisions on corruption to contractual personnel. But GRECO could not scrutinise the measures since the processes announced were not sufficiently advanced.
35. The authorities of Liechtenstein stress that in order to extend the application of the regulations on incompatibilities of functions and gifts contained in the State Personnel Act and the State Personnel Ordinance, it is planned to include in the Government decision for adoption of the Code of Conduct (see answer to recommendation xii below) an obligation for public enterprises to adopt equivalent Codes of Conduct for their employees. In addition, the definition of article 74 paragraph 4 of the Criminal Code will continue to apply and extend the coverage of the criminal law provisions on corruption to contractual personnel as well.



36. GRECO takes note of the updated information, which basically reiterates what the authorities had already indicated. It regrets the absence of any tangible result as regards the implementation of this recommendation.
37. GRECO concludes that recommendation x remains not implemented.

#### **Recommendation xi.**

38. *GRECO recommended to introduce appropriate screening procedures which would ensure that relevant positions in the public sector are filled by persons with a high degree of integrity.*
39. GRECO recalls that this recommendation was considered not implemented since the authorities of Liechtenstein had only referred to existing mechanisms which pre-dated the Evaluation Report and to their intention to extend the screening procedures to a broader range of administration (reference was made to employees of the office of justice who handle classified information).
40. The authorities of Liechtenstein now report that since the adoption of the Compliance Report security screenings, based on the relevant Government ordinance, have been carried out in additional parts of the national administration, such as the Financial Intelligence Unit. Integrity checks related to the classification of information held by the authorities will also be introduced for the implementation of automatic information exchange in tax matters.
41. GRECO takes note of the above. It recalls that the Evaluation report had pointed to a series of underlying considerations such as the limited number of officials subject to the existing screening procedures (whether civil servants or not), the absence of a general requirement for a clean criminal record in order to work in the public sector, the absence of background information kept in respect of foreigners (bearing in mind that one third of the government and municipal employees are commuters from Austria, Switzerland and Germany). The only tangible new initiative taken is the application of screening procedures to the members of the Financial Intelligence Unit, on the basis of the respective Government Ordinance. GRECO welcomes this of course, but overall, given the limited concrete information available concerning the categories of persons newly and actually subject to screenings and the absence of any other pertinent initiatives, GRECO can still not conclude that this recommendation has been implemented, even partly.
42. GRECO concludes that recommendation xi remains not implemented.

#### **Recommendation xii.**

43. *GRECO recommended to develop ethical rules and codes of conduct for public administrations at central and local level and to provide adequate training on the use of these rules, including the conduct to be adopted vis-a-vis the offering of gifts and other gratuities.*
44. GRECO recalls that this recommendation had been considered as not implemented given the absence of tangible progress both as regards a possible draft text and the intended implementing training measures. The authorities of Liechtenstein had reported that a draft Code of Conduct for the public administration, elaborated by the Working Group on the Prevention of Corruption, had been submitted to the Prime Minister's Office, but that the adoption of this code had been delayed as it needed to be considered in conjunction with whistleblowing provisions and a possible revision of the State Personnel Act following recent rulings by the Administrative Court. An

intended special training seminar dedicated to such a code for senior public managers (to be organised by Transparency International, Switzerland) had been postponed. The authorities furthermore reported that work was underway to include the issue of corruption prevention in an e-learning programme for the whole staff of the national administration with a view to having a regular and mandatory check on knowledge and individual faculties in respect of cyber security and other important issues for the proper functioning of the national administration. The specific information on the content of the draft Code of Conduct (excluding the “whistleblowing” regime in the immediate) to be included in the training of newly hired staff had been presented to the Conference of Directors of the National administration on 26 September 2013.

45. The authorities now report that following the adoption of the revised State Personnel Act – which introduced important new elements such as rules on side activities and a reporting obligation – a draft Code of Conduct for public officials was prepared, which will supplement the above Act and will be submitted to the Government for adoption. The current version of the draft contains chapters on conflicts of interest, withdrawal from decisions, acceptance of gifts and other benefits, side activities, duty to report and so on. On most of the other elements which were already in place in the former act, special training sessions were organised for senior members of the public administration as well as for certain offices, by the head of the Criminal Police and the Deputy Public Prosecutor. Apart from the training for senior officials who will act as multipliers in their units, a specific information element on the relevant provisions of the State Personnel Act and the corresponding Government Ordinance have been included in the training of newly hired staff.
46. GRECO takes note of the above updated information. It is pleased to see that the State personnel Act already contains some fundamental principles, and that a Code of conduct is in the drafting stage. It would address a variety of pertinent matters including reactions to gifts and other benefits. GRECO is looking forward to the final adoption of the Code and information on the training efforts undertaken to promote it.
47. GRECO concludes that recommendation xii has been partly implemented.

#### **Recommendation xiii.**

48. *GRECO recommended i) to introduce an effective system for the management of conflicts of interest and secondary activities that would be applicable to all public officials at central and local level, including elected representatives; and ii) to introduce rules / guidelines for situations where public officials move to the private sector.*
49. GRECO recalls that this recommendation had been considered as not implemented given the absence of noticeable progress and of a draft text submitted for consideration. The authorities had stated that the draft Code of Conduct (referred to under Recommendation xii) introduces measures to be taken for the management of conflicts of interests and secondary activities. Rules for situations where public officials move to the private sector were included in a consultation report (see Recommendation vi) and the draft law which was elaborated by the Working Group on the Prevention of Corruption had been sent to the Government for adoption.
50. The authorities reiterate that the draft Code of Conduct contains measures to be taken for the management of conflicts of interests and secondary activities. The Working group on Corruption Prevention has spent several hours on the revision, on the basis of feedback received from within the administration. Rules for situations where public officials move to the private sector are

contained in article 39a of the revised State Personnel Act, effective as of 1 July 2015. In order to further reduce such conflicts of interest, article 6 paragraph 1 of the law on the management of the national administration (*Landesverwaltungspflegegesetz*) was supplemented by an additional criterion triggering the obligation for the official to refrain from taking a decision concerning a third party if s/he has applied for a job or received/accepted such an offer from that third party.<sup>9</sup>

51. GRECO takes note of the above information. On the first part of the recommendation, no further information is yet available about the precise content of the Code of conduct which is in the drafting process. As indicated in paragraph 45, its drafters intend to include a chapter on conflicts of interest and one on secondary activities. This part of the recommendation has not been implemented as yet. On the second part of the recommendation, article 39a of the new amendments to the State Personnel Act referred to by the Liechtenstein authorities provides for the possibility for the employing department of the administration, to impose cooling-off periods of up to two years: *Art. 39a – independence: 1) The authority employing personnel of administrative departments who are vested with responsibilities in the area of supervision, assessment, awarding and other similar decision-making power, may agree with this personnel that for a maximum of two years following termination of their duties, they may not be hired by an employer or supplier who has been significantly concerned by decisions of the said department in the past two years prior to termination of employment; 2) It can be agreed that in the event of breach of the prohibition referred to in para. 1, penalties amounting to up to one year of the gross annual salary shall be applicable; 3) the Government shall settle the details by ordinance.* GRECO is overall pleased by these arrangements and it encourages Liechtenstein to make effective use of this new framework. This part of the recommendations has thus been implemented.
52. GRECO concludes that recommendation xiii has been partly implemented.

#### **Recommendation xiv.**

53. *GRECO recommended to extend the applicability of the new regime of liability of legal persons under article 74a of the Criminal Code to all private sector bribery offences in their active form.*
54. GRECO recalls that this recommendation had been considered as not implemented. The authorities had merely announced that it was the Government's intention to introduce a new article in the Criminal Code on private sector bribery and that the liability of legal persons under article 74a CC will then be extended to these offences as well.
55. The authorities indicate that with the proposed introduction of a new article in the Criminal Code on private sector bribery, the liability of legal persons under article 74a of the Criminal Code will be extended to these offences as well.
56. GRECO takes note of the new draft article 309 CC on bribery in the private sector, provided for in the legal package mentioned under recommendation v – see paragraph 18. Article 74a CC currently in force provides for a regime of liability of legal persons in relation to any criminal offence categorised as misdemeanour or felony. According to the draft amendments, both passive bribery and active bribery offences in the private sector would be criminalised in accordance with the CC (active bribery is criminalised to some extent only under the Unfair

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<sup>9</sup> See [https://www.gesetze.li/get\\_pdf\\_chrono.jsp?PDF=2015161.pdf](https://www.gesetze.li/get_pdf_chrono.jsp?PDF=2015161.pdf)

Competition Act, at the moment) as misdemeanours or felonies depending on the case<sup>10</sup>. The reference to misdemeanours and felonies would also ensure that other relevant offences are captured in future, such as the draft new offences of taking/granting an advantage of articles 306, 307 and 307a CC (see below recommendation xvi). GRECO encourages Liechtenstein to swiftly proceed with the adoption and enforcement of these draft amendments.

57. GRECO concludes that recommendation xiv has been partly implemented.

#### **Recommendation xv.**

58. *GRECO recommended to introduce a measure in the Criminal Code which would enable the courts to prohibit a person found guilty of serious corruption offences from holding a leading position in a legal entity for a certain period of time.*

59. GRECO recalls that this recommendation had been considered as not implemented. The authorities were merely considering a possibility to prohibit corruption offenders from holding positions in legal persons, in the context of the above-mentioned “legal package” (see recommendation v). This would also depend on whether Austria makes such amendments given that Liechtenstein criminal legislation is modelled on the laws of that country.

60. The authorities now underline that a system of professional disqualifications already exists in Liechtenstein. As regards the leading positions in all legal entities supervised by the independent and integrated Liechtenstein Financial Market Authority – FMA<sup>11</sup>, the mandatory licencing criteria require, also pursuant to the new competences conferred to the FMA, a clean record which proves that the applicant has not been convicted in the past for a serious criminal offence, including serious corruption offences. In case the applicant cannot demonstrate that s/he complies with the requirement, the application is rejected.

61. In their latest information, the authorities explain that the draft legal package amending the Criminal Code (see paragraph 17), which is currently in parliament, contains a series of amendments aimed at aligning the incriminations of bribery and trading in influence on the Criminal Law Convention on Corruption. With the extension of the range of corruption offences in the Criminal Code, including the introduction of private corruption offences, a conviction by the court for the commission of such an offence would have the effect of disqualifying the offender from taking a leading position in a legal entity under the requirements of the legislation on business activities.

62. GRECO notes with interest that in the context of the intended amendments to the Criminal Code, a professional disqualification could result in relation to sanctions for bribery in the private sector. This is a good starting point and GRECO encourages the country to ensure that in future, such a disqualification can be applied in connection with a broad range of offences, including corruption involving a public official.

63. GRECO concludes that recommendation xv has been partly implemented.

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<sup>10</sup> GRECO notes that all acts falling under article 309 CC would be misdemeanours, or a felony where the value of the bribe is in excess of CHF 75 000 (article 309 paragraph 3 CC) – text of the draft new provision available on page 105 in the following document [http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht\\_1.pdf](http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf)

<sup>11</sup> Banks and investment firms, e-money institutions, payment institutions, insurance undertakings insurance intermediaries, pension schemes, pension funds, management companies and funds under the IUA, management companies and UCITS under the UCITS Act, asset management companies, alternative investment fund managers under the AIFM Act, trustees, auditors, lawyers, patent lawyers, persons according to 180a Act, dealers in goods, real estate brokers

## Recommendation xvi.

64. *GRECO recommended to extend the list of non-tax deductible expenditures to the broadest range of relevant corruption-related offences.*
65. GRECO recalls that this recommendation had been considered as not implemented, given the absence of concrete outcome. It was being foreseen that the “legal package” referred to above would include a reference to article 308 CC as well as to the new draft criminal law provision on bribery in the private sector in article 47 paragraph 3 lit. k of the Tax Act (LGBl. 2010 Nr. 340). With such a reference, the current list of non-tax deductible expenditures (which already refers to article 307 CC) would be extended to include all corruption-related criminal offences.
66. The Liechtenstein authorities reiterate the information provided earlier and recalled above.
67. GRECO takes note of the above and of the content of the draft legal package which was finalised by the Government in the end of 2014 and which is now available for public consultation<sup>12</sup>. If adopted, the draft would prohibit the tax deductibility in connection with articles 307, 308 and 309 CC, i.e. active and passive bribery, trading in influence and bribery in the private sector. This is a good starting point but it should be recalled that the package foresees further changes when it comes to the incriminations and the new offences of granting / taking and advantage of articles 306, 307a and 307b CC:

New structure of corruption-related offences according to the draft amendments to the Criminal Code currently contemplated	
Active and passive bribery	Article 307
Taking of an advantage	Article 305
Taking of an advantage with the purpose of influencing	Article 306
Granting of an advantage	Article 307a
Granting of an advantage with the purpose of influencing	Article 307b
Prohibited intervention (active and passive trading in influence)	Article 308 paras 1 and 2, et seq.
Active and passive bribery in business (in the private sector)	Article 309 paras 1 and 2, and para. 3

68. As it was pointed out in the Evaluation Report, “*The new Tax law which entered into force in January 2011 provides now explicitly for the non-deductibility of corruption-related expenditures, but this only in connection with the offence of active bribery in the public sector (article 307 CC). Expenses generated in the context of other corruption-related offences such as trading in influence or bribery in the private sector would need to be included, bearing in mind that the list could require further extension once Liechtenstein ratifies the Criminal Law Convention on Corruption.*” Liechtenstein would thus need to ensure that in future, the non-deductibility of expenses related to corruption applies to a greater number of corruption-related offences particularly those of articles 307a and 307b CC as they carry an active bribery element.
69. GRECO concludes that recommendation xvi has been partly implemented.

<sup>12</sup> [http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht\\_1.pdf](http://www.llv.li/files/srk/Vernehmlassung%20Abänderung%20Korruptionsstrafrecht_1.pdf) (pages 83 and 117)

## Recommendation xvii.

70. *GRECO recommended to take appropriate measures to enhance the supervision of trustees and holders of certificates under article 180a of the Law on Persons and Companies (Personen und Gesellschaftsrecht - PGR).*
71. GRECO recalls that this recommendation was considered partly implemented. As it was indicated in paragraph 73 of the Compliance Report: "(...) *at the initiative of the Financial Market Authority (FMA) and the Association of Liechtenstein Trustees, a draft law aimed at revising the Trustee Act has been elaborated. The main purpose of this exercise is to strengthen the regulatory supervision of trustees; an essential objective is the introduction of a continuous supervision over the compliance with the licensing requirements. Currently, the competence for issuing authorisations for holders of a certificate under article 180a PGR lies with the Department for Justice/Trade Register. Furthermore, a draft law regarding the supervision of holders of a certificate under article 180a PGR is also under way. Both these draft laws were subject to a first reading in Parliament on 6 September 2013 and the adoption is expected in November 2013, followed by entry into force on 1 January 2014. According to the authorities, this will allow for an improved license procedure as well as an effective and permanent supervision by the FMA. The new law will encompass extended conditions for licenses (such as capacity to act, education and practical experience), a proper check (personal integrity and professional qualification), rights and obligations (e.g. duty of disclosure, obligation to inform, continuing education) as well as effective measures (e.g. temporary prohibition of practising) and sanctions (termination, cancellation and revocation of a license and fines). Regulations concerning national and international administrative assistance and a public register of all licensees are provided for. Due to transitional provisions, each holder of a certificate under article 180a PGR will have to apply for a "new" license with the FMA and all holders will be checked with regard to their personal integrity. In case they do not apply within a certain period, they will lose their initial authorisation to exercise activities according to article 180a PGR.*" GRECO welcomed these intended changes and was looking forward to the final adoption of the above draft laws.
72. The authorities of Liechtenstein report that the new Trustees Act (LGBl. 2013 Nr. 421) and the new law on holders of a certificate under article 180a of the Persons and Company Act (LGBl. 2013 Nr. 426) entered into force on 1 January 2014<sup>13</sup>. With these two pieces of legislation the supervisory competences of the independent Liechtenstein Financial Market Authority have been considerably extended as was announced earlier.
73. GRECO welcomes that Liechtenstein has now established a legal framework that allows to apply a more effective supervision over persons licensed as trustees and those licensed (previously by the Government) to perform similar services under article 180a of the Law on Persons and Companies. The licensing and supervision is now under the responsibility of the Financial Market Authority - FMA in both cases, with the additional powers and means described by the Liechtenstein authorities and the license can be withdrawn in case of non-compliance with the regulatory obligations and the FMA's orders. GRECO very much hopes that the FMA will make effective use of these in future, given the various insufficiencies and problems noted at the time of the on-site visit.
74. GRECO concludes that recommendation xvii has been implemented satisfactorily.

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<sup>13</sup> - Trustees Act: [https://www.gesetze.li/get\\_pdf.jsp?PDF=2013421.pdf](https://www.gesetze.li/get_pdf.jsp?PDF=2013421.pdf)  
- 180a PGR Act: [https://www.gesetze.li/get\\_pdf.jsp?PDF=2013426.pdf](https://www.gesetze.li/get_pdf.jsp?PDF=2013426.pdf)

### III. CONCLUSIONS

75. In view of the above, GRECO concludes that Liechtenstein has now implemented satisfactorily or dealt with in a satisfactory manner only seven of the eighteen recommendations contained in the Joint First and Second Round Evaluation Report.
76. Recommendations i, iv, ix and xviii, and now also recommendations vii, viii and xvii have been fully implemented. Recommendations v, xii, xiii, xiv, xv and xvi can be added to the recommendations iii and vi which have (already) been partly implemented. Recommendations ii, x and xi remain not implemented.
77. Overall, the reform process remains fairly slow and only limited additional progress has been achieved in order to comply with the pending recommendations. GRECO welcomes that the recommendation calling for a reform of the licensing and supervision of trustees and similar professionals has now been fully implemented with legal acts effective as from 1 January 2014. Liechtenstein is also planning to improve the regime of confiscation of assets in respect of corruption offences and to extend the list of predicate offences of money laundering so as to include acts of bribery in the private sector. Partial progress is also observed in respect of six further recommendations and a series of draft texts still need to be adopted. This concerns for instance the Code of conduct for public officials and the "legal package" on corruption aimed at enabling Liechtenstein to ratify the Criminal Law Convention on Corruption (ETS 173) and thus to improve i.a. access of investigators and prosecutors to financial information and evidence, and the applicability of corporate liability to a larger number of corruption-related acts. Likewise, GRECO welcomes that legislation amending the State Personnel Act was adopted and promulgated on 1 July 2015 to improve in particular the preventive anti-corruption measures in public administration. However, it is striking that to date, only one recommendation concerning the public administration has been fully implemented.
78. To sum up, four years after the adoption of the Evaluation Report, the number of recommendations which have been fully implemented is disappointing. Important reforms still need to materialise in various areas which are crucial for the prevention and repression of corruption.
79. Given the above, GRECO invites the Head of the delegation of Liechtenstein to submit additional information on the pending recommendations ii, iii, v, vi, x, xi, xii, xiii, xiv, xv and xvi by 31 July 2016 at the latest.
80. GRECO invites the authorities of Liechtenstein to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.