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Third Evaluation Round

Compliance Report on Italy

"Incriminations (ETS 173 and 191, GPC 2)"

***

"Transparency of Party Funding"

Adopted by GRECO
at its 64th Plenary Meeting
(Strasbourg, 16-20 June 2014)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Italy to implement the sixteen recommendations issued in the Third Round Evaluation Report on Italy (see paragraph 2), covering two distinct themes, namely:

   - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).

2. The Third Round Evaluation Report was adopted at GRECO's 54th Plenary Meeting (20-23 March 2012) and made public on 11 April 2012, following authorisation by Italy (Greco Eval III Rep (2011) 7E, Theme I and Theme II).

3. As required by GRECO's Rules of Procedure, the authorities of Italy submitted the Situation Report on the measures taken to implement the recommendations on 15 October 2013 and additional information on 6, 12, 23 and 29 May 2014. This information served as the basis for the Compliance Report.

4. GRECO selected Austria and Montenegro to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Christian MANQUET, Head of Department, Directorate for Penal Legislation, Ministry of Justice (Austria) and Mr Dušan DRAKIC, Senior Advisor, Directorate for Anti-Corruption Initiative (Montenegro). They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendations (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed nine recommendations to Italy in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).*

8. The authorities of Italy report that the Criminal Law Convention was ratified by the Italian Parliament through the adoption of the Law of 28 June 2012 (No. 110) on "Ratification and enforcement of the Criminal Law Convention on Corruption, done at Strasbourg 27 January 1999". The Law was published in the Official Journal (No. 173) of 26 July 2012. The authorities add that preparations for the ratification of the Additional Protocol to the Convention are underway.

9. GRECO welcomes Italy's ratification of the Criminal Law Convention on Corruption. The official date of ratification was 13 June 2013 and the entry into force of this instrument in respect of Italy was 1 October 2013; Italy became the 45th Member to ratify the Criminal Law Convention on Corruption. In respect of the Additional Protocol to the Criminal Law Convention on Corruption, GRECO notes that this instrument was signed by Italy in 2003, but that it has not yet been ratified by Italy. Preparations for the ratification of the Additional Protocol are reportedly underway.

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

Recommendations ii.

11. *GRECO recommended to enlarge the scope of application of the legislation concerning active and passive bribery to all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies as well as judges and officials of international courts, in order to fully comply with the requirements of Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*

12. The Italian authorities report that the only legal change that has occurred in respect of this recommendation is the amendment to Article 322bis of the Criminal Code (as presented in the Evaluation Report, paragraph 42) with the new section 5bis which extends the bribery provisions also to be applicable in respect of "th*e Judges, the Prosecutor, the Deputy Prosecutors, the officials and the agents of the International Criminal Court, the persons seconded by the State Parties to the Treaty establishing the International Criminal Court who carry out functions corresponding to those officials or agents of the said Court, to the members and employees of bodies created on the basis of the Treaty establishing the International Criminal Court.* The quoted amendment was introduced through the adoption of Law No. 237 of 20 December 2012 on "*Provisions to conform with the provisions of the Statute establishing the International Criminal Court*").

13. GRECO recalls that at the time of the adoption of the Evaluation Report, active and passive bribery of foreign/international officials were only covered when involving officials of EU institutions or EU member states. Bribery in respect of other types of foreign officials were only covered when it occurred within the framework of an international business transaction, ie in accordance with relevant OECD and EU requirements (Evaluation Report, paragraphs 45 and 107). With the amendment adopted in respect of Article 322bis of the Criminal Code, Italy has extended the scope of application of the legislation to also cover officials and judges of the International Criminal Court (ICC); however, not in respect of officials of any other international courts, foreign public officials, members of foreign public assemblies, officials of any other international organisations, or international parliamentary assemblies, as required by the Criminal Law Convention and requested in the current recommendation.

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

15. GRECO notes that Italy, when ratifying the Criminal Law Convention on 13 June 2013, also deposited with the instrument of ratification a declaration that it reserves the right not to establish as a criminal offence under its domestic law the conduct of passive bribery of foreign public officials (Articles 5 and 6 of the Convention) except for individuals of member states of the European Union. The declaration has an impact on Italy's conventional obligations as far as it concerns Article 5 and 6 of the Criminal Law Convention on Corruption, see Conclusions, below.

16. Furthermore, GRECO notes that Article 37 of the Criminal Law Convention does not allow reservations in respect of Article 9 (*bribery of officials of international organisations*) and it observes that Italy has not made reservations concerning Articles 10 and 11 of the Convention, despite the fact that its domestic legislation still limits the coverage of these offences to the EU/OECD context (as was the case at the time of adoption of the Evaluation Report) and now also to the ICC (as referred to above). Therefore, Italy is conventionally bound to adjust its legislation to comply with Articles 9-11 of the Convention.

Recommendation iii.

17. *GRECO recommended to (i) enlarge the scope of application of the legislation concerning active and passive bribery of foreign jurors in order to fully comply with the requirements of Article 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and (ii) criminalise active and passive bribery of domestic and foreign arbitrators).*

18. The authorities of Italy have not reported progress in respect of this recommendation; more than that, preparations are underway for the ratification of the Additional Protocol to the Criminal Law Convention.

19. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

20. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption.*

21. The Italian authorities report that Article 2635 of the Civil Code, which deals with private sector corruption, has been amended through the adoption of Law 190/2012. Article 2635 now reads:

> *"Unless the act constitutes a more serious offence, managers, general directors, executive officers responsible for drafting the accounting documents of a company, auditors and official receivers who, upon receiving or accepting the promise of money or other advantages for themselves or for others, perform or omit acts in violation of the obligations inherent in their office and duties of loyalty, thereby causing harm to the company, shall be liable to a term of imprisonment of between one and three years.*
>
> *A term of imprisonment of up to one year and six months shall be imposed if the act is committed by a person subject to the direction and supervision of any of the individuals indicated in the first paragraph. Whoever gives or promises money or other advantages to the persons indicated in the first and second paragraphs shall be liable to the punishment provided for therein.*
>
> *The penalties established in the preceding paragraphs shall be doubled if the offence involves companies listed on regulated markets in Italy or other States of the European Union, or which are largely widespread within the meaning of article 116 of the consolidated legislation on financial intermediation, under Legislative Decree no. 58 of 24 February 1998, as subsequently amended.*
>
> *Proceedings shall be initiated on complaint of the injured person, unless a distortion of competition in purchase of goods or services derives from the act."*

22. The authorities make the following observations: As regards the *active side* of the offence, it can be committed by anyone; the conduct consists of giving or promising money or other utility in order for the receiver to "perform or omit to perform acts, in breach of the obligations inherent to their office and duties of loyalty". This description of the conduct is modelled on the corresponding elements of bribery in the public sector. In order for the offence to be committed, the act or omission to which the bribe refers must have taken place and, as a consequence, the legal entity for which the subject of passive corruption operates must have suffered damage. Furthermore, there is a requirement upon the victim of the crime to report the offence in order for the criminal proceedings to be instituted; however, paragraph 5 of Article 2635 Civil Code now also states that prosecution follows *ex officio* if the bribery gives rise to a distortion in competition, thus underlining the protection of the general interest in the integrity of the market. According to paragraph 3 of Article 2635 Civil Code, the penalties have been strengthened. According to the "reservation clause" in paragraph 1, this offence cannot be applied if the conduct constitutes another more serious criminal offence. As far as the *passive side* of this offence is concerned, the authorities point out that the range of persons who receive the bribe or the promise thereof has been enlarged to cover not only persons in managerial positions of a legal person (ie limited to "managers", "general directors", "executive officers responsible for drafting the accounting documents of a company", "auditors and official receivers"), but also to any person who, although not vested with one of the positions described above, is subject to his/her "direction or supervision". The scope of the phrase covers employees but also external collaborators, contract agents, etc. who work in the interest of the company and under instruction of its managers. The requirement of a "damage to the company" means that the act or omission violates office or loyalty duties. The elements "offering" and "requesting" are not explicitly in the text; however, such situations may lead to attempted bribery. The sanction for this bribery offence is now between 1 and 3 years, and may be doubled if it involves large scale actions or concerns companies listed at the stock exchange market within the EU. Given the fact that the amended provision has entered into force only recently, no concrete cases of application by courts are as yet available.

23. GRECO takes note of the information provided. Although the provisions constituting bribery in the private sector have been subject to some amendments, for example, that the range of perpetrators who can commit such an offence both as regards the active and passive side has been broadened and that the sanctions have been strengthened in respect of some types of perpetrators, the elements of this Civil Code offence remain far from being in line with the requirements of Articles 7 and 8 of the Criminal Law Convention. For example, the "offering" and "request" of a bribe are not explicitly covered (and criminalising an offer as attempt to bribery is not sufficient in this respect), there is no reference to the indirect commission of the offence; however, it would appear that general rules on participation would apply. GRECO notes that damage to the legal person needs to occur, which according to the authorities would imply that the act or omission must violate office or loyalty duties, which is not in line with the Convention. Furthermore, this offence cannot be prosecuted *ex officio* in all situations; either there needs to be a complaint from the victim or, when there is no such complaint, the offence must give rise to a distortion in competition. It follows that further measures are required by the Italian authorities to fully comply with Article 7 and 8 of the Convention. Finally, GRECO has doubts as to the appropriateness of maintaining such an offence under the Civil Code; it finds it noteworthy that no conviction has ever occurred for this offence.

24. GRECO concludes that recommendation iv has been partly implemented.

25. In this connection, GRECO notes that Italy, when ratifying the Criminal Law Convention, also deposited with the instrument of ratification a declaration reserving the right not to establish as a criminal offence under its domestic law the conduct referred to in Articles 7 and 8 of the Convention, except when committed in the course of activity of a company with a view to acting, or refraining from acting, in breach of their duties and causing harm to society. The declaration has an impact on Italy's conventional obligation to comply with the above mentioned Articles of the Criminal Law Convention on Corruption, see Conclusions, below.

Recommendation v.

26. *GRECO recommended to criminalise active and passive trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*

27. The authorities of Italy report that in reply to this recommendation, Article 346 of the Criminal Code (CC) ("Millantato credito"), (the text of which is available in the Evaluation Report, paragraph 69) has been amended through Law 190/2012 with a new provision specifically labelled

"Trading in illegal influence" (Article 346-bisc.c.,"Traffico di influenze illecite"), which reads: "*A person who, in cases other than those of complicity in the offences referred to in Articles 319 and 319-ter, taking advantage of the existing relationship [s]he has with a public official or person charged with a public office, unduly makes someone give or promise to give, to him[her] or others, money or other patrimonial advantage as the price for his[her] unlawful mediation with the public official or person in charge of a public service, or to remunerate him[her], in respect of the performance of an act contrary to his[her] official duties or to the omission or delay to perform an act of his[her] office, shall be sentenced to imprisonment from one to three years". –* "*The same penalty shall be imposed on the person who unduly gives or promises money or other patrimonial advantage" – "The penalty shall be increased if the person who unduly makes someone give or promise to give, to him[her] or others, money or other patrimonial advantage has the status of public official or person in charge of a public service" – "The penalties shall also be increased if the acts are committed in respect of judicial activities" – "If the acts are particularly insignificant, the penalty shall be reduced".*

28. The authorities add that while Article 346 CC is mainly about boasting of a non-existent influence over a public official (See also Evaluation Report paragraph 111), the new Article 346-bisc.c., criminalises undue remunerations for illegal influences when there is an existing influential relationship between the peddler and the public official.

29. GRECO takes note of the information provided. It welcomes the adoption of new legislation which widens the scope of the criminalised activity in respect of trading in influence. Concerning the details of this offence, GRECO notes, *inter alia*, the following: active trading in influence is now (for the first time) criminalised as such. However, while the Criminal Law Convention requires "*promising, giving or offering*", the Italian law is limited to "gives or promises", both in respect of the active and the passive side of this offence (and criminalising an offer as attempt to trading in influence is not sufficient in this respect). It also observes that active trading in influence under Article 346-bisc.c CC requires that there is an existing relationship of influence, while under the Convention the mere assertion to this end is sufficient. GRECO is pleased that the Italian text comprises the "*undue advantage"* requirement and that third party beneficiaries are explicitly mentioned. Although the "*indirect* nature" of the offence is not explicit, it would appear that general rules on participation would apply. As regards the sanctions under Article 346-bisc.c CC,

GRECO notes that these (imprisonment 1-3 years) are clearly weaker than under Article 346 CC (imprisonment 1-5 years) as well as in comparison with the sanctions for bribery in the public sector. It follows that full compliance with the offence trading in influence under the Convention has not been achieved.

30. GRECO concludes that recommendation v has been partly implemented.

31. GRECO furthermore observes that Italy, when ratifying the Criminal Law Convention, also deposited with the instrument of ratification two declarations concerning Article 12 of the Convention: firstly "*that it reserves the right not to establish as a criminal offence under its domestic law the conduct referred to in Article 12 of the Convention, except when committed in the context of an existing relationship between the influence peddler and the persons referred to in Articles 2 and 4 of the Convention and to remunerate the performance of a conduct contrary to the duties, service or the failure or delay of an act of service*." Secondly, Italy has declared "*that it reserves the right not to establish as a criminal offence the conduct of trading in influence defined in Article 12 of the Convention, in view to exert an improper influence, as defined in the foresaid article, over the decision making of any person referred to in Articles 5, 6 and 9 to 11of the Convention"*.

32. To sum up, GRECO acknowledges that with the adoption of the new legislation, Italy has widened its possibilities of prosecuting situations of trading in influence and that it complies with several elements of Article 12 of the Criminal Law Convention on Corruption, but not with all. Some of the shortcomings referred to above are covered up by reservations made when the Convention was ratified. The reservations reduce Italy's conventional obligations to implement all requirements of this recommendation. See also Conclusions, below.

Recommendation vi.

33. *GRECO recommended to take appropriate steps, in close consultation with the institutions concerned, to ensure that the applicable provisions for bribery and trading in influence offences are actively enforced in practice and facilitate an effective, proportionate and dissuasive sanctioning regime for corruption offenders, as required by Article 19 of the Criminal Law Convention on Corruption (ETS 173).*

34. GRECO recalls that the concerns raised in this recommendation were triggered because of a number of different indications on the practical implementation of the criminal legislation concerning corruption as noted in the Evaluation Report; for example, that the sentences in respect of corruption convictions could be reduced by one third if the offer or promise was not accepted; that sentences were often set at the lowest statutory level; that a large majority of corruption sentences were turned into suspended sentences; and that there were indications of a significant decrease in the number of convictions for corruption in 2009 and 2010 (Evaluation Report, paragraphs 112-114).

35. The Italian authorities stress that data provided by the Central Registry for Convictions (Casellario Giudiziale Centrale) indicates that the number of final convictions in relation to corruption offences from 2000 to 2012, was 11 355. The convictions reached their peak in 2008, with 1 074 offences, with an average of approximately 858 convictions per year. Thus, the conclusion in the Evaluation Report (paragraph 113) that there was a "very significant decrease in the number of convictions for corruption offences in 2009 and 2010, as compared to the conviction rates of previous years", appears, according to the authorities, inaccurate since the trend in the years under consideration

(2009-2010) was similar to that in the previous 8 years. However, the authorities agree that there is a significant gap between the conviction rates of the last 12 years as compared to those of the previous decade, which included the so-called "Mani Pulite" investigations. The authorities also submit that in the period from 2000 to 2012, of the above mentioned 11 355 convictions, 3 566 were suspended; however, starting from 2003, the figures gradually decreased and, from 2007 to 2012, there have only been four suspensions. They add that the General Pardon Act, introduced by Law 241/2006, has been applied, from 2006 to 2012, to 589 corruption-related convictions.

36. Furthermore, the authorities refer to a number of preventive measures taken to curb corruption in the public sector in connection with the adoption of Law 190/2012, which, *inter alia*, provides for compulsory application of the General Code of Conduct in respect of public officials and for the various public administrations to adopt their own codes of conduct, coherently, with the General Code. The authorities also refer to the National Anti-corruption Authority for the Evaluation and Transparency of Public Administration (ANAC) which under the same law is aimed at providing an advisory role to all public administrations on the compliance of public employees with the codes of conduct, collective and individual contracts and the law. Moreover, the Anti-corruption Law 190/2012 provides, in particular, that when a public employee breaks the code of conduct and, at the same time, violates duties, laws and regulations, s/he could be charged also with civil, administrative and accounting responsibility. Moreover, the Anti-corruption Law provides for some causes of incompatibility in the assignments within public administrations and private bodies in order to prevent and fight corruption. Finally, in order to prevent corruption and conflicts of interest, Law 190/2012 provides, inter alia, that no appointment can be made of public officials who have been sentenced for crimes such as corruption and that quarantine rules have been established for officials moving from the private sector and for elected officials moving into the public administration.

37. GRECO takes note of the information. It acknowledges that the Italian authorities have provided statistics which suggest that the drop in the number of convictions in the years 2009/2010, mentioned in the Evaluation Report, did in fact not occur. Moreover, the figures provided by the authorities also indicate that the ratio of suspended sentences was lower than those indicated in the Evaluation Report. These official statistics reduce some of the reasons for the current recommendation, to ensure the enforcement of corruption convictions, even if the authorities agree that the number of corruption cases is considerably less in recent years than a decade earlier. Having said that, the current recommendation also calls for steps to be taken for the application of an effective, proportionate and dissuasive sanctioning regime for corruption offences, in practice, in close consultation with the institutions concerned. GRECO notes in this respect that legislative and practical preventive measures to curb corruption in the public sector have been taken. These measures are to be welcomed; however, they do not address the core of the recommendation, which was that the judicial bodies are generally resorting to the lowest level of statutory sanctions. More should be done in order to deal with this matter, while respecting the independence of the judiciary.

38. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

39. GRECO recommended, in order to ensure that cases are decided before the expiry of the statute *of limitations, to (i) undertake a study of the rate of limitation period-related attrition in corruption cases to determine the scale and reasons for any problem which may be identified as a result; (ii)*

adopt a specific plan to address and solve, within a specified timescale, any such problem or problems identified by the study; (iii) make the results of this exercise publicly available.

40. The authorities of Italy refer to their response to recommendation v contained in the Addendum to the Compliance Report of the Joint First and Second Evaluation Rounds. No new information has been submitted.

41. GRECO notes that this recommendation is identical to recommendation v of the Joint First and Second Round Evaluation Report on Italy and that the measures taken by Italy have been dealt with in detail in the subsequent Compliance Report (adopted on 27 May 2011, Greco RC-I/II (2011)1E) and its Addendum (adopted on 21 June 2013, Greco RC-I/II (2011)1E Addendum). As the Italian authorities have submitted no new information, GRECO maintains its conclusion in the aforementioned Addendum that this recommendation was partly implemented.

42. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

43. *GRECO recommended to examine in depth the practical application of the offence of concussione, as established in Article 317 of the Criminal Code, in order to ascertain its potential misuse in the investigation and prosecution of corruption; (ii) in the light of such examination, to take concrete measures to review and clarify the scope of the offence, as necessary*.

44. The authorities of Italy report that the legislative process to amend the provisions of the Criminal Code (CC) concerning the offence of "*concussione*" was finalised with the adoption of Law 190/2012. The new definition of the offence "*concussione*" (Art. 317 CC) criminalises exclusively the conduct of a public official who forces a person to pay a sum of money or provide other benefits which are not due. The minimum term of imprisonment for this offence has been increased to 6 years' imprisonment while the maximum term remains unchanged at 12 years. At the same time, a new offence has been introduced in the Criminal Code; the conduct to pay or provide an advantage in such a situation is now described in a new provision labeled "*Undue inducement to give or promise money or other benefit*" (Article 319 quater CC)[1]. According to this provision, the public official who by abusing his powers induces unlawful payment is to be punished by imprisonment from 3 to 8 years and the person who has been induced to pay the public official (or to pay the person in charge of a public service) is now also punished by up to 3 years of imprisonment. The authorities conclude that the conduct contemplated in the original provision on "*concussione*", which was the object of the recommendation, has now been split in two by the new provisions in the CC as amended by Law 190/2012. Article 317 continues to apply only to the case of the public official who forces the private party to pay, whereas the conduct consisting of an inducement, which previously fell within the scope of Article 317 (with the effect of decriminalising the action of the private party) now falls under the new provision of undue inducement. The common element of the new provisions is the nature of the relationship between the public official and the private party, whereas in the case of proper corruption this relationship can be described as equal, with both parties agreeing on a common goal. In respect of the illicit advantage (now under both Article 317 and Article 319-quater CC) the public official

[1] *Article 319-quater – (Undue inducement to give or promise an advantage). "Unless the act constitutes a more serious offence, a public official or person charged with a public service who, abusing of his quality or powers, induces someone to unduly give or promise to him or others, money or other advantage, shall be sentenced to imprisonment from three to eight years. In the cases specified in paragraph one, the person giving or promising the money or other advantage shall be sentenced to imprisonment for up to three years."*

is in a position to condition the will of the private party, who accedes to the unjust pretences of the former in order to avoid further prejudice. The rationale of the reform of 2012 is the following: whereas in the case of *concussione* through extortion, the will of the private party is substantially overpowered by the action of the public official and the former can therefore be regarded substantially as victim of the offence and go unpunished. In the case of *undue inducement,* the private party maintains a margin of freedom of decision: thus, if s/he determines himself to pay the public official, he will be subject to punishment, albeit to a lesser degree than the public official.

45. GRECO takes note of the information provided, which clearly indicates that the Italian authorities have studied the matter in depth and, as a result, amended the Criminal Code in order to deal with the problem of possible impunity on the side of the advantage provider in situations of so called "*concussione*". The amendments made in the Criminal Code, Articles 317 and 319-quarter, have extended the scope of the offence of "*concussione*" in a way that makes it possible also to prosecute the advantage provider. With the new legal construction in Article 319-quarter CC, both the public official and the advantage provider are under criminal liability in situations of undue inducement from the side of the public officials. Even if the defence like situation in extreme cases of "concussione" where the advantage provider has no margin to decide still remains, the previous situation of impunity has been narrowed with the introduction of the offence *undue inducement under Article 319-quarter CC.*

46. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix.

47. *GRECO recommended (i) to abolish the condition, where applicable, that the prosecution of acts of corruption committed abroad must be preceded by a request from the Minister of Justice or a victim's complaint; (ii) to extend jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, nationals of Italy.*

48. The authorities of Italy report that the situation has not been changed in respect of this recommendation. That said, they stress that there are no known cases where a Minister of Justice in respect of corruption offences would have rejected such a request and that such decisions are purely formal and carry no risk of political interference.

49. GRECO regrets that the possibility to prosecute corruption in the foreign context is still subject to permission by the Minister of Justice or complaint of a victim, obstacles that are not foreseen in the Criminal Law Convention on Corruption. Even though such ministerial decisions would normally be of a formal character, they could amount to risks of political interference. GRECO also regrets that the second part of the recommendation has not been followed as it limits Italy's capacity to prosecute corruption offences, as explained in the Evaluation Report (paragraph 126).

50. GRECO concludes that recommendation ix has not been implemented.

51. In connection with this recommendation, GRECO notes that Italy, when ratifying the Criminal Law Convention on 13 June 2013, also deposited with the instrument of ratification a declaration *that it will apply without restriction the rules of jurisdiction defined in Article 17, paragraphs 1b*

and c of the Convention, under the conditions currently provided for in articles 9 and 10 of the Italian Penal Code. The declaration has an impact on Italy's conventional obligations to implement the second part of the recommendation, see Conclusions, below.

Theme II: Transparency of Party Funding

52. It is recalled that GRECO in its Evaluation Report addressed seven recommendations to Italy in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

53. *GRECO recommended to initiate a legislative process that provides for (i) rules on the legal status of political parties; (ii) a clear definition of the financial and accounting reference period for election campaigns; (iii) transparency, control and sanctioning requirements concerning elections to the European Parliament which are comparable to those pertaining to other types of election; and (iv) a systematised, comprehensive and workable legal framework for the financing of political parties and candidates, including by considering the consolidation of the applicable rules within a single piece of legislation.*

54. The Italian authorities report in respect of the first part of the recommendation that Article 5 of Law 96/2012 provides that parties seeking to receive government subsidies are required to have articles of association and a charter compiled by a public notary in the form of an official public deed. Such deeds have to identify, at a minimum, the body approving the annual financial statement and the body responsible for economic and financial management. The charter of the party's internal organisation is to be consistent with democratic principles, in particular with regard to the selection of candidates, respect for minorities and the rights of members. Furthermore, Parliament is considering, under an urgent procedure, the Bill (AC no. 1154) introduced by the Government requiring the registration of parties wishing to benefit from new forms of public direct and indirect support (Chamber document "AC n. 1154", especially Articles 3 and 4). Under this Bill, a key requirement for registration is the adoption of a charter compiled by a public notary in the form of a public deed, the minimum content of which should go beyond what is required by Article 5 of Law 96/2012, including, for example, the number, membership and powers of the decision-making, executive and supervisory bodies; the modes of their election, their terms of office, and the name of the person holding the power of attorney; procedures for the approval of deeds committing the party; rights and duties of party members and relating supervisory bodies; participation of members in the party activities; which body approves the annual financial statement etc. In respect of the second part of the recommendation, the authorities submit that Article 12(1-*bis*) of Law 515/1993 (as introduced by Art. 11(3)(a) of Law 96/2012), establishes that the campaign runs from the day when an election is called to the day before the ballot takes place. Concerning the third part of the recommendation, the authorities put forward that with the adoption of Law 96/2012 (Article 14), amending Law 515/1993 in respect of its Articles 7, 11-15, spending limits, supervision and sanctions as already provided for in respect of national general and regional elections have been adjusted also to encompass elections to the European Parliament, both as regards political parties and election candidates. In relation to the fourth part of the recommendation, the authorities refer to the aforementioned Bill (AC no. 1154, Art.16), currently under Parliamentary scrutiny which aims at adopting consolidated legislation in the area of political financing.

55. GRECO takes note of the comprehensive information provided. It concludes that all parts of this recommendation have been addressed; Italy has now in place more stringent rules in respect of

the legal status of political parties and the issue of party registration appears to be well underway through a Government Bill (AC no. 1154) pending before Parliament. Election campaigns have been given a defined period in law and a number of legal provisions providing transparency, control and sanctions in respect of national elections are now extended to cover elections to the European Parliament. It also appears that the Government aims at continued reform in this area and the aforementioned Bill is currently pending to that end. GRECO welcomes the substantial measures taken. In the light of the achievements made, including legislative changes, as well as the on-going reform process, GRECO concludes that this recommendation, which requires Italy "*to initiate a legislative reform process",* has been complied with, despite the fact that some reforms have not yet produced final results.

56. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

57. *GRECO recommended to (i) introduce a general ban on donations from donors whose identity is not known to the political party/candidate; (ii) lower the current threshold of donations above which the identity of the donor is to be disclosed, namely, 20,000 EUR for donations made to individual candidates, and 50,000 EUR for donations made to political parties, to an appropriate level.*

58. The authorities of Italy report in respect of the first part of the recommendation, that Article 8(10-bis) of Law 2/1997 has been amended through the adoption of Article 9(23)(c) of Law 96/2012; the new paragraph states that the identity of each donor is to be registered in the accounting records of the parties. The authorities add that a number of requirements concerning the identification of donors have been introduced in the legislation in order to prevent large donations from anonymous donors; however, they also state that in respect of donations with a value less than 5,000 EUR a year, there is no obligation to identify the donor. As to the second part of the recommendation, the previous thresholds above which a donor is to be disclosed have been changed through the adoption of Article 11(1) of Law 96/2012, amending the thresholds in Article 4, paragraph 3 of Law 659/81 and Article 7(6) of Law 515/93, from 20,000 EUR and 50,000 EUR respectively, to 5,000 EUR in both cases.

59. GRECO takes note of the progress achieved. The new requirement that the identity of private donors is to be registered in the party accounts represents an improvement in terms of transparency. Although the new law is a step in the right direction, it does not entail a general ban on donations from unknown donors, nor does it cover such donations in respect of election candidates. This part of the recommendation is therefore not more than partly implemented. GRECO is pleased to note that the considerably lowered thresholds introduced in the legislation for the disclosure of the identity of donors are fully in line with the requested measure in the second part of the recommendation.

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

Recommendation iii.

61. *GRECO recommended (i) to seek ways to consolidate the accounts of political parties so as to include local branches; and (ii) to take measures to increase the transparency of income and expenditure of (a) entities, related directly or indirectly, to political parties or otherwise under their control; and (b) parliamentary groups.*

62. The Italian authorities report that with the adoption of Law 13/2014, the financial statements of regional branches of political parties as well as political movements (organisations with the same purpose as political parties, but with a lighter structure, including entities related to political parties) are as of 2014 to be included in the annex to the financial statements of the political parties. Regional bodies of a political party with a total revenue exceeding € 150,000 are required to avail themselves with an independent auditor. Furthermore, the authorities report that *ad-hoc* rules have been introduced by the two Chambers of Parliament, requiring parliamentary groups to draw their annual financial statements, certified by an independent auditor appointed by each House through a public selection procedure. Monetary penalties are provided in cases of non-compliance or false accounting. Such penalties may consist in the curtailment of the contribution for the current year and the obligation to refund the amount received in the previous year. The regulatory framework is provided, in particular, by Senate Rules 15(3-bis)-(3-quater), 16 and 16-bis and Chamber of Deputies Rules 15(2-bis)-(4) and 15-ter.

63. GRECO takes note of the information that Article 6 of Law 13/2014 obliges political parties to attach to their financial statements, those of their regional branches as well as in respect of other entities, "political movements", related to the party. Moreover, *ad-hoc* rules have been established requiring parliamentary groups to draw up accounts and to have them audited by independent auditors. It goes without saying that these measures, if applied, would contribute to the overall transparency of income and expenditure as requested in the recommendation.

64. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

65. *GRECO recommended to (i) elaborate a coordinated approach for the publication of information on party and campaign finance; (ii) ensure that such information is made available in a coherent, comprehensible and timely manner and thereby provides for easier and meaningful access by the public, including by making best use of internet publishing.*

66. The authorities of Italy report that Law 96/2012, establishes the *Committee for the Transparency and Control of Financial Statements of Parties and Political Movements*. The Committee consists of five members, all to be selected from among magistrates belonging to the Judiciary The Committee is based in Parliament, which also provides the secretarial staff necessary for its functioning (Article 9(3)). The Committee is to verify parties' and movements' financial annual statements and their publication. Within this framework, a number of new obligations have been introduced in order to provide for a co-ordinated approach for the publication of parties' annual financial statements and reports. Art. 9(20) of Law 96/2012 requires parties, before 10 July each year, to publish on their own websites their financial statements, including verifications. Furthermore, reports of the aforementioned Committee are to be made public on the respective parliamentary Chambers' websites (Art. 9(5) of Law 96/2012). The authorities also explain that the report on campaign spending oversight is to be disclosed on the website of the National Court of Accounts (Article 12(3-bis of Law 515/93, introduced by Article 11(3)(b) of Law 96/2012). Moreover, the annual financial statements of the parliamentary groups are to be published on the sites of the two Chambers, as annexes to their financial statements (Senate Rule 16-bis(4)-(5), Chamber Rule 15-ter(3)).

67. Furthermore, the authorities submit that according to the new Law 13/2014, political parties, through their legal representatives, members of Parliament, the Prime Minister, ministers and

their deputies, state secretaries, regional councillors and members of regional executive bodies, provincial councillors and provincial members of executive bodies, municipal councillors of municipalities with more than 15,000 inhabitants and members of Parliament are obliged to accompany their statements of property and income with a declaration of donations received which exceed € 5,000 per year. Such declarations are to be published on-line, including on the website of Parliament, by 15 July every year. That supervision is conducted by the Regional Electoral Guarantee Board and online disclosure is not required in law; however, the law does not exclude on-line publication (Article 14(2) of Law 515/93). Finally, the authorities submit that Law 515/1993 obliges election candidates, from the day the election is called to channel all campaign funding through "electoral agents", who in turn must record all funds received in support of the candidates. The information is to be submitted to the regional electoral boards and within 120 days this information is made public in respect of all candidates, regardless of whether they are elected or not.

68. GRECO takes note of the information provided. It welcomes the measures taken in order to comply with the current recommendation. In respect of the annual finances of political parties, the amended legislation provides for a new independent mechanism to control the implementation of parties' legal requirements in relation to their financial statements. This control extends to covering the implementation of the legal requirements to publish such statements. The new requirements establish a co-ordinated approach, aiming at providing information in a coherent and comprehensible manner and, moreover, the new law refers explicitly to the use of online means. GRECO considers these to be major achievements in comparison with the situation as described in the Evaluation Report (paragraphs 136 and 137), provided the law is applied as intended. Obviously, the watchdog functions of the *Committee for the Transparency and Control of Financial Statements of Parties and Political Movements* will have a crucial role in this respect. While the transparency of parties' annual accounts have been subject to the reform efforts described, GRECO notes that to some extent that has also been the case in respect of campaign funding; the new law, 13/2014, requires that elected officials and executives also have to make their campaign funding public. This is a step in the right direction; however, while this rule covers the parties and those candidates who were elected/appointed following the campaign, it does not encompass the election candidates who were not elected. The authorities have in this respect referred to rules on election candidates in law 515/93, which were already known by GRECO at the time of the adoption of the Evaluation report. This part of the recommendation therefore requires more efforts in order to be fully implemented.

69. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

70. *GRECO recommended to (i) introduce clear and consistent rules on the audit requirements applicable to political parties; (ii) ensure the necessary independence of auditors who are to certify the accounts of political parties.*

71. The authorities of Italy report that this recommendation has resulted in amended legislation in respect of the auditing of political parties as well as parliamentary groups. Law 96/2012 introduces mandatory audit of the financial statements of political parties which obtain at least 2% of the votes cast in general, regional or European elections (art. 9, paragraph 1, Law 96/2012). They are obliged to use external auditors registered by the National Committee for Companies and the Stock Exchange ("CONSOB"), in accordance with the Banking Law. The same

requirement applies to parliamentary groups as stipulated in the amendments to the parliamentary rules of procedure (Senate Rule16-bis(2) and Chamber of Deputies Rule 15-ter(2)).

72. GRECO welcomes the new legislation which obliges political parties with a certain level of support from the electorate to have their accounts audited by external independent auditors, in line with what applies in the business sector. The mandatory rule in this respect represents a real improvement from the previous situation of using the parties' internal auditors, provided the law is applied as intended. It is also worth mentioning that the obligation to engage an independent auditor may also apply to regional branches (see paragraph 62).

73. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

74. *GRECO recommended (i) to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate, tenure stability, adequate powers and resources to carry out a pro-active and efficient supervision, investigation and enforcement of political finance regulations; (ii) until that occurs, to ensure that the existing institutions with current responsibilities develop a practical working arrangement for the effective implementation of party and campaign funding rules; and (iii) to strengthen the cooperation and coordination of efforts on an operational and executive level between the authorities entrusted with the supervision of political finances and the tax and law enforcement authorities.*

75. The Italian authorities report that Law 96/2012 (Article 9(3) establishes *the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements* (the "Committee"). The Committee is based in the Chamber of Deputies, which undertakes to contribute, together with the Senate, to the secretarial staff necessary for the functioning of the Committee. The Committee consists of five members, one appointed by the First President of the Court of Cassation, one appointed by the President of the Council of State and three appointed by the President of the Court of Accounts. All Committee members are to be selected from among magistrates belonging to judicial bodies, and all members must be qualified at least to the grade of bench judge in the Court of Cassation or equivalent. On the basis of nominations made in accordance with the rules set out in the present paragraph, the Committee members are to be appointed by joint decisions of the President of the Senate and the Speaker of the Chamber of Deputies and to be published in the Official Journal. Such decisions have to name the Committee Chairperson from among the Committee members. The Chairperson is responsible for coordinating the work of the Committee. The members of the Committee receive no compensation or allowance for their work under this law. For the duration of their period in office, the members of the Committee may not accept or carry out any other office or functions. The term of office is four years, renewable once. The task of the Committee is to verify that parties' and movements' financial statements comply with Article 8 and relating annexes of the Law of 2 January 1997 no. 2, as amended and with the provisions of Law 96/2012. The authorities add that the members of the Committee have been appointed by act of the President of the Republic (3 December 2012) and that the most recent appointments were made on 3 December 2013. The Committee is fully operational and has started its work. The authorities furthermore report that with the establishment of the Committee, it has replaced the “Court of Auditors”, which ceased to exist by the end of October 2012.

76. GRECO notes that the Italian authorities have set up a new body with the mandate to monitor the implementation of political parties' annual financial statements. *The Committee for the*

Transparency and Control of Financial Statements of Parties and Political Movements is established by law and is composed of representatives of the judiciary, working on a full time basis with political finance supervision. The members are not allowed to carry out other functions. These requirements are aimed at ensuring the independence of this Committee. It is also clear that the Committee has a whole battery of measures at its disposal under the law in the form of fines that can be applied in respect of non-compliant parties. GRECO notes that this body is already operational; however, it would appear premature at this early stage to draw any conclusions as to its efficiency and to what extent it is adequately powered and resourced. That said, GRECO notes that the new Committee only replaces the previous Board of Auditors concerning the monitoring of political parties' annual financial statements, and that it, to this end, has been vested with some more powers to carry out this function. However, it cannot be seen as a leading body for political financing as the other monitoring mechanisms relating to election campaigns of parties and individual candidates, as described in the Evaluation report, remain the same. Finally, the authorities have not established any form of co-ordination and co-operation between the new Committee and the other monitoring bodies.

77. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

78. *GRECO recommended to review the existing administrative and criminal sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive.*

79. The authorities of Italy report that with the adoption of the Decree-law no. 149/2013, the direct public funding to political parties will progressively decrease until 2017 when it will cease to exist. This system will be replaced by one where political parties will have to attract voluntary citizen donations for which the citizens will get tax credits. As a consequence, the old system of sanctions which is closely connected to the provision of public funds will also be progressively abandoned and replaced by a model connected to the management by the political parties of their funds resulting from voluntary contributions and indirect public funding. The authorities also report that new administrative sanctions have been put in place through the adoption of Law 96/2012 (Article 9). Administrative sanctions in the form of monetary penalties in cases of non-compliance with the regulations or incorrect accounting by political parties, ranging up to complete withdrawal of government subsidies. Furthermore, Law 13/2014 establishes that in violations of the duties of accounting disclosure and transparency, *the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements* may order that the political party involved be removed from the register, which would imply that such a party cannot receive any funding. The same law also introduces pecuniary sanctions for situations, such as when the party accounts are not properly drawn up; when data is missing or when they are not made public etc. The sanctions can be adjusted to the situation, but may not exceed one-twenties of the full amount provided to the party that particular year. The authorities add that in case duties relating to accounting, disclosure and transparency are not followed, the treasurer or any other person with such functions may be excluded for doing such work during five consecutive years. The authorities also refer to sanctions available under Article 13 of Law 515/1993, such as fines for violating expenditure limits, or for not having submitted declarations on time (already known at the time of the adoption of the Evaluation Report).

80. GRECO notes that Italy has entered into a major reform process in respect of public funding of political parties. It would appear that according to the Law 13/2014 direct public funding will be

abandoned gradually. As of 2017, such funding will be replaced by a new system built on voluntary contributions by citizens (who will be encouraged to provide contributions in return for tax credits). It would also appear that the old sanctions will gradually be abandoned at the same time as a new system of sanctions is to be put in place. GRECO notes that Article 9 of Law 96/2012 provides for a range of sanctions in order to make political parties comply with the old legal framework. For example, the Presidents of the Senate and the Chamber of Deputies may suspend the distribution of state funds and if the situation of non-compliance is not reversed, the *Committee for the Transparency and Control of Financial Statements of Parties and Political Movements* may impose a fine on the party or political movement. Likewise the Committee may impose a fine on a party that fails to meet its obligations, such as to submit its financial statements or to publish the accounts. The penalties are to be imposed directly on the political party or movement and may not exceed two thirds of the total sum allocated to the previous year. GRECO also notes that new sanctions have been put in place in parallel with the introduction of the new funding system for situations when the political parties do not comply with their obligations, for example, to submit correct accounts, to follow disclosure rules or to make accounts public. The sanctions may even reach persons working for the party, such as the treasurer. GRECO furthermore notes that the legislative measures taken by Italy are of a fundamental character and it is difficult at this stage to measure their consequences. That said, GRECO accepts that the sanctioning regime has been subject to extensive review and that a number of new sanctions are in place. However, it appears that the new sanctions are limited to infringements by political parties as well as to persons employed by the parties and no review has taken place as regards sanctions in respect of election campaigns and election candidates.

81. GRECO concludes that recommendation vii has been partly implemented.

III. CONCLUSIONS

82. **In view of the above, GRECO concludes that Italy has implemented satisfactorily or dealt with in a satisfactory manner four of the sixteen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations, ten have been partly implemented and two have not been implemented.

83. More precisely, with respect to Theme I – Incriminations – recommendation viii has been dealt with in a satisfactory manner, recommendations i, ii, iv-vii have been partly implemented and recommendations iii and ix have not been implemented. With respect to Theme II – Transparency of Party Funding – recommendations i, iii and v have been implemented satisfactorily and recommendations ii, iv, vi and vii have been partly implemented.

84. Concerning incriminations, GRECO welcomes Italy's ratification of the Criminal Law Convention on Corruption (ETS 173) and notes that this instrument entered into force in respect of Italy as of 1 October 2013. This major achievement has been the result of extensive anti-corruption legislative reforms in Italy; however, Italy has also entered a maximum number of reservations possible when ratifying the Convention and it is to be noted that Italy is still in the process of preparing for the ratification of the Additional Protocol to the Criminal Law Convention. The legislative reforms undertaken have brought the Italian legislation more into compliance with the requirements of the Criminal Law Convention, but at the same time it is rather disappointing – and difficult to understand – that these efforts have not led to a higher degree of compliance with the said Convention. For example, more needs to be done in order to enlarge the scope of jurisdiction for corruption offences and to broaden the legislation criminalising bribery of foreign/international officials. Further legislative measures are also required in order to fully

comply with the requirements of the Convention as regards private sector bribery and trading in influence. Italy is requested to further pursue these matters.

85. That said, Italy's conventional obligations to deal with certain shortcomings of domestic legislation in respect of the Criminal Law Convention, are reduced by the reservations made at the time of the ratification of the Convention in accordance with its Article 37. Nevertheless, following GRECO's well-established practice in respect of member states having deposited reservations, the Italian authorities are to re-consider Theme I-recommendations ii, iv, v and ix with a view to amending its legislation in order to fully comply with the pertinent provisions of the Convention and thus withdrawing or not renewing the reservations relating to Articles 5-8, 12 and 17 of the Criminal Law Convention on Corruption (ETS 173).

86. As far as transparency of party funding is concerned, Italy has undertaken reforms mainly through the adoption of Laws 96/2012 and 13/2014, which have amended several laws and regulations in this area. Italy has, for example, put in place regulations on the legal status of political parties, defined election periods and aligned the transparency of elections to the European Parliament with the regulations pertaining to domestic elections. Furthermore, Italy plans to gradually move away from direct public funding to political parties, into a voluntary funding system based on voluntary contributions from the citizens. Thresholds of donations above which the identity of donors are to be disclosed have been considerably lowered, parties with a certain level of support will have to be audited by independent auditors and a new independent body for the monitoring of the annual accounting of political parties has been established: the *Committee for the Transparency and Control of Financial Statements of Parties and Political Movements.* Italy has also improved the range of sanctions available in this respect. It goes without saying that the efficiency of these measures will have to be tested once the system has been operational for some time. GRECO also notes that a number of issues are still not resolved, for example, the overall co-ordination of the monitoring, to ban donations from donors whose identity is not known and to increase the transparency of the financing of candidates in election campaigns etc.

87. To sum up, GRECO acknowledges that Italy has addressed a majority of the Theme I recommendations to some degree thus leading to a higher level of compliance with the Criminal Law Convention now than at the time of the adoption of the Evaluation Report. That said, a large number of these recommendations are only partly implemented, which is also reflected by reservations in respect the Convention made by Italy. The amended legislation concerning political financing (Theme II) has improved Italy's level of concurrence with the principles of Recommendation Rec(2003)4. In view of the aforementioned, GRECO takes the view that the current low level of compliance with GRECO's recommendations, is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO invites the Head of the Italian delegation to submit additional information regarding the implementation of recommendations i-vii and ix (Theme I) and recommendations ii, iv and vii (Theme II) by 31 December 2015 at the latest.

88. Finally GRECO invites the authorities of Italy to authorise, as soon as possible, the publication of the current report, to translate the report into the national languages and to make this translation public.