



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL I - HUMAN RIGHTS AND RULE OF LAW
INFORMATION SOCIETY AND ACTION AGAINST CRIME DIRECTORATE



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Third Evaluation Round

Compliance Report on Malta

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

"Transparency of Party Funding"

Adopted by GRECO
at its 52nd Plenary Meeting
(Strasbourg, 17-21 October 2011)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Malta to implement the 9 recommendations issued in the Third Round Evaluation Report on Malta (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 44th Plenary Meeting (8 October 2009) and made public on 10 November 2009, following authorisation by Malta (Greco Eval III Rep (2009) 2E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Maltese authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 22 August 2011 and served as a basis for the Compliance Report.
4. GRECO selected Cyprus and the Slovak Republic to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS, Counsel at the Law Office of the Republic (Cyprus) and Mr Ronald KAKAŠ, Director, Bureau of the Fight Against Corruption (Slovak Republic). 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 recommendation (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 3 recommendations to Malta in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to amend the Criminal Code to include the offences of bribery of domestic and foreign arbitrators as well as foreign jurors and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*

8. The authorities of Malta report that amendments to Article 121, paragraphs (2) and (4) of the Criminal Code (CC) have been drafted, which will – if adopted by Parliament – criminalise bribery of domestic and foreign arbitrators as well as foreign jurors. The authorities have submitted the draft legislation to GRECO (the draft Bill is entitled “*Various laws (Criminal Matters) (Amendment) Act, 2011*”). The draft is completed by the Government and is expected to be adopted by Parliament by the end of 2011.
9. GRECO welcomes the information provided and recalls that it is noted in the Evaluation report (paragraph 89) that there were already plans at the time of the adoption of that report to amend the Criminal Code in order to criminalise the offences mentioned in recommendation i, after which the ratification process of the Additional Protocol to the Criminal Law Convention (ETS 191) was to follow. The texts submitted appear to cover the criminalisation of the three offences concerned and to allow for the ratification of the Additional Protocol as recommended. The situation has thus improved; however, the legislation has not yet been adopted.
10. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

11. *GRECO recommended to increase the maximum penalty provided for trading in influence (Article 121 A of the Criminal Code) in order to render it effective, proportionate and dissuasive as required by Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).*
12. The authorities of Malta have submitted draft legislation (the same draft Bill as mentioned under recommendation i) which would, if adopted, increase the level of criminal sanctions for trading in influence from the current three to eighteen months of imprisonment to that of between six months and three years.
13. GRECO appreciates that the Maltese authorities are in a process of amending the current criminal legislation in order to adjust the criminal sanctions for trading in influence. GRECO notes, however, that what has been suggested (maximum of three years of imprisonment) appears not to be fully in line with other comparable offences under Maltese law, such as bribery in the public or in the private sector, which may lead to a maximum sanction of eight years. GRECO urges the Maltese authorities to reconsider this matter as the draft law has not yet been adopted by Parliament. Nevertheless, what has been reported is a step in the right direction.
14. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

15. *GRECO recommended to revise Article 117 of the Criminal Code in order to provide for effective, proportionate and dissuasive penal sanctions for all bribery offences of judges, in accordance with Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).*
16. The authorities of Malta report that amendments to the Criminal Code (the same draft Bill as mentioned under recommendation i) have been drafted in order to increase the sanctions in respect of the particular situations of bribery of judges described in Article 117 a), b) and c). What has been reported to GRECO means that the sanctions under Article 117a) would increase from the current level of imprisonment (18 months – five years) to imprisonment from three to nine years; the sanctions under Article 117 b) would increase from the current level of imprisonment

(nine months – three years) to between 18 months and five years; and, finally, the sanctions under Article 117 c) would increase from the present level of imprisonment (four – twelve months) to between nine months and two years. In addition, the authorities refer to a draft amendment concerning Article 120 CC in the form of a “*proviso*” according to which the contradictory effect in the current law, which might lead to a more severe sanction for an attempted bribery offence than in respect of a completed offence (as noted in the Evaluation report, paragraph 93), is suggested to be eliminated.

17. GRECO takes note of the information provided and is of the opinion that the suggested amendments to Article 117 CC, which would lead to substantial increases of the criminal sanctions concerning bribery of judges in the particular context as provided for in that Article, would meet the requirements of Article 19.1 of the Criminal Law Convention on Corruption concerning effective, proportionate and dissuasive sanctions, if adopted. Having said that, GRECO maintains its earlier position (Evaluation report paragraph 93) that Articles 116 and 117 CC, which are provisions inherited from the past, could still be subject to a reflexion exercise as to their necessity in the light of the elements of other forms of public sector bribery under the Criminal Code.
18. GRECO concludes that recommendation iii has been partly implemented.

Theme II: Transparency of Party Funding

19. It is recalled that GRECO in its evaluation report addressed 6 recommendations to Malta in respect of Theme II. Compliance with these recommendations is dealt with below.
20. The authorities of Malta have in respect of all recommendations under Theme II referred to a draft Bill entitled “Political Parties Act”, which has been prepared within the Government, hereafter referred to as the Draft Bill 2011.

Recommendation i.

21. *GRECO recommended (i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate.*
22. The authorities of Malta submit that the Draft Bill 2011 (articles 21 and 35-44, available to GRECO) contains elements addressing the concerns raised in the current recommendation.
23. GRECO considers the particular concerns raised in the current recommendation and notes in respect of its first part (i) concerning disclosure of donations that Article 21 of the Draft Bill 2011 indicates that contributions or sponsorships to political parties made by *non-members* of the party exceeding 3 000 Euros are to be publicly declared and that the name of the contributor is to be made public if the contribution exceeds 10 000 Euros. It appears, however, that there are no such rules in respect of donations from *party members*, which is not in line with Recommendation Rec(2003)4, where such a distinction is not made. Moreover, nothing has been reported in respect of foreseen changes to the current spending limits of election candidates. Concerning the second part of this recommendation (ii), GRECO notes that the Draft Bill 2011 does not contain a general ban on anonymous donations. On the contrary, it is stated in Article 39 of the draft Bill

2011 that political parties, their members or candidates may receive donations from unidentified sources when the amount is less than 2 000 Euros and from anonymous donors (i.e. whose identity is not made public by the party) up to 10 000 Euros per year. Compared to the current situation, the draft Bill 2011 represents a restriction; however, the threshold amounts appear to be critically high in comparison with the situation in other European countries. It follows that the draft Bill 2011 meets some of the demands of the recommendation but does not contain all the elements requested.

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

Recommendation ii.

25. *GRECO recommended (i) to introduce rules for political parties to keep proper books and accounts (including in connection with election campaigns); (ii) to ensure that income and expenditure, assets and debts are accounted for in a comprehensive and coherent manner and reported on at appropriate intervals; and (iii) to seek ways to consolidate the accounts to include entities which are related directly or indirectly to a political party or otherwise under its control.*
26. The authorities of Malta submit that the Draft Bill 2011 (articles 25 and 26, available to GRECO) contains elements addressing the concerns raised in the current recommendation.
27. GRECO takes note of the submitted texts in the light of the recommendation: concerning the first and second parts, (i) and (ii), GRECO is pleased that article 25 of the draft Bill 2011 contains binding rules upon the treasurer of a political party to keep accounting records which disclose the financial position of the party at any time (including income, expenditure, assets and liabilities). Furthermore, the draft legislation, article 26, obliges party treasurers to prepare annual statements of the accounts. As regards, the third part of the recommendation (iii), GRECO notes that Article 25 of the draft Bill 2011 prescribes that the accounts must also contain the records of entities which are related directly or indirectly to a political party or otherwise under its control. GRECO takes the view that these draft texts would appear to be in line with GRECO's recommendation; however, the draft Bill 2011 is not yet adopted.
28. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

29. *GRECO recommended to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.*
30. The authorities of Malta submit that the Draft Bill 2011 (article 32, available to GRECO) contains elements addressing the concerns raised in the current recommendation.
31. GRECO takes note of the content of Article 29 of the draft Bill 2011, according to which the treasurer of a political party is required within four months from the end of the financial year to submit the annual statement of the accounts to the Electoral Commission¹, which according to Article 32 in turn is obliged, within one month, to make the statement available for public scrutiny. GRECO takes the view that the effectiveness of such publication depends on how detailed the annual statement is (which is not dealt with in the draft text) and how the annual statements are

¹ The role of the Electoral Commission is further explained under recommendation v, below.

made available to the public (which is also not described). Clarifications in law or in regulations would therefore be required to this end. Moreover, GRECO also notes that the suggested time limits for publication appear unnecessarily long and that there are no specific rules concerning the publication relating to election campaigns. In conclusion, GRECO considers that the draft Bill 2011 (not yet adopted) responds to some extent to recommendation iii, but would like to see further meaningful regulations in respect of the above-mentioned shortcomings.

32. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

33. *GRECO recommended to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts.*
34. The authorities of Malta submit that the Draft Bill 2011 (article 27, available to GRECO) contains elements addressing the concerns raised in the current recommendation.
35. GRECO takes note of the content of Article 27 in which it is stated that “the accounts of a political party shall each year be audited by an accountant as defined by article 2 of the Accounting Professions Act”. GRECO concludes that this provision, if adopted, would meet the demands of recommendation iv.
36. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

37. *GRECO recommended to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.*
38. The authorities of Malta state that it is suggested in article 29 of the draft Bill 2011 that the treasurer of a political party is to deliver the annual statement of the party’s accounts to the Electoral Commission for its monitoring.
39. GRECO recalls that the Electoral Commission is the sole entity charged with the general administration of elections in Malta. It is established under the Constitution and it is composed of a Chairperson and eight commissioners, appointed by the President, following consultations with the Prime Minister and the opposition. The Commission has a distinct legal personality and it should not be subject to the direction or control of any other person or authority, as stipulated in the Constitution. Currently it has some supervisory functions over the election expenses of election candidates, but not in respect of political parties (for more information, see Evaluation report, paragraphs 13-16). GRECO does not dispute the independence of the Commission. What has now been reported by Malta will clearly widen the mandate of the Electoral Commission to include some monitoring of political parties’ accounts, in addition to a monitoring function in respect of election candidates. It appears from article 29 of the draft Bill 2011 that the monitoring is to be limited to the accounts of the parties and the accompanying audit reports, but apart from that, the draft text does not provide much guidance. Clarifications in law or in regulations would therefore be required. GRECO appreciates that the draft Bill 2011, if adopted, would establish some kind of monitoring of party financing for the first time in Malta, which is to be welcomed; however, it is not possible at this stage to make any assessment of the future effectiveness of such a system and, moreover, the Bill is still at the drafting stage.

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

Recommendation vi.

41. *GRECO recommended that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive.*
42. The authorities of Malta refer to various articles of the draft Bill 2011, which contain sanctions for failure to, for example, declare foreign donations (article 35) and for false declarations concerning domestic donations (article 40) or for failure to follow the procedure for accepting a donation (article 41).
43. GRECO takes note of the information provided, which indicates that the draft Bill 2011 indeed combines some of its provisions with criminal sanctions, which would require involvement of the ordinary criminal justice process, i.e. police investigation, prosecution and adjudication by a court. GRECO recalls in this respect what is stated in the Evaluation report, paragraph 71: *“To the extent that Malta will establish a coherent framework for providing a more transparent system of political financing in the future, any such rules need to be complemented with effective, proportionate and dissuasive sanctions, in line with Article 16 of the Recommendation Rec(2003)4. It should be added that GRECO has held on several occasions that in addition to ordinary criminal sanctions, which may be cumbersome to apply in practice, more flexible sanctions ought to be introduced in respect of less serious violations of the political financing rules, which do not necessarily require a criminal court procedure.”* GRECO concludes that what has been reported represents some achievements, provided that the draft Bill 2011 is adopted; however, at the same time it notes that more remains to be done, in particular, the introduction of a more systematic sanctioning system and, possibly, of administrative sanctions that could be applied directly by the Electoral Commission for minor procedural violations etc.
44. GRECO concludes that recommendation vi has been partly implemented.

III. CONCLUSIONS

45. **In view of the above, GRECO concludes that Malta has implemented satisfactorily or dealt with in a satisfactory manner none of the nine recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and iii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i–vi have been partly implemented.
46. Concerning incriminations, the Government is in the process of preparing amendments that should make it possible to ratify the Additional Protocol to the Criminal Law Convention, which is to be welcomed. Furthermore, draft legislation containing adjustments of sanctions in respect of trading in influence and bribery of judges is also underway.
47. In relation to political financing, GRECO welcomes that the Government is in the process of establishing comprehensive legislation which would, if adopted, represent far going changes as regards the legal framework for political financing, where Malta currently falls short of the European standards under scrutiny. GRECO strongly supports this process although there are certain parts of the draft Bill 2011 that need to be further developed.

48. In the light of what has been stated in paragraphs 46 – 48, GRECO notes that Malta has been able to demonstrate that substantial legislative reforms are underway in respect of both themes of the current evaluation. GRECO therefore concludes that the current level of compliance with the recommendations, despite the low level of full compliance, is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO’s Rules of Procedure. Malta is encouraged to pursue its efforts – and in that context also to take note of the comments made in the current report – in order to implement the pending recommendations within the next 18 months.
49. GRECO invites the Head of the delegation of Malta to submit additional information regarding the implementation of all recommendations (Theme I and Theme II) by 30 April 2013 at the latest.
50. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.