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# Third Evaluation Round

# Compliance Report on Turkey

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

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## "Transparency of Party Funding"

Adopted by GRECO
at its 54th Plenary Meeting
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## I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Turkey to implement the 17 recommendations issued in the Third Round Evaluation Report on Turkey (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 46th Plenary Meeting (26 March 2010) and made public on 20 April 2010, following authorisation by Turkey (Greco Eval III Rep (2009) 5E, Theme I and Theme II).

3. As required by GRECO's Rules of Procedure, the Turkish authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 September 2011 and served as a basis for the Compliance Report.

4. GRECO selected Bulgaria and Norway to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Jens-Oscar NERGÅRD, Senior Adviser, Ministry of Government Administration, Reform and Church Affairs, on behalf of Norway, and Mr Georgi RUPCHEV, State Expert, Directorate of International Co-operation and European Affairs, Ministry of Justice, on behalf of Bulgaria. 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 8 recommendations to Turkey in respect of Theme I. Compliance with these recommendations is dealt with below.

7. The authorities of Turkey report that in 2010, the Ministry of Justice appointed a preparatory commission to evaluate the procedures and principles for the fulfilment of the recommendations issued by GRECO in its Third Round Evaluation Report on Turkey. Based on the results of the commission's work, a working group with broader participation – including judges, prosecutors and academics – and a sub-working group were established in 2011 in order to prepare legislative measures prompted by the recommendations. The Ministry of Justice included

proposals by the sub-working group in a draft bill which was sent to the Prime Ministry on 16 January 2012 and publicised at a press conference on 18 January 2012. The draft bill was then further amended and sent to Parliament as a bill, on 30 January 2012. In response to the recommendations contained in the Evaluation Report (Theme I), the authorities submitted the relevant draft amendments contained in the bill. The authorities expect that the bill will be further amended – taking into account GRECO's assessment of the corruption-related provisions – and will, after its current consideration by the Justice Commission, come before a plenary session of Parliament in the near future.

**Recommendation i.**

8. *GRECO recommended to revise existing criminal law in order to (i) provide for comprehensive, consistent and clear definitions of bribery offences; and (ii) to capture unambiguously a) promises, offers and requests for a bribe, irrespective of whether or not the parties have agreed upon the bribe; and b) all acts/omissions in the exercise of the functions of a public official, irrespective of whether or not they constitute a breach of duty and whether or not they lie within the scope of the official's competence.*

9. The authorities indicate that the above-mentioned bill foresees several amendments to section 252 of the Turkish Penal Code (TPC). According to the bill, the amended bribery provisions would read as follows (amended and new paragraphs in *italics*).

***Section 252 TPC: Bribery***

(1) Any public officer who receives a bribe shall be sentenced to a penalty of imprisonment for a term of four years to twelve years. The person giving the bribe shall be sentenced as if s/he were a public official. Where the parties agree upon a bribe, they shall be sentenced as if the offence were completed.

*(2) If the public official requests a bribe but it is not accepted by the other person, or if the other person offers or promises any undue advantage to the public official but the offer or promise is not accepted by the public official, the penalty to be imposed in accordance with the provisions on attempt shall not be less than two years.*

*(3) The person acting as an intermediary for transferring the offer or the request for a bribe to the other party, for agreeing on bribery or for providing the bribe to the other party shall be sentenced as a principal offender.*

(4) Where a person who receives a bribe, or agrees to such, is a person in a judicial duty, an arbitrator, an expert witness, a public notary or a professional financial auditor, the penalty to be imposed shall be increased by between one-third and one-half.

*(5) A bribe is defined as the procuring of any undue advantage by a public official, for him/herself or for anyone else, by his/her agreeing with another to act or refrain from acting in the exercise of his/her functions.*

*(6) The provisions of this section shall also apply where any undue advantage has been provided to a person acting on behalf of one of the legal entities enumerated below, for him/her to act or refrain from acting in the exercise of his/her functions during the establishment of a legal relationship or in the framework of an existing legal relationship, irrespective of whether s/he is a public officer or not:*

*a) public professional institutions,*
*b) companies incorporated by the participation of public institutions or public corporations or public professional institutions,*

*c) foundations operating within the framework of public institutions or public corporations or public professional institutions,*
*d) associations acting in the public interest,*
*e) co-operatives,*
*f) public joint stock companies.*

*(7) The following actions shall be presumed to be bribery: offering, promising or giving a direct, or indirect, undue advantage, for the purpose of ensuring the performance or non-performance of a task, or obtaining or protecting an unjust benefit concerning international commercial activities or any other reason, to an elected or appointed person in a foreign country who is a member of a public institution or public organisation charged with legislative, administrative or judicial duties; an official of an international organisation that has been established by another international public institution, State or government (regardless of its structure or function), or any other person performing a duty having an international character in a foreign country; a judge, juror ("jüri üyesi") or other public official performing his/her duties in international courts; a member of an international parliament; an arbitrator assigned within the framework of the arbitration procedure applied for the settlement of a legal dispute.*

*Any request for a bribe or receipt of any undue advantage by any of the persons enumerated above shall also be presumed to be bribery.*

*(8) The investigation sua sponte is conducted in Turkey against bribers and bribees if the offence described in paragraph 7 is committed:*

*a) in Turkey,*
*b) by a Turkish citizen abroad,*
*c) by a foreigner abroad for acting or refraining from acting in a transaction or a dispute relating to:*
*1. Turkey,*
*2. a public institution in Turkey,*
*3. any legal entity of private law established in accordance with Turkish legislation,*
*4. a Turkish citizen.*

10. As concerns the first part of the recommendation, the authorities explain that the bill provides an amended definition of bribery in section 252, paragraph 5 TPC, which no longer requires a breach of duty by the public official and thus includes both simple and aggravated cases of bribery (i.e. with or without breach of duty). Furthermore, the draft section 252 TPC contains new paragraphs 2 and 3 dealing with unilateral bribery acts and with intermediaries, amended provisions on private sector bribery (paragraph 6) and bribery of foreign and international officials (paragraph 7) as well as new jurisdictional rules in paragraph 8.

11. With regard to the second part of the recommendation, the authorities indicate that according to the bill, the new paragraph 2 of draft section 252 TPC makes it clear that cases of simple promises, offers and requests are criminalised under the bribery provisions. They state that the reference to the attempt provisions only concerns the range of sanctions available, which is decreased in comparison to other forms of corrupt behaviour. According to the general rules under section 35 TPC, in cases of attempt the penalty is to be reduced by one-quarter to three-quarters, but draft section 252, paragraph 2 TPC states that in cases of unilateral bribery acts the penalty may not be less than two years. As a result, in cases of simple promises, offers and requests the punishment ranges from two to nine years' imprisonment.

12. The authorities furthermore stress that the amended definition of bribery in draft section 252, paragraph 5 TPC no longer requires the public official to act "in breach of the requirements of

his/her duty". This element has been replaced by the concept "to act or refrain from acting in the exercise of his/her functions". This means, firstly, that draft section 252 TPC covers all acts and omissions in the exercise of the functions of a public official, irrespective of whether or not they lie within the scope of the official's competence. Secondly, draft section 252 TPC covers both simple and aggravated cases of bribery, in contrast to the current situation where section 252 TPC only applies to aggravated bribery (implying a breach of duty) and not to simple bribery (without breach of duty) – which is currently dealt with under the provisions of section 125, paragraph 3a) TPC on "insult" (simple active bribery) and section 250 TPC on "extortion" or section 257, paragraph 3 TPC on "misuse of public duty" (simple passive bribery). The authorities add that as a consequence and according to the bill section 257, paragraph 3 TPC would be abrogated. By contrast, the bill foresees amendments to section 250 TPC which make it clear that in cases where a public official has extorted a bribe, s/he would still be liable for extortion (section 250, paragraph 1, second sentence, TPC). The authorities explain that in accordance with the system of the TPC, bribery and extortion are quite separate offences and that in cases of actions classified as extortion by the court, the public official concerned would be punishable under section 250 TPC but not under section 252 TPC, whereas the bribe-giver would not be criminally liable in such cases.

13. GRECO takes note of the information provided, according to which draft legal amendments to the bribery offences under section 252 TPC prepared by the Ministry of Justice and further amended by the Prime Ministry have been sent to Parliament. GRECO notes that the draft amendments would, if adopted, include all acts and omissions in the exercise of the functions of a public official in the provisions on domestic bribery, irrespective of whether or not these acts and omissions constitute a breach of duty and whether or not they lie within the scope of the official's competence – in contrast to the current situation where numerous other criminal offences apply, depending on the circumstances. GRECO considers that the draft amendments would thus appear to provide for more comprehensive and consistent definitions of bribery offences.

14. That said, GRECO is concerned that the complicated structure of the bribery offences has not been remedied but rather amplified by the draft legislation. Draft section 252 TPC is composed of eight paragraphs, with several basic bribery offences defined in paragraph 1, unilateral bribery acts regulated in paragraph 2, a general definition of bribery in paragraph 5, aggravated cases and cases of bribery in the private sector and in the international context (the latter would remain subject to an autonomous offence) regulated in the various other paragraphs. Moreover, the definition of domestic bribery in draft paragraph 5 of section 252 TPC is still built on an agreement between the parties and unilateral acts of bribery – namely the (refused) offer, promise or request of a bribe – are punishable only in accordance with the provisions on attempt. Although GRECO acknowledges that the draft legislation now explicitly includes such unilateral acts and stipulates a minimum penalty of two years' imprisonment (deviating from the general rules on attempt), and although the authorities maintain that the reference to the attempt provisions only concerns the level of sanctions available, GRECO finds the draft regulations unnecessarily complex and misleading. Furthermore, although the authorities point to the high level of sanctions available for unilateral bribery acts – two to nine years' imprisonment – GRECO maintains the misgivings it expressed in the Evaluation Report as regards the fact that such bribery acts are not subject to the same sanctions as bribery agreements. In addition, GRECO is concerned that requests for a bribe with a compelling character are only criminalised in respect of the bribe-taker (i.e. the public official concerned), under the extortion provisions. To conclude, GRECO notes i) that only parts of the recommendation have been dealt with and ii) that the measures taken have not yet resulted in adopted legislation. Therefore, GRECO urges the authorities to continue the reform process, to design clearer definitions of bribery offences – submitting unilateral acts of bribery to

the same rules as "bribery agreements", to harmonise the bribery provisions applicable to domestic and foreign/international officials and to have such draft legislation adopted as soon as possible.

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

**Recommendation ii.**

16. *GRECO recommended to ensure that the bribery offences are construed in such a way as to cover, unambiguously, instances of bribery committed through intermediaries as well as instances where the advantage is not intended for the official him/herself but for a third party.*

17. The authorities stress, firstly, that draft section 252 TPC contains a paragraph 3 dealing specifically with instances of bribery committed through intermediaries. According to this draft, persons acting as intermediaries are to be sentenced as principal offenders. The authorities add that intermediaries themselves are criminally liable under the general rules of the TPC on "jointly committed offences"[1] in conjunction with the provision foreseen in draft section 252, paragraph 3 TPC and that this view is shared by the relevant chamber of the Court of Cassation.

18. Secondly, the authorities indicate that the general definition of bribery in paragraph 5 of draft section 252 TPC explicitly refers to "the procuring of any undue advantage by a public official, for him/herself or for anyone else".

19. GRECO notes that the bill explicitly includes instances where the advantage is intended for a third party in the bribery offences, as required by the recommendation. As concerns the indirect commission of bribery through intermediaries, GRECO notes that the draft amendments only concern the liability of intermediaries themselves but not the liability of persons using intermediaries for committing bribery. GRECO wishes to draw attention to the fact that in line with the Criminal Law Convention on Corruption (ETS 173) the recommendation was aimed at holding the latter category of persons criminally responsible. Even if the authorities affirm that persons using intermediaries to commit bribery may be held criminally liable under the general rules of the TPC in conjunction with the provision foreseen in draft section 252, paragraph 3 TPC, GRECO recalls the concerns expressed in the Evaluation Report that this has not been confirmed by case law and that the provisions on bribery of domestic officials are inconsistent with those on bribery of foreign and international public officials – which explicitly regulate the indirect commission of such bribery offences. GRECO notes that the situation remains unchanged and therefore invites the authorities, for the sake of legal clarity and consistency, to further amend the draft legislation.

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

**Recommendation iii.**

21. *GRECO recommended to ensure that active and passive bribery – within or outside of the context of international commercial activities – of all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts are criminalised unambiguously, in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*

[1] In particular, section 37 TPC.

22. The authorities underline that the bill includes an amended provision on bribery of foreign and international public officials in paragraph 7 of draft section 252 TPC. The scope of this provision is extended, *inter alia*, to include judges, jurors ("jüri üyelerine") or other public officials performing their duties in international courts and members of international parliaments. In contrast to the current section 252, paragraph 5 TPC on bribery of foreign and international officials, the draft paragraph 7 covers certain forms of passive bribery – the request and receipt of a bribe – and it is not restricted to acts of bribery committed within the context of international commercial activities.

23. GRECO takes note of the information provided which indicates that the draft amendments to section 252 TPC take into account several important elements of the recommendation. That said, GRECO notes that the draft provision on bribery of foreign and international public officials does not clearly cover all forms of passive bribery, as it does not mention the acceptance of an offer or promise. Likewise, third party beneficiaries are not explicitly regulated. Moreover, GRECO recalls the concerns expressed in the Evaluation Report that in contrast to bribery of domestic public officials, bribery of foreign and international public officials is limited to "elected or appointed persons". These concerns have not been addressed by the draft amendments. Finally, GRECO strongly regrets that the provisions on bribery in the domestic and foreign/international context have not been harmonised (see the comments under recommendation i).

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

**Recommendation iv.**

25. *GRECO recommended to ensure that active and passive bribery – within or outside of the context of international commercial activities – of foreign jurors and arbitrators are criminalised unambiguously, in accordance with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to sign and ratify this instrument as soon as possible.*

26. The authorities explain that bribery of foreign arbitrators is addressed by draft section 252, paragraph 7 TPC, according to which the bribery provisions are applicable to "arbitrators assigned within the framework of the arbitration procedure applied for the settlement of a legal dispute". As regards foreign jurors, the authorities refer to the clause "an elected or appointed person in a foreign country who is a member of a public institution or public organisation charged with legislative, administrative or judicial duties" in the same provision – which is currently contained in section 252, paragraph 5 TPC (without the term "legislative"). Finally, the authorities report that a process directed at the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption has been initiated. To date, the Ministry of Justice in coordination with the Ministry of Foreign Affairs has obtained affirmative opinions from the relevant ministries and institutions in this respect.

27. GRECO recognises that the draft amendments to section 252 TPC explicitly mention arbitrators as possible perpetrators of bribery offences. Even if the relevant provision (draft paragraph 7) mainly concerns foreign and international public officials, it should, however, be specified that the reference to arbitrators in the same provision is meant to also cover *foreign* arbitrators. As concerns foreign jurors, GRECO notes that the clause referred to by the authorities (in the same provision) which is already included in the current law, has not been amended to explicitly cover this category of persons. GRECO therefore maintains its doubts, expressed in the Evaluation Report, that a foreign juror can be considered as "a member of a public institution charged with legislative, judicial or administrative duties". Moreover, the concerns described under recommendation iii with regard to several aspects of the amended provisions on bribery in the

foreign/international context (i.e. with respect to the absence of the elements "acceptance of an offer or promise" and of third party beneficiaries) also apply in relation to bribery of foreign jurors and arbitrators. GRECO asks the authorities to finalise and adopt the draft legislation, in line with the requirements of the recommendation, and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption.

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

**Recommendation v.**

29. *GRECO recommended to criminalise active and passive bribery in the private sector – applicable to any persons who direct or work for, in any capacity, any private sector entities – in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*

30. The authorities stress that the bill includes an amended provision on bribery in the private sector. They explain the main differences between paragraph 6 of draft section 252 TPC and paragraph 4 of the current section 252 TPC. Firstly, the list of relevant entities acting in the private sector has been revised to make it clear that they also include public joint stock companies and co-operatives which have no connection with the State. Secondly, the scope of possible perpetartors has been amended to include any persons acting on behalf of specified legal entities, irrespective of whether they are public officials or not. The authorities stress that during the deliberations of the working group under the Ministry of Justice, various legal experts shared the view that this concept would be broad enough to capture any person at any level who works for the relevant entities. Thirdly, according to draft paragraph 6, all the general bribery provisions of section 252 TPC – covering the various forms of active and passive bribery – are applicable to private sector bribery, whereas the current paragraph 4 only extends the scope of paragraph 1 to private sector bribery. Consequently, the wording of draft section 6 has been brought into line with the public sector bribery provisions, in particular, by replacing the element "through a breach of duty" with the element "to act or refrain from acting in the exercise of his/her functions" – thus making it clear that both simple and aggravated cases of bribery (with or without breach of duty) are covered.

31. GRECO takes note of the draft legal amendments to the provision on private sector bribery. It would appear that some of the concerns underlying the recommendation have been addressed, in particular, as regards the scope of possible perpetrators of private sector bribery offences and their harmonisation with the public sector bribery offences. However, some important shortcomings remain, in particular, the list of entities covered – which has only been slightly modified and is still restricted to a limited number of entities with public participation or acting in the public interest – and the restrictive element "during the establishment of a legal relationship or in the framework of an existing legal relationship". It is clear that the authorities need to further amend the draft legislation in order to respond fully to all the concerns expressed in the Evaluation Report in connection with private sector bribery offences.

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

**Recommendation vi.**

33. *GRECO recommended to criminalise active and passive trading in influence – without the requirement of a deception by the influence peddler – in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*

34. The authorities report that the bill foresees an amended section 255 TPC on "Procuring any undue advantage for a task outside the scope of authority" in order to specifically criminalise trading in influence. According to the bill, the amended provisions would read as follows.

> ***Section 255 TPC: Trading in influence***
>
> *(1) Where the influence peddler (with influence over a public official) procures any undue advantage for him/herself or for anyone else indicated by him/herself, in order to take the initiative for the purpose of having an improper business done, s/he shall be sentenced to a penalty of imprisonment of two years to five years and a judicial fine of up to five thousand days. In the case that the offender is public official, the penalty shall be increased by one-half. As for the person providing any undue advantage in exchange for performing his/her business or in the expectation of performing his/her business, s/he shall be sentenced to a penalty of imprisonment of one year to three years.*
>
> *(2) Even in the case of agreeing on providing any undue advantage, the penalty shall be imposed as if the offence is completed.*
>
> *(3) Where taking the initiative for the purpose of performing a business constitutes a distinct offence, the persons shall also be sentenced owing to this offence.*

35. The authorities explain that the main differences between the current situation – where trading in influence is meant to be addressed by various different provisions (see, in particular, sections 158, paragraph 2, 255 and 259 TPC, as described in the Evaluation Report) – and draft section 255 TPC are the following. Firstly, in contrast to section 255 TPC in its current form, the draft provisions do not require deception by the influence peddler as to his/her ability to exert influence. They are aimed at criminalising the receipt of an undue advantage with a view to "taking the initiative for the purpose of having an improper business done", irrespectively of whether or not the initiative is actually taken or whether or not it leads to the intended result. Secondly, perpetrators of the offences under draft section 255 TPC are not only public officials, they can be any person acting as an influence peddler (if the perpetrator is a public official, this is an aggravating circumstance). Thirdly, the draft provisions criminalise both the active and passive forms of the offence. In addition, they explicitly cover situations where the undue advantage is provided to a third party and they give rise to higher sanctions than the current provisions.

36. GRECO welcomes that according to the draft legislation, both active and passive trading in influence by any person (not only public officials) for their own benefit or for the benefit of third parties, without the requirement of deception by the influence peddler, would be criminalised. That said, these offences would apparently not capture all the possible forms of influence peddling – namely the offering, promising or requesting of an undue advantage. The authorities commented in this respect that the general provisions on attempt would apply to such acts, but GRECO maintains its view that all forms of corrupt behaviour must be submitted to the same rules. The indirect commission of the offences through intermediaries would not be explicitly regulated – in this respect, the authorities again referred to the general rules on "jointly committed offences" (see the comments under recommendation ii) – and clarification is needed as to whether the element "for the purpose of having an improper business done" is equivalent to the concept of exertion of influence over the decision-making of any person as referred to in Articles 2, 4 to 6 and 9 to 11 of the Criminal Law Convention on Corruption. These issues must be dealt with in the context of the on-going reform process.

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

**Recommendation vii.**

38. *GRECO recommended (i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of "effective regret", and to abolish the restitution of the bribe to the bribe-giver in such cases; and (ii) to make it clear to everyone, including the practitioners who are to apply the law, that exemption from punishment is not granted in cases where "effective regret" is invoked after the start of preliminary investigations.*

39. The authorities indicate that the bill foresees several amendments to section 254 TPC which currently regulates the matter. According to the bill, the amended provisions on effective regret would read as follows.

> ***Section 254 TPC: Effective regret***
>
> *(1) Where, before the official authorities learn of the act, the person in receipt of the bribe presents the consideration of such, in its original state, to the authorities, no penalty shall be imposed for the offence of bribery. Where, before the act is learnt by official authorities, a public officer who, after having agreed to receive a bribe, informs the authorities of such, no penalty shall be imposed.*
>
> *(2) Where, before the official authorities learn of the act, a person who offered and gave a bribe to a public official informs the competent authorities of such, no penalty shall be imposed.*
>
> *(3) Where, before the official authorities learn of the act, any other person who participates in the offence of bribery demonstrates regret by informing the authorities responsible for investigation of such, no penalty shall be imposed upon such person.*
>
> *(4) The provisions of this section shall not apply to foreign public officials.*

40. As concerns the first part of the recommendation, the authorities first stress that in paragraph 2 of draft section 254 TPC, concerning effective regret by the bribe-giver, the wording "and the bribe s/he gave to the public official shall be taken from the public official and handed back to him/her" has been deleted. Secondly, as regards the automatic nature of the defence, the authorities report that this question has been analysed in depth by the working group under the Ministry of Justice. The members of the working group took the view that the current provisions encourage any persons who know they will not be sentenced to inform the authorities of the offences committed and that any changes in this respect would impair the fight against corruption.

41. As regards the second part of the recommendation, the authorities indicate that according to draft section 254 TPC, the wording "prior to the commencement of an investigation" is replaced by "before the official authorities learn of the act". They state that thus no exemption from punishment may be granted in cases where effective regret is invoked after the start of preliminary investigations.

42. GRECO acknowledges that the draft amendments to the provisions on effective regret would abolish the restitution of the bribe to the bribe-giver and that they make it clear that this defence could not be invoked in any situations where the bribery act has already come to the knowledge of official authorities. GRECO considers that this would make it clear that no exemption from punishment could be granted in cases where effective regret is invoked after the start of preliminary investigations. Finally, GRECO notes that the automatic – and mandatorily total –

exemption from punishment has been analysed by the working group under the Ministry of Justice but that it has not been revised, as required by the recommendation. GRECO refers to the significant concerns about the automatic nature of this defence described in the Evaluation Report and asks the authorities to reconsider their position and to revise the relevant provisions accordingly.

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

**Recommendation viii.**

44. *GRECO recommended (i) to abolish the condition that the prosecution of acts of corruption committed abroad by non-citizens, but involving Turkish public officials or members of Turkish public assemblies who are at the same time Turkish citizens, must be preceded by a request by the Minister of Justice (section 12, paragraph 1 of the Turkish Penal Code); and (ii) to establish jurisdiction over acts of corruption committed abroad by non-citizens, but involving officials of international organisations, members of international parliamentary assemblies, judges or officials of international courts who are, at the same time, Turkish citizens.*

45. The authorities stress that according to the bill, section 252 TPC would be complemented by a new paragraph 8 dealing with jurisdictional rules. The draft provides that investigation *sua sponte* is conducted in Turkey against bribers and bribees if the offence described in paragraph 7 of the same section (i.e. bribery of foreign and international officials) is committed, *inter alia*, by a foreigner abroad for acting or refraining from acting in a transaction or a dispute relating to a Turkish citizen. The authorities explain, with regard to the first part of the recommendation, that under the draft provision, prosecution of acts of bribery committed abroad by foreigners but involving Turkish citizens no longer needs to be preceded by a request by the Minister of Justice but is initiated *sua sponte*. They furthermore state that the draft provision also addresses the second part of the recommendation, as it includes bribery offences committed abroad by foreigners but involving Turkish citizens, without the additional requirement that the offence be committed to the detriment of Turkey, as is the case under the general jurisdictional rules (see section 12, paragraph 1 TPC). The authorities stress that this provision is not a mere procedural rule but establishes a specific jurisdictional rule over certain acts of bribery.

46. GRECO notes that the draft amendments to section 252 TPC include jurisdictional rules in a new paragraph 8 which appear to be partly in line with the recommendations – in so far as the requirement of a request by the Ministry of Justice before prosecuting certain acts of bribery committed abroad by foreigners but involving Turkish citizens is abolished (first part of the recommendation). As regards the second part of the recommendation, GRECO has no reason to doubt the explanations provided by the authorities according to which draft paragraph 8 of section 252 TPC establishes jurisdiction over specified bribery acts, in line with the requirements of the recommendation. That said, it is to be noted – in respect of both parts of the recommendation – that the new rules under draft paragraph 8 would only apply in respect of bribery of foreign and international officials (in the meaning of draft paragraph 7) but not in respect of bribery of domestic public officials or trading in influence, as required by the recommendation, which concerns any corruption offence.

47. GRECO concludes that recommendation viii has been partly implemented.

## Theme II: Transparency of Party Funding

48. It is recalled that GRECO in its evaluation report addressed 9 recommendations to Turkey in respect of Theme II. Compliance with these recommendations is dealt with below.

49. The authorities report that in the framework of the "Strategy for Enhancing Transparency and Reinforcing the Fight Against Corruption" of 1 February 2010 and the corresponding Action Plan of 12 April 2010, a working group was established with a view to conducting reforms, taking into account the recommendations issued by GRECO in its Third Round Evaluation Report on Turkey. The working group and its subgroups were composed of representatives of competent State agencies. Representatives of the parliamentary political parties, an academic, a public accountant and a rapporteur of the Constitutional Court were also invited to some of their meetings. The final report of the working group (hereafter "the Report-WG") was submitted to the Commission tasked with the implementation of the above Strategy (hereafter "the Commission"). The Commission decided on 19 August 2011 to implement the suggestions made in the Report-WG and to establish a working group under the Ministry of Justice also with representatives of other relevant ministries and institutions (hereafter "Working Group-MoJ") in order to prepare necessary legal amendments. This working group first met on 30-31 January 2012 and established a roadmap for the preparation of legal reforms. Further meetings were held in February 2012, during which Working Group-MoJ started its work on the basis of the roadmap.

50. The authorities furthermore indicate that following constitutional amendments of 2007 which introduced direct elections of the President of the Republic by popular vote, Law No. 6271 on Presidential Elections which includes rules on campaign financing of presidential candidates was adopted on 19 January 2012 and entered into force on 26 January 2012 (date of publication in the Official Gazette).

### Recommendation i.

51. *GRECO recommended to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control.*

52. The authorities indicate, with regard to the first part of the recommendation, that the Report-WG includes the suggestion "to take necessary measures in relation to the financing of election campaigns conducted by the candidates" and that the Commission has instructed to enact it. The implementation of this suggestion requires legal amendments, which will be prepared by Working Group-MoJ.

53. As concerns the second part of the recommendation, the authorities stress that under existing law, political parties can only establish entities for educational purposes such as women's and youth branches or political academies which have no separate legal personality and whose accounts are therefore already checked together with the party accounts by the Constitutional Court. Nevertheless, Working Group-MoJ is considering further measures to increase transparency of the financing of such entities, in particular by incorporating their accounts into the annual accounts of political parties.

54. GRECO takes note of the information provided according to which it is planned to take measures to implement the recommendation. In the absence of any concrete results, such as draft

legislation, GRECO cannot conclude at this stage that the recommendation has been even partly implemented. GRECO urges the authorities to pursue the reform process and to make sure that the measures under preparation in respect of the first part of the recommendation fully comply with its requirements, namely to ensure that party accounts include financial information in respect of both elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning. As regards the second part of the recommendation, GRECO recalls that it was aimed at increasing transparency in respect of consolidated accounts of both political parties and entities which are closely related to or come under the influence of a party – i.e. not necessarily entities established by the parties, which appear to be already regulated to some extent. This issue should be reconsidered and appropriate measures be taken.

55. GRECO concludes that recommendation i has not been implemented.

**Recommendation ii.**

56. *GRECO recommended to take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body.*

57. The authorities indicate that Report-WG suggests "to take necessary measures in order to standardise the keeping and reporting of financial records of political parties" and that the Commission has instructed to act on this suggestion. Legal amendments to that effect will therefore be prepared by Working Group-MoJ. The authorities furthermore state that Working Group-MoJ is considering further measures such as setting up common accountancy standards or the monitoring body providing further guidance to political parties – even though under the Law on Political Parties (LPP) in its current form, political parties are already obliged to submit their financial accounts and supporting documents to the Constitutional Court in view of a control which is based on precise rules in respect of time and method.

58. GRECO notes that it is planned to standardise financial reporting of political parties. However, in the absence of any concrete measures, such as draft legislation, GRECO cannot conclude at this stage that the recommendation has been even partly implemented. Moreover, GRECO wishes to stress that the recommendation was not aimed at legal amendments alone but at a broader range of measures to enhance the reporting practice by political parties, including the provision of guidance to the parties by the monitoring body. GRECO urges the authorities to take such practical measures, which are reportedly also under consideration.

59. GRECO concludes that recommendation ii has not been implemented.

**Recommendation iii.**

60. *GRECO recommended to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law.*

61. The authorities state that currently, the complete audit reports on party finances are published in the Official Gazette, both in its printed version and on its website. In addition, following recent amendments to Law No. 6216 on the Establishment of the Constitutional Court and Rules of

Procedure which entered into force on 30 March 2011, the complete audit reports are also publicly available on the website of the Constitutional Court. The authorities add that auditing of party accounts by the Constitutional Court has accelerated in practice but that further legal or administrative regulations are necessary in order to ensure timely disclosure of audit reports. The authorities furthermore indicate that while two parliamentary parties already publish financial information on their websites, Report-WG recommends "that the financial reports of the political parties be released to the public by easily accessible means", which has been endorsed by the Commission.

62. GRECO acknowledges that steps have been taken to disclose audit reports on party finances on the Internet and it further notes that it is planned to prepare measures to ensure that party accounts are made public by easily accessible means. GRECO invites the authorities to persist in their efforts to present a comprehensive regime of public disclosure of information on party finances.

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

**Recommendation iv.**

64. *GRECO recommended to regulate transparency in the financing of parliamentary, presidential and local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties.*

65. The authorities report, first, that the above-mentioned Law No. 6271 on Presidential Elections of 19 January 2012 introduced rules on campaign financing of presidential candidates. Section 14 of this law regulates, *inter alia*, prohibited funding sources, donation ceilings, obligations on candidates to disclose their assets, to deposit donations received in electoral accounts and to only use them for election expenditures, to register income received and expenditure incurred during the campaign period on lists approved by the Supreme Election Board and to submit specified financial information and documents to the Supreme Election Board for examination, within specified timeframes. According to the same section, the procedures, principles and forms for financial reporting by election candidates are to be determined by the Supreme Election Board.

66. Secondly, as far as parliamentary and local elections are concerned, the authorities reiterate that Report-WG includes the proposal "to take necessary measures in relation to the financing of election campaigns conducted by the candidates" and that the Commission has instructed to enact it (see recommendation i above). The implementation of this suggestion requires legal amendments which will be prepared by Working Group-MoJ. By contrast, the authorities see no need for any measures to regulate transparency in the financing of election campaigns conducted by the parties as information on the parties' campaign funding is included in the annual accounting and monitoring process.

67. GRECO welcomes the introduction of transparency regulations concerning campaign funding by presidential candidates, which appear to be of a good standard. GRECO is, however, concerned about the apparent lack of a ban on anonymous donations in the law. GRECO furthermore notes the preparation of legal amendments concerning campaign funding by candidates in parliamentary and local elections is planned. The authorities should ensure that such amendments enhance transparency in campaign funding by both independent candidates and

individual party candidates. Moreover, GRECO urges the authorities to also address the issue of support provided by third parties to election campaigns of political parties.

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

**Recommendation v.**

69. *GRECO recommended to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period.*

70. The authorities state that two suggestions made in the Report-WG and approved by the Commission are relevant to the implementation of this recommendation, namely "to work on ensuring the announcement of all existing financial sources of political parties before elections and their expenditures at the end of elections" and "to take necessary measures in relation to the financing of election campaigns conducted by the candidates". Working Group-MoJ is tasked with preparing legal amendments in these respects.

71. GRECO takes note of the information provided, according to which it has been decided to prepare legal amendments aimed at disclosure of party income and expenditure during election periods and at ensuring transparency in campaign funding by election candidates. While GRECO clearly supports this initiative, it wishes to draw attention to the fact that the recommendation was not limited to the election campaign period alone but was aimed more broadly at regular disclosure of donations received (above a certain value), indicating the nature and value of each donation and the identity of the donor. Given the very early stage of the current reform process, GRECO cannot conclude at present that the recommendation has been even partly implemented.

72. GRECO concludes that recommendation v has not been implemented.

**Recommendation vi.**

73. *GRECO recommended to introduce independent auditing of party accounts by certified experts.*

74. The authorities indicate that while some parties already have recourse to certified public accountants, Report-WG recommends "that party accounts be audited by licensed experts in an independent way". This recommendation has been endorsed by the Commission. Legal amendments to that effect will therefore be prepared by Working Group-MoJ.

75. GRECO acknowledges that it is planned to prepare legal amendments to introduce independent auditing of party accounts by certified experts. GRECO invites the authorities to speed up their efforts to present tangible results.

76. GRECO concludes that recommendation vi has not been implemented.

**Recommendation vii.**

77. *GRECO recommended that the supervision of the party accounts be complemented by specific monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections.*

78. The authorities report, first, that the 2012 Law on Presidential Elections introduced specific monitoring of the campaign financing of presidential candidates. Pursuant to section 14 of this law, candidates have to submit to the Supreme Election Board information and documents in respect of electoral accounts, donations and financial aid and expenditure within ten days after the finalisation of election results. The Supreme Election Board is to examine the information in a month, to determine irregularities, if any, and to give candidates a reasonable time to correct the determined deficiencies. The amount of donations and financial aid which exceed the determined limit are to be transferred to the State Treasury. The Supreme Election Board may ask for assistance from the Court of Accounts and other relevant public institutions which are considered necessary for the monitoring of campaign funding. The results of the control carried out by the Supreme Election Board are final and are to be announced within a month.

79. Secondly, as far as parliamentary and local elections are concerned, the authorities again refer to the proposals made in the Report-WG "to work on ensuring the announcement of all existing financial sources of political parties before elections and their expenditures at the end of elections" and "to take necessary measures in relation to the financing of election campaigns conducted by the candidates". Working Group-MoJ is tasked with preparing legal amendments in these respects.

80. GRECO welcomes the adoption of legislation providing for specific monitoring of campaign funding of presidential candidates by the Supreme Election Board and encourages the authorities to implement the new regulations in an effective manner. Furthermore, GRECO takes note of the plans to prepare draft legislation to increase transparency in the financing of parliamentary and local elections. At the current early stage of the reform process it is, however, not clear to what extent specific monitoring of campaign funding in such elections is foreseen.

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

**Recommendation viii.**

82. *GRECO recommended (i) to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities; and (ii) to increase the financial and personnel resources dedicated to the control of political financing.*

83. In relation to the first part of the recommendation, the authorities state that several proposals made in the Report-WG and approved by the Commission have the potential to facilitate the follow-up of political financing in a more effective way, in particular, the proposal "to introduce a legal regulation that financial transactions exceeding a specific amount only be made through the banking system". Legal amendments to that effect will therefore be prepared by Working Group-MoJ.

84. With regard to the second part of the recommendation, the authorities recall that supervision over party funding is exercised by the Constitutional Court, in co-operation with the Office of the Chief Public Prosecutor at the Court of Cassation. They report that due to recent amendments to Law No. 6216 on the Establishment of the Constitutional Court and Rules of Procedure, which entered into force on 30 March 2011, the financial audit of the political parties will in the future be conducted by the Court of Accounts in terms of technical aspects. In accordance with the amended section 55 of this law, the Constitutional Court is to secure assistance from the Court of

Accounts in order to review the lawfulness of property acquisitions by the political parties and their revenue and expenditure. To that effect, it has to convey the documents received by the parties – i.e. their consolidated final accounts as well as the final accounts of their central, provincial and district organisations – to the Court of Accounts and the latter has to send its audit reports to the Constitutional Court for final decision. The authorities state that the Court of Accounts, which is the supreme judicial audit organ in performing the audit of public expenditure and revenue on behalf of Parliament, employs an adequate number of qualified experts.

85. GRECO takes note of the planned measures to increase transparency in party financing and to facilitate the supervision of financial transactions as well as of recent legal amendments according to which the Constitutional Court is called to systematically request assistance by the Court of Accounts in checking the annual accounts of political parties. These moves are a step in the right direction and have the potential to strengthen the existing monitoring mechanism. At the same time, GRECO must stress in this connection that much more needs to be done in order to meet the requirements of this recommendation which is of prime importance. It also calls for more pro-active monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities. GRECO reiterates its concerns expressed in the Evaluation Report that the current monitoring appears to be limited to auditing in a strict sense and does not go beyond the information provided by parties themselves. GRECO therefore expects further practical measures to ensure a more-proactive and effective mechanism.

86. GRECO concludes that recommendation viii has been partly implemented.

**Recommendation ix.**

87. *GRECO recommends to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates.*

88. The authorities report that it is foreseen to develop sanction mechanisms together with the planned legal and administrative amendments for ensuring transparency in the financing of election campaigns.

89. GRECO notes that it is planned to introduce sanctions for infringements of campaign funding regulations and urges the authorities to take action.

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

## III. CONCLUSIONS

91. **In view of the above, GRECO concludes that Turkey has implemented satisfactorily none of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, all recommendations (i – viii) have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations iii, iv, vii and viii have been partly implemented and recommendations i, ii, v, vi and ix have not been implemented.

92. In relation to Theme I (Incriminations), GRECO is pleased that Turkey has reported on a substantial reform process, within which all recommendations issued in the Evaluation Report

have been considered and have been addressed at least to some extent. At the same time, GRECO regrets that the draft amendments to the Turkish Penal Code are not fully in line with the recommendations. The authorities must therefore pursue their commendable efforts in this respect and further amend the draft legislation – which is pending before Parliament – in order to establish a solid legal framework in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173). GRECO acknowledges that the authorities have confirmed their willingness to take account of GRECO's assessment in further stages of the ongoing legislative proceedings and it urges the authorities to make every effort to achieve tangible results as soon as possible.

93. In so far as Theme II (Transparency of party funding) is concerned, GRECO welcomes that in the framework of the 2010 "Strategy for Enhancing Transparency and Reinforcing the Fight Against Corruption" preparatory work in view of strengthening transparency in the financing of political parties and election campaigns has been conducted. It has been broadly inspired by GRECO's recommendations. It resulted in decisions to prepare legal and administrative amendments which, in GRECO's opinion have the potential of addressing many of the concerns expressed in the Evaluation Report. That said, as the reform process is still at a very early stage and no tangible results – with a few exceptions, such as the adoption of legislation on campaign funding of presidential candidates – have been achieved to date, it is not yet possible to draw final conclusions and to assess whether GRECO's recommendations are being dealt with satisfactorily. It would appear, however, that some (planned) measures would not fully meet the requirements of the recommendations, in particular, as regards the strengthening of the monitoring mechanism which clearly needs to adopt a much more pro-active approach than in the past. GRECO urges the authorities to carry through the reforms planned and to pay particular attention to the effectiveness of measures, which need to include practical arrangements for proper implementation of the law.

94. In the light of what is stated in paragraphs 91 to 93, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. It must be recalled in this connection that, at this stage, more than a third of the recommendations have not been implemented and all the other recommendations have been categorised as only partly implemented, as the planned measures have not yet been adopted and are, in addition, often insufficient to fully meet the requirements of the recommendations. However, bearing in mind that in respect of both themes substantial reforms are underway and on the understanding that the Turkish authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Turkey to submit additional information regarding the implementation of all recommendations (Theme I and Theme II) by 30 September 2013.

95. Finally, GRECO invites the authorities of Turkey to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.