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**Public**  
**Greco RC-I/II (2009) 2E**  
**Addendum**

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

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

Adopted by GRECO  
at its 54<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-23 March 2012)

## I. INTRODUCTION

1. GRECO adopted the Joint First and Second Round Evaluation Report on Switzerland at its 37th plenary meeting (4 April 2008). This report (Greco Eval I-II Rep (2007) 1E), containing 13 recommendations for Switzerland, was made public on 2 June 2008.
2. Switzerland submitted the Situation Report required under the GRECO compliance procedure on 30 October 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 Switzerland at its 46th Plenary Meeting (26 March 2010). This last report was made public on 4 June 2010. The Compliance Report (Greco RC-II (2009) 2E) concluded that recommendations i to iii and v to xiii had been implemented satisfactorily and that recommendation iv had been partly implemented; GRECO requested additional information on its implementation. This information was provided on 23 September 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 recommendation iv in the light of the additional information referred to in paragraph 2.

## II. ANALYSIS

### Recommendation iv.

4. *GRECO recommended to extend the scope of special investigation techniques to all serious cases of corruption, accompanied by appropriate safeguards for fundamental rights.*
5. GRECO notes that in the Compliance Report, it pointed out that this recommendation mainly concerned the prosecution of corruption in the private sector, the Joint First and Second Round Evaluation Report having noted that special investigation techniques were already applicable in relation to public sector corruption. GRECO had welcomed the fact that the entry into force of the code of criminal procedure in 2011 would make it possible to use interception of telephone communications in response to private sector bribery offences where these were prosecutable also for serious cases of breach of trust (article 158 of the criminal code), which was considered to be a related offence to that of corruption in the private sector (section 4a and 23 of the Unfair Competition Act). It was only in this respect that it considered the recommendation to have been partly implemented, as it noted the arguments adduced in the evaluation report in favour of this recommendation<sup>1</sup>. GRECO therefore considered that the current approach was not entirely satisfactory and that there should be authority to use, among other methods, interception of telephone communications for all serious cases of corruption in the private sector (such as ones involving large sums, manipulation of markets or serious breaches of free competition or major consequences in terms of public safety or health); furthermore, other techniques such as controlled deliveries and undercover operations had proved their worth in other countries. Finally, GRECO made the point that corruption offences were no less serious than those of breach of trust.

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<sup>1</sup> The fact that article 158 of the criminal code probably does not permit proceedings to be taken against all cases of corruption in the private sector and that even when there is a conviction that does not have the same social consequences, the fact that it may sometimes be difficult to determine which law applies in the case of public-private partnerships, etc. (paragraphs 68 and 69 of the Report).

6. The Swiss authorities reiterate the point that the Swiss code of criminal procedure allows the use, for bribery of public officials and private persons, of various investigation techniques, such as observation, searches and attachment (including of electronic data) as well as the freezing and monitoring of bank accounts.
7. The most intrusive measures, namely surveillance of telecommunications and the use of undercover agents, may be used, furthermore, in cases of active or passive bribery of Swiss, foreign or international public officials (articles 332<sup>ter</sup>, 322<sup>quater</sup> and 322<sup>septies</sup> of the criminal code), under articles 269 and 286 of the code of criminal procedure, which entered into force on 1 January 2011<sup>2</sup>. As already explained in the Compliance Report, these new provisions now also allow surveillance of telecommunications for serious cases of private sector corruption which likewise involve an element of breach of trust (article 158 of the criminal code), i.e. when, for the purposes of unlawful enrichment, the perpetrator harms the pecuniary interests of others, in breach of his or her duties of management or by abusing his or her power of representation.
8. GRECO takes note of the information provided. Once again it wishes to draw attention to the fact that Switzerland too is confronted with the problem of private sector corruption and according to some of those interviewed in the successive evaluations, corruption would be more widespread in the private than in the public sector<sup>3</sup>. As stated in the first report on Switzerland: "Fedpol's 2005 report on Swiss internal security states that corruption in the private sector remains very discreet[<sup>4</sup>]"<sup>5</sup>. Furthermore, according to the Third Round Evaluation Report of October 2011, there have still not been any convictions for private sector bribery, even though an offence was introduced in 2006 through articles 4a and 23 of the Unfair Competition Act; the report indicates that 4 criminal cases are currently under way.
9. In this context, it is important that the judicial authorities be able to employ the most intrusive and effective investigation techniques in serious cases of private sector bribery as well. GRECO notes that there have been no new developments since the Compliance Report (apart from the entry into force of the new provisions of the code of criminal procedure). In the Compliance Report, GRECO had observed that not all serious cases of private sector bribery (which are covered by this recommendation iv) involved an element of breach of trust. It accepted, therefore, the Swiss authorities' argument that the possibility of using telephone tapping to investigate the related offence of breach of trust provided for in article 158 of the criminal code could constitute only a partial alternative. Moreover, despite the fact that the Compliance Report once again drew Switzerland's attention to this subject, the authorities have not taken additional steps to allow the use of other investigation techniques (e.g. infiltration/undercover operations or controlled deliveries) which would make it possible, in all the most serious cases, to combat the highly secretive nature of private sector bribery.
10. In light of the above, GRECO concludes that recommendation iv remains partly implemented.

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<sup>2</sup> Recueil systématique (RS) 312.0. On the internet: [http://www.admin.ch/ch/fr/rs/c312\\_0.html](http://www.admin.ch/ch/fr/rs/c312_0.html)

<sup>3</sup> Cf. paragraph 86 of the October 2011 report – [link to the report](#), and paragraph 69 of the Joint First and Second Round Evaluation Report – [link to the report](#).

<sup>4</sup> "numerous firms say that they have certainly been concerned by cases of corruption but prefer to deal with such conduct without calling on the authorities to avoid damaging their reputations".

<sup>5</sup> Cf. paragraph 8 of the Joint First and Second Round Evaluation Report.

### III. CONCLUSION

11. In addition to the conclusions contained in the Joint First and Second Round Compliance Report on Switzerland and in view of the above, GRECO concludes that recommendation iv remains partly implemented.
12. With the adoption of this Addendum to the Joint First and Second Round Compliance Report, GRECO concludes that out of the 13 recommendations issued to Switzerland, 12 have been implemented in a satisfactory manner. Since Switzerland has not taken additional measures to allow the use of the most intrusive and effective investigation techniques in all serious cases of private sector bribery, the last recommendation – recommendation iv – has not been fully implemented. GRECO therefore invites the Swiss authorities to give further consideration to this matter.
13. The adoption of this Addendum to the Compliance Report concludes the Joint First and Second Round compliance procedure concerning Switzerland. The Swiss authorities may, however, wish to inform GRECO of further developments with regard to the implementation of recommendation iv.
14. Finally, GRECO invites the Swiss authorities to authorise the publication of this report as soon as possible, translate it into the country's other official languages and publish these translations.