

Strasbourg, 22 June 2012

**Greco RC-I/II (2010) 1E  
Addendum**

## **Joint First and Second Evaluation Round**

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

Adopted by GRECO  
at its 56<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-22 June 2012)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Austria at its 38<sup>th</sup> Plenary Meeting (13 June 2008). This report ([Greco Eval I/II Rep \(2007\) 2E](#)) addressed 24 recommendations to Austria and was made public on 19 December 2008.
2. Austria submitted the Situation Report required under the GRECO compliance procedure on 31 December 2009. On the basis of this report, and after a plenary debate, GRECO adopted the Joint First and Second Round Compliance Report (RC Report) on Austria at its 47<sup>th</sup> Plenary Meeting (11 June 2010). This last report was made public on 29 September 2010. The Compliance Report ([Greco RC-I/II \(2010\) 1E](#)) concluded that recommendations iii, viii, ix, xi, xii, xvii, xxii, xxiii and xxiv had been implemented satisfactorily and recommendations i, vi and xv had been dealt with in a satisfactory manner. Recommendations ii, iv, v, vii, xiii, xviii and xx had been partly implemented and recommendations x, xiv, xvi, xix and xxi had not been implemented; GRECO requested additional information on their implementation. This information was provided on 30 December 2011.
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, v, vii, x, xiii, xiv, xvi, xviii, xix, xx and xxi in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### **Recommendation ii.**

4. *GRECO recommended i) to establish an inter-institutional and multi-disciplinary coordination mechanism that would be given the necessary resources and a clear mandate to initiate a strategy or policy in the area of anti-corruption; ii) to involve the Länder and the private sector in these overall anti-corruption efforts (paragraph 21).*
5. GRECO recalls that in the Compliance Report, note was taken of the setting-up of the Co-ordinating Body on Combating Corruption which appeared to constitute an inter-institutional and multi-disciplinary coordination mechanism and also involved the *Länder* and the private sector. However, as its concrete mandate still needed to be determined – especially as regards responsibility for initiating an anti-corruption strategy or policy – and as the functioning of this body, which was to meet only four times a year, needed to be further enhanced and it needed to be given the necessary resources, this recommendation was considered as only partly implemented.
6. The authorities of Austria now report that the Co-ordinating Body on Combating Corruption met periodically in 2010 and 2011 back to back with the expert conference on corruption at the level of the *Länder*. The Co-ordinating Body has dealt with various issues regarding the prevention and fight against corruption such as whistleblower protection and improvement of efficiency regarding the investigation and prosecution of economic crime including corruption. Topics that the Co-ordinating Body dealt with resulted in draft bills such as that on lobbying and also in amendments, already adopted by Parliament, such as measures on whistleblower protection and post public employment. Finally, questions regarding the legal base and concrete tasks of the Co-ordinating Body are still under consideration.

7. GRECO takes note of the information provided. While GRECO acknowledges that the recent Coordinating Body on Combating Corruption has dealt with different issues regarding the prevention and fight against corruption, some of which have been included in (draft) legislation, it also notes that the concrete mandate of this body has still not been determined and that no measures have been taken to improve its functioning and to provide it with the necessary resources.

8. GRECO concludes that recommendation ii remains partly implemented.

**Recommendation iv.**

9. *GRECO recommended to increase the human resources available to the police, in particular the units responsible for conducting investigations concerning corruption and criminal assets.*

10. GRECO recalls that it was concluded in the Compliance Report that this recommendation had been partly implemented. The transformation of the Federal Bureau for Internal Affairs (BIA) into the Federal Bureau of Anti-Corruption (BAK) had been accompanied by an increase in human resources which it was planned to further develop. Moreover, it was planned to reorganise and increase the staff of departments of the Federal Bureau of Investigation and the Criminal Investigation Service competent for the fight against white-collar and financial crime by the end of 2010, and to also strengthen the economic crime units of the police in the *Länder*.

11. The authorities now indicate that in the course of the current evaluation of the BAK in the framework of an overall strategic concept of the Federal Ministry of the Interior, it has become apparent that so far, the staff requirements in the area of investigation have been met by temporarily assigning personnel to the BAK. In recent years, these requirements have mainly increased due to a rising number of files and a growing complexity of the cases to be investigated. Assignments of police officers, which have an average duration of six months to a year and a half, involve a complicated recruitment process and a loss of knowledge caused by a high turnover of staff in the investigation department. Therefore, one of the results of the above evaluation is to convert 16 assigned posts to 16 permanent posts in the area of investigation, which would increase the number of permanent posts from 16 to 32 in the investigation department.

12. Moreover, the authorities report that the Austrian Police Headquarters were reorganised in 2010. The new "Department for Economic and Financial Crime" is also competent for corruption in the private sector and the relevant staff increased from 52 to 64. Furthermore, the staff for investigating economic and financial crime in the subordinated units was expanded to around 33 officers. One of the four units of the above department is competent for asset recovery, with seven officers competent to lead, control and investigate in the field of asset recovery. Since 2011, specialised teams in this field have been set up in the subordinated departments in order to increase the effectiveness in this area.

13. GRECO welcomes the increase in staff and establishment of specialised teams within the Department for Economic and Financial Crime of the Austrian Police Headquarters, as well as plans to create additional posts in the investigation department of the Federal Bureau of Anti-Corruption. GRECO encourages the authorities to make every effort to implement these plans as soon as possible, as well as further plans mentioned in the Compliance Report, including the strengthening of the economic crime units of the police in the *Länder*.

14. GRECO concludes that recommendation iv remains partly implemented.

## **Recommendation v.**

15. *GRECO recommended i) to proceed with the reform of the statute of prosecutors in order to bring it closer to the statute of judges; ii) to consider the setting-up of a specialist body/bodies responsible for the selection, training, appointment, career development and disciplinary procedures in respect of judges and prosecutors.*
16. GRECO recalls that in the Compliance Report, it had concluded that the recommendation was only partly implemented, as further approximation of the statute of prosecutors with the statute of judges – including constitutional amendments and the establishment of a new Act on Judges' and Prosecutors' Service Law in 2008 – had been achieved but the work in that direction was ongoing. As regards the second part of the recommendation, it appeared that consideration had been given to the possible establishment of a specialist body for judges and prosecutors such as a High Judicial Council, as required by the recommendation.
17. The authorities now indicate that the latest amendments to the Service Law of Judges and Public Prosecutors (*Richterdienstgesetz-RStDG*), which were approved by Parliament on 15 December 2011, harmonise disciplinary rules for judges and prosecutors (i.e. modified catalogue of sanctions, measures for transparency). The authorities add that the above amendments also facilitate training of prosecutors (and judges) in areas relevant for combating corruption (in particular, since 1 January 2012, they can be sent for training purposes to various organisations dealing with financial management such as tax administration, financial audit, economic crime units, financial market authority and the Austrian national bank). Furthermore, since 1 September 2011 the existing "Public Prosecutor's Office for Corruption" has been upgraded to the new "Public Prosecution Office for Economic Crime and Corruption" ("*Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption*" (WKStA)). The new office is competent for the investigation and prosecution of serious economic crime and corruption offences as well as related money laundering offences. Public prosecutors, together with experts in the field of finance and economics, conduct investigations. As of 1 January 2012, 14 public prosecutors as well as four experts in the field of finance and economics and additional staff have been appointed or seconded to the office and a further increase in staff and public prosecutors is envisaged.
18. As a complement, the authorities state with regard to the second part of the recommendation that an advisory body has been established in the Austrian Federal Ministry of Justice ("*Fortbildungsbeirat*"), which is responsible for various aspects of planning and improving the continuing education of judges and prosecutors.
19. GRECO takes notes that the approximation of the statute of prosecutors with the statute of judges, already initiated in 2008, has continued and has most recently brought about the harmonisation of disciplinary rules for judges and prosecutors. GRECO understands that the reform of the statute of prosecutors is a rather long-term challenge and it encourages the authorities to persist in their efforts to address all the concerns expressed in the Evaluation Report, in particular, in respect of the independence and the resources available for the public prosecution service. That said, GRECO takes account of the steps already taken until now, which also include practical measures such as the establishment of the Public Prosecution Office for Economic Crime and Corruption, the increase in staff and facilitation of training for prosecutors.
20. GRECO concludes that recommendation v has been implemented satisfactorily.

### **Recommendation vii.**

21. *GRECO recommended to provide more training opportunities to judges, including those of lower courts, in those areas which are of particular relevance for handling corruption cases.*
22. GRECO recalls that in the Compliance Report, note was taken of some training activities provided to judges, including on the handling of economic/financial crimes and on the prevention of (internal) corruption, and of plans within the Federal Ministry of Justice to develop a more comprehensive training programme on economic crime. Given that such a comprehensive training programme – which would also have to include the handling of corruption cases – had not yet been developed, GRECO concluded that the recommendation was only partly implemented.
23. The authorities now report that in view of the establishment of the Central Public Prosecutor's Office for Economic Crime and Corruption in Vienna in September 2011, the Federal Ministry of Justice offered a training course "Business Law" for judges and prosecutors lasting from January until June 2011. The course provided a basic introduction into fields of business law including business and administration, business accountancy, company law and tax law. In total 37 participants completed this training course. An additional programme started in February 2012. The authorities furthermore indicate that since October 2010, the Federal Ministry of Justice has given judges and prosecutors the opportunity to participate in the "Post Graduate Programme Business Studies for Lawyers" hosted by the Johannes Kepler University Linz. This three semester long programme provides, *inter alia*, knowledge in the fields of business administration including business accountancy, controlling and finance as well as management and leadership, the influence taxation has in regards to business decisions, and crisis and re-structuring management.
24. GRECO acknowledges the efforts made to offer training activities relating to business law to judges and prosecutors. That said, GRECO regrets that no further information has been provided with regard to the development of a more comprehensive training programme on economic crime, as mentioned in the Compliance Report, and it recalls that the recommendation was aimed at the provision of such specific training – including the handling of corruption cases – also for judges of lower courts.
25. GRECO concludes that recommendation vii remains partly implemented.

### **Recommendation x.**

26. *GRECO recommended to i) adopt guidelines providing for specific and objective criteria to be applied in determining whether an act is connected to the official functions of a parliamentarian and thus whether the immunity of that member applies and can be lifted; ii) ensure that these guidelines reflect the needs of the fight against corruption and iii) require the competent parliamentary committees at federal and Länder levels to give grounds for their decision to lift or not to lift immunity in a given case.*
27. GRECO recalls that no substantial progress concerning the recommended guidelines and requirements on parliamentary committees had been reported and the recommendation was therefore not implemented.

28. The authorities now state that in June 2011, members of the National Council introduced a private members' bill for reform of parliamentary immunity which is currently subject to deliberations by the constitutional committee. One of the proposed changes is to abandon the extra-professional immunity laid down in Article 57, paragraph 3 of the Federal Constitutional Law (*Bundes-Verfassungsgesetz*) and to replace it by a new system which focuses on the exercise of an MP's parliamentary duties rather than on his personal circumstances and which is intended to ensure the unhindered performance of these duties.
29. GRECO takes note of the information provided with regard to a private members' bill aimed at reforming parliamentary immunity. In the absence of any detailed information on how such a reform would clarify the conditions for lifting immunity and given the very early stage of such a possible reform, GRECO cannot conclude that the recommendation has been even partly implemented.
30. GRECO concludes that recommendation x has not been implemented.

### **Recommendation xiii.**

31. *GRECO recommended to enhance the ability of Austria's anti-money laundering system to better deal with proceeds from corruption by i) examining the need to criminalise self-laundering; ii) providing guidance to all the obliged entities that would take into account the needs of the fight against corruption (typologies of corruption-related money laundering and indicators for corruption-related suspicious transactions, information and guidance on politically exposed persons etc.).*
32. GRECO recalls that Parliament had adopted an amendment to section 165 PC in order to criminalise self-laundering (first part of the recommendation) but that in respect of guidance to reporting entities (first part of the recommendation), it was not sufficiently clear to what extent the reported measures – in particular, adoption by the Financial Market Authority/FMA of “Guidelines on the risk-based approach to the prevention of money laundering and terrorism financing” as well as “Guidelines on Suspicious Transaction Reports” – took into account the specific needs of the fight against corruption. For that reason, compliance with the recommendation was only partial.
33. The authorities now report that the above-mentioned guidelines – which also cover corruption as a predicate offence to money laundering – have been amended by circulars of the FMA on the risk-based approach and on suspicious transaction reports, which explain in detail the steps supervised institutions have to take in the context of customer due diligence. The measures prescribed are intended to help the institutions to apply the appropriate due diligence, to better detect a predicate offence and to file a suspicious transaction report. In this framework, corruption is listed as an important criterion for the assessment of the risk certain countries represent in terms explained in the circular. Moreover, these circulars illustrate the concept of politically exposed persons and the enhanced due diligence to be applied and additional measures to be taken in respect of such persons – which also aim at supporting international anti-corruption efforts by preventing funds deriving from predicate offences for money laundering, such as bribery offences, from being channelled into financial circuits.
34. In addition, the authorities refer to 37 awareness training activities – including on the use of money for corruption – organised, in 2011, by the Austrian FIU based in the Federal Ministry of

Interior for all entities obliged to report, as well as on training for tax officers on recognising corruption, money laundering and/or financing terrorism when conducting tax inspections.

35. GRECO notes that the “Guidelines on the risk-based approach to the prevention of money laundering and terrorism financing” and the “Guidelines on Suspicious Transaction Reports” have been revised by circulars of the Financial Market Authority and that training has been provided in this area to reporting entities and tax officers. It would appear that these measures take into account the needs for the fight against corruption such as indicators for corruption-related suspicious transactions concerning predicate offences for money laundering – including bribery offences – and information and guidance on politically exposed persons
36. GRECO concludes that recommendation xiii has been implemented satisfactorily.

#### **Recommendation xiv.**

37. *GRECO recommended with a view to facilitating access to information, to provide for precise criteria for a limited number of situations where access to information can be denied and to ensure that such denials can be challenged by the person concerned.*
38. GRECO recalls that in the Compliance Report, it had concluded that the recommendation was not implemented. The authorities opined, in particular, that the existing legal framework was already in accordance with the standards required by the recommendation, but GRECO stressed that the Evaluation Report had expressed concerns about access to information in practice and had therefore called for a more precise definition of the criteria for the limited number of situations where access to information can be denied.
39. The authorities maintain their position that no measures are necessary to implement the recommendation.
40. GRECO very much regrets that no new information concerning the implementation of the recommendation has been provided.
41. GRECO concludes that recommendation xiv has not been implemented.

#### **Recommendation xvi.**

42. *GRECO recommended to i) introduce whistleblower protection for all federal employees, i.e. civil servants and contractual staff; ii) to invite the Länder which do not as yet have such protection mechanisms to introduce them.*
43. GRECO recalls that in the Compliance Report, note was taken of plans to introduce rules on whistleblower protection in the federal legislation. However, as no concrete information on the content of this project had been provided and no draft bill had been presented, and as the protection measures in place at the level of the *Länder* were not entirely clear, GRECO concluded that the recommendation was not implemented.
44. The authorities now report that the latest amendments of the Civil Servants’ Service Act 1979 (*Beamten-Dienstrechtsgesetz* 1979 – BDG 1979), the Act on Contractual Employees (*Vertragsbedienstetengesetz* – VBG) and the Service Law for Judges and Public Prosecutors (*Richterdienstgesetz* – RStDG), which were approved by Parliament on 15 December 2011, set

out new regulations aiming at enhancing the protection for whistleblowers: Since 1 January 2012, a federal staff member (civil servant, contractual employee, judge or public prosecutor) reporting a reasonable suspicion of a case of corruption (which constitutes a criminal offence within the competence of the Federal Bureau of Anti-Corruption) in good faith – either to the superior/head of department or to the Federal Bureau of Anti-Corruption – must not be discriminated against by the employer. This rule is meant to provide for enhanced protection of whistleblowers from non-objective unilateral (retaliation) measures taken by the employer in relation to the report made by the staff member concerned (e.g. transfer, dismissal,...). It not only applies to the whistleblower him/herself, but also to any staff member corroborating the report of the whistleblower (e.g. as a witness).

45. As regards the level of the *Länder*, the authorities state that the *Länder* had preferred to wait for the adoption of protection rules at federal level before considering any further steps to be taken at *Länder* level, and that they were expected to do so now that the above amendments at federal level have been adopted. Consequently, during the meeting of the Co-ordinating Body on Combating Corruption held on 29 March 2012, all participants – including representatives of the *Länder* – concerned in recommendations that were pending were called upon to show as much progress as possible in implementing them before the examination of the present Compliance Report. Recommendation xvi was addressed on that occasion.
46. On 16 May 2012, the *Verbindungsstelle der Bundesländer* (i.e. the liaison institution for co-operation between the *Länder* and the Federal administration) reported to the Ministry of Justice developments in the *Länder* regarding whistleblower protection and post-public employment. The report shows that in one *Land* (*Burgenland*), Parliament has already adopted amendments to the Public Service law containing, *inter alia*, provisions concerning whistleblower protection and post-public employment. Two other *Länder* (*Lower Austria, Vienna*) have already prepared draft bills foreseeing such measures and most of the remaining *Länder* (notably *Carinthia, Styria, Tyrol and Vorarlberg*) have initiated a process directed at implementing such measures as soon as possible. Several *Länder* reported that the planned amendments would be modelled on the rules introduced at federal level. Finally, the *Land Upper Austria* is still examining whether legal amendments are necessary.
47. GRECO acknowledges the recent adoption of whistleblower protection measures, which appear to protect any public employees at federal level who report in good faith reasonable suspicions of corruption to the superior/head of department or to the Federal Bureau of Anti-Corruption. As concerns the second part of the recommendation, it would appear that the *Länder* which do not as yet have such protection mechanisms have been clearly invited to introduce them, as required by the recommendation. GRECO welcomes that legal amendments in this respect are under preparation in the majority of the *Länder* and it encourages the authorities to closely follow this process up to the adoption of adequate *Länder* regulations.
48. GRECO concludes that recommendation xvi has been implemented satisfactorily.

#### **Recommendation xviii.**

49. *GRECO recommended i) to make sure that all categories of officials (including elected officials, judges and prosecutors) are covered by adequate provisions on the acceptance of gifts; ii) to invite the Länder that do not have adequate provisions on gifts for public officials to introduce such provisions; iii) to examine whether additional clarification or guidance is needed to make sure that certain key provisions of the Penal Code (in particular Section 304 paragraph 4 on*



*“accepting an advantage” and Section 308 paragraph 2 on “illicit intervention”*) cannot be misinterpreted.

50. GRECO recalls that the Compliance Report concluded that the recommendation was partly implemented. Notwithstanding the information provided with regard to the regulations on the acceptance of gifts applicable to officials at federal and *Länder* levels as well as to judges and prosecutors – as complemented by decrees designed to provide further guidance – it appeared that those regulations only applied to civil servants and that other categories of officials such as contractual staff, experts or advisors to elected officials and elected officials themselves remained, in principle, outside their scope of application.
51. The authorities now indicate that several preventive measures – which include information on regulations on the acceptance of gifts – have been taken and are to be continued, such as the yearly reminder (before Christmas) by the Ministry of Justice of the circular of 7 July 2009 on “Prohibition of the Acceptance of Gifts” on the Intranet, the establishment by the Ministry of Justice of an “Information Centre on Integrity” (*Beratungszentrum für berufsethische Fragen*) in the area of the Court of Appeal in Innsbruck – which may be contacted and acts as a helpdesk with regard to corruption-prevention measures – as well as the inclusion of matters concerning the prevention of corruption, integrity management and the “Code of conduct” in various training activities. Moreover, on 21 June 2012 an amendment to the Penal Code was adopted by the Justice Committee of the National Council of Parliament, which i.a. provides for applicability of the criminal law provisions against corruption to all parliamentarians and gives clarification concerning the admissibility of gifts under the Penal Code.
52. GRECO takes note of the information provided. It would appear that no further measures have been taken to explicitly address the outstanding issues of the recommendation, namely on the rules concerning the acceptance of gifts by elected officials and public officials other than civil servants.
53. GRECO concludes that recommendation xviii remains partly implemented.

#### **Recommendation xix.**

54. *GRECO recommended to i) provide for a framework to deal with moves of federal employees to the private sector; ii) invite the Länder that do not have such measures nor appropriate mechanisms to prevent conflicts of interest yet to introduce such measures; iii) strengthen the control of the declarations of assets and interests to be submitted by parliamentarians and senior members of the executive.*
55. GRECO recalls that in the Compliance Report, it concluded that the recommendation was not implemented. Firstly, there were plans to introduce new legislation dealing with post-public employment issues at federal level, but no concrete information on the content of this project had been provided and no draft bill had been presented yet. Secondly, public service regulations on secondary employment and official secrecy at *Länder* level had been reported, but GRECO stressed that the recommendation further aimed at introducing post-public employment regulations and mechanisms for their enforcement. Thirdly, no substantial information had been provided with regard to the recommended strengthening of the control of declarations of assets and interests, which was reportedly under consideration.

56. As concerns the first part of the recommendation, the authorities now report that the latest amendments of the Civil Servants' Service Act 1979 (*Beamten-Dienstrechtsgesetz 1979 – BDG 1979*), the Act on Contractual Employees (*Vertragsbedienstetengesetz – VBG*) and the Service Law for Judges and Public Prosecutors (*Richterdienstgesetz – RStDG*), which have been approved by Parliament on 15 December 2011, set out a new regulatory framework for the movement of federal staff to the private sector. Since 1 January 2012, federal staff (civil servant, contractual employee, judge or public prosecutor) are prohibited to work for a private sector entity (any entity which is not subject to the control of the Federal Court of Audit, a Court of Audit of the *Länder*, or a similar international body) for a period of six months after leaving federal civil service. This applies if the decisions of the former staff member taken during the last 12 months of service prior to the resignation of his/her employment relationship with the federation (or his/her retirement) had significant impact on the legal position of the private sector entity s/he intends to work for, and if the exercise of the new job may harm the trust of the general public in the objective performance of the former duties of the staff member in question. As these restrictions are a constraint of the fundamental right to choose any occupation desired (as guaranteed by the Constitution), they are not applied if (1) their application may result in an inequitable obstacle for the professional career of the former staff member; (2) the last monthly salary of the former staff member has not exceeded a certain amount (linked to social security contributions, currently approx. 1.500 Euros); or (3) the federation in its capacity as an employer is responsible for the resignation of the former staff member.
57. In case of breach of these rules, the staff member (contractual employee, civil servant/judge/public prosecutor leaving federal service) is subject to a penalty of 300% of his/her last monthly salary. As retired civil servants/judges/public prosecutors still have an employment relationship with the federation (life-time tenure) they face regular disciplinary proceedings in case of breach of these rules.
58. With regard to the second part of the recommendation, the authorities report that the *Länder* were called upon to implement recommendation xix at the meeting of the Co-ordinating Body on Combating Corruption held on 29 March 2012 and that, furthermore, legal amendments to the public service law including the issue of post-public employment were under preparation in the majority of the *Länder* and, in the case of *Burgenland*, such amendments have already been adopted (cf. under recommendation xvi.).
59. Finally, no further information has been provided in relation to the third part of the recommendation.
60. GRECO acknowledges that a new regulatory framework for the movement of federal staff to the private sector has been created which prohibits, under specified conditions, federal staff from working for a private sector entity for a period of six months after leaving federal civil service (first part of the recommendation). GRECO furthermore notes that the *Länder* which do not as yet have such mechanisms have been invited to introduce them (second part of the recommendation) and it welcomes that legal amendments in this respect are under preparation in the majority of the *Länder*. That said, GRECO regrets that no measures have been taken to strengthen the control of declarations of assets and interests.
61. GRECO concludes that recommendation xix has been partly implemented.

## **Recommendation xx.**

62. *GRECO recommended to initiate consultations on appropriate measures to be taken - in the context of the fight against corruption - with a view to increasing the transparency and control of business entities, foundations and associations.*
63. GRECO recalls that in the Compliance Report, the recommendation was considered partly implemented. Legal amendments had been introduced – and further legal amendments were under preparation – in order to increase transparency in stock corporations issuing bearer shares, but these amendments only addressed part of the concerns underlying the recommendation which, in a much broader sense, aimed at increasing the transparency and control of business entities, foundations and associations.
64. As concerns the measures aimed at increasing transparency in stock corporations, already referred to in the Compliance Report, the authorities now indicate that the working group set up by the Ministry of Justice – on the basis of the resolution by the Council of Ministers of 9 February 2010 that in the future bearer shares may only be issued by companies listed on the stock exchange – has prepared a governmental bill to that effect.
65. In addition, the authorities mention recent legal amendments aimed at enhancing transparency in view of the identification of the beneficial owner and the determination of the control of stock corporations. More precisely, in July 2011, Parliament adopted a law on compulsory conversion of bearer shares into nominative shares (BGBl I 53/2011). Following these new rules, stock corporations are obliged to convert bearer shares already issued into nominative shares until 31 December 2013. Stock corporations that are founded after the end of July 2011 are not allowed to issue bearer shares any more. A register of shareholders is to be maintained by the stock corporation. The following information on the shareholders is to be kept: name, address, (in case of a natural person) date of birth, (in case of a legal person) commercial register number, number of shares, in case of par-value shares the value, and a bank account. If the owner is somebody other than the (natural or legal) person registered, the above information (without the bank account) has to be given also on the “real” owner. Regarding listed companies, in order to ensure transparency of the owners it is now regulated that shares may not be issued separately but only in a global certificate that must be kept by a bank (in Austria by the Central Depository which is the *Österreichische Kontrollbank*). The authorities stress that all share transactions can thus be traced back through the relevant bank account movements.
66. Moreover, the authorities report that the 2010 Tax Code Amendment Act (FLG I No. 34/2010) changed the corporate tax law 1988 (section 13 (6)) in such a way that since 1 July 2010, private foundations are obligated to provide, without delay, the most recent version of their founding deed and supplementary founding deed to the competent tax authorities. If the founder uses a “*Treuhand*”, the latter must be disclosed to the tax authorities. Non-compliance results in the tax authorities filing a report to the A-FIU and sanctions according to section 51 of the Fiscal Penal Law (in addition to excluding the private foundation from favourable tax treatment). The authorities state that since the amendment came into force, a significant rise in disclosure was recognised by the tax office competent for the majority of private foundations. In addition, since 1 April 2011, private foundations are obliged to disclose to the tax authorities the beneficiaries who are not indicated in the founding deed/appendix declaration but designated by the foundation (section 5 of the Act on Private Foundations/“*Privatstiftungsgesetz*”). In order to enable tax authorities to effectively compile a comprehensive electronic register of all beneficiaries of private

foundations, these foundations have also been obliged to disclose all past beneficiaries to the tax authorities by 30 June 2011. In order to ensure that private foundations meet their obligations, the bill provides for a fine of EUR 20,000 for nondisclosure.

67. GRECO takes note of the information provided and acknowledges that several legal amendments have been adopted – and that further amendments are under preparation – in order to enhance transparency in stock corporations and private foundations. It would appear that the measures reported have the clear potential of addressing the main concerns underlying the recommendation, relating in particular to bearer shares issued by stock corporations (which have been converted into nominative shares and are now prohibited) and to the identification of the beneficiaries of private foundations (which has been dealt with by a range of disclosure obligations, coupled with newly introduced sanctions).
68. GRECO concludes that recommendation xx has been implemented satisfactorily.

#### **Recommendation xxi.**

69. *GRECO recommended to establish guidelines for prosecutors facilitating the application of the statute on responsibility of legal entities (Verbandsverantwortlichkeitsgesetz-VbVG) and to develop systematic training for the competent police forces, prosecutors and judges on the matter.*
70. GRECO recalls that in the Compliance Report, it had taken note of the evaluation of the statute on responsibility of legal entities and its application by the prosecutors and courts which might possibly result in the preparation of guidelines and training activities in this area. However, as no concrete steps had been taken yet in order to introduce such guidelines and systematic training for the competent police forces, prosecutors and judges, GRECO concluded that the recommendation had not been implemented.
71. The authorities now report that the Austrian Institute of Law- and Criminal Sociology (*Institut für Rechts- & Kriminalsoziologie, IRKS*), on commission by the Federal Ministry of Justice, has recently finished a study on the effectiveness, practice and problems of implementation of the Federal Statute on the Responsibility of Entities for Criminal Offences (*Verbandsverantwortlichkeitsgesetz, VbVG*). The Federal Ministry of Justice has evaluated this study and is considering further steps to establish instructions for public prosecutors to facilitate the application of the VbVG. Furthermore, advanced training for the responsible public prosecutors and judges is planned, but still under development. The authorities state that a working party on this matter seems appropriate and is being contemplated. Moreover, the Federal Ministry of Justice is in the process of assessing whether the current limits of fines should be raised.
72. GRECO notes that on the basis of a recent evaluation of the effectiveness of the Federal Statute on the Responsibility of Entities for Criminal Offences (*Verbandsverantwortlichkeitsgesetz*), the development of instructions for public prosecutors to facilitate the application of this law, as well as an increase in the limits of fines under this law, are being considered by the Federal Ministry of Justice and that advanced training for the competent public prosecutors and judges is currently under preparation. GRECO urges the authorities to step up their efforts to implement these plans swiftly, in accordance with the requirements of the recommendation.
73. GRECO concludes that recommendation xxi has been partly implemented.



### III. CONCLUSION

74. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on Austria and in view of the above, GRECO concludes that recommendations v, xiii, xvi and xx have been implemented satisfactorily. Recommendations ii, iv, vii, xviii, xix and xxi have been partly implemented and recommendations x and xiv have not been implemented. With the adoption of this Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 24 recommendations issued to Austria, in total 16 recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner.
75. Austria has made further important progress in several areas, such as the establishment of the “Public Prosecution Office for Economic Crime and Corruption”, the introduction of a new regulatory framework at federal level for the protection of whistleblowers and for the movement of federal staff to the private sector, as well as legal amendments aimed at enhancing transparency of stock corporations and foundations. While several improvements mainly concern the federal level and need to be followed by corresponding measures at *Länder* level, GRECO notes that the *Länder* have been invited to take action on their part, as recommended, and are currently engaged in a promising reform process. That said, GRECO regrets that in various areas the progress achieved so far, if any, is only partial and more determined action is needed to carry through the reforms planned or initiated – for example, as regards the Co-ordinating Body on Combating Corruption which still lacks a precise mandate and adequate resources, the increase in human resources available to economic crime units of the police and the regime of parliamentary immunity. GRECO therefore urges the authorities to step up their efforts in order to effectively address the outstanding recommendations.
76. The adoption of the present Addendum to the Compliance Report terminates the First and Second Evaluation Round compliance procedure in respect of Austria. The Austrian authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations ii, iv, vii, x, xiv, xviii, xix and xxi.
77. Finally, GRECO invites the Austrian authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.