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Third Evaluation Round

Second *Interim* Compliance Report on Turkey

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 70th Plenary Meeting
(Strasbourg, 30 November - 4 December 2015)

I. INTRODUCTION

1. 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](#)). It contained a total of 17 recommendations: eight in respect of Theme I and nine in respect of Theme II.
2. As required by GRECO's Rules of Procedure, the Turkish authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Bulgaria and Norway to appoint Rapporteurs for the compliance procedure.
3. In the [Compliance Report](#), which was adopted by GRECO at its 54th Plenary Meeting (Strasbourg, 23 March 2012) it was concluded that Turkey had not implemented satisfactorily or dealt in a satisfactory manner any of the 17 recommendations contained in the Third Round Evaluation Report. In view of the fact that in respect of both themes (Theme I – Incriminations, and Theme II – Transparency of Party Funding) substantial reforms were underway and on the understanding that the Turkish authorities would further pursue their efforts, GRECO did not categorise the overall response to the recommendations as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure but invited the Head of the Turkish delegation to submit additional information regarding the implementation of pending recommendations by 30 September 2013.
4. The [Second Compliance Report](#) was adopted by GRECO at its 63rd Plenary Meeting on 28 March 2014. With respect to Theme I – Incriminations, GRECO welcomed the adoption of a new legal framework for the criminalisation of corruption offences, taking into account the requirements of several recommendations. However, some shortcomings remained and GRECO encouraged, therefore, the authorities to pursue their commendable efforts and further amend the legal framework. With regard to Theme II – Transparency of Party Funding, GRECO took note of the preparation of a draft bill by the Ministry of Justice, but found that the reform process was too early to conclude that any substantial and tangible progress had been achieved since the Compliance Report. GRECO therefore assessed the overall situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and invited the Head of the Turkish Delegation to submit a report on the progress made in implementing pending recommendations by 30 September 2014.
5. In the [Interim Compliance Report](#), adopted by GRECO at its 66th Plenary Meeting on 12 December 2014, GRECO concluded that Turkey had made only moderate progress by implementing two of the thirteen recommendations found to be not or partly implemented in the Second Compliance Report – both of them on Theme I – Incriminations. Seven recommendations remained partly implemented and four recommendations not implemented. GRECO consequently concluded that the level of compliance with the recommendations remained “globally unsatisfactory” and asked the Head of Delegation of Turkey to provide a new report on the action taken to implement the pending recommendations, namely recommendations v and vii regarding Theme I and recommendations i to ix regarding Theme II by 30 September 2015. In accordance with Rule 32, paragraph 2, subparagraph (ii) a), GRECO also instructed its President to send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Turkey, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible. Information on the current situation was provided by Turkey on 2 October and 27 November 2015.

6. This Second Interim Compliance Report, drawn up by Mr Atle ROALDSØY (Norway) and Mr Georgi RUPCHEV (Bulgaria), assisted by the GRECO Secretariat, assesses progress in the implementation of the pending recommendations since the adoption of the *Interim Compliance Report*, and performs an overall appraisal of the level of compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

Recommendation v.

7. *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).*
8. It is recalled that according to the Second Compliance Report, the provision on private sector bribery had been amended (revised article 252, paragraph 8 TPC). While the amendments had taken into account several elements of the recommendation, GRECO was concerned that the list of entities covered by the above provision was still restricted to a limited number of entities with public participation or acting in the public interest. No progress had been recorded in the *Interim Compliance Report* and the recommendation was thus assessed as partly implemented.
9. The authorities now state that Turkey maintains its position and assessments, as expressed in the Second Compliance Report.
10. GRECO takes note of the information provided and concludes that recommendation v remains partly implemented.

Recommendation vii.

11. *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.*
12. It is recalled that the recommendation was considered as partly implemented in the Second Compliance Report. The provisions on effective regret had been amended to abolish the restitution of the bribe to the bribe-giver and to ensure that this defence cannot be invoked in any situations where the bribery act has already come to the knowledge of official authorities (thus making it clear that no exemption from punishment can be granted in cases where effective regret is invoked after the start of preliminary investigations). However, no changes had been made to the automatic – and mandatorily total – nature of this defence, as the relevant working group established under the Ministry of Justice considered the defence in its present form as an effective tool for fighting corruption. This position was maintained in the *Interim Compliance Report*.

13. The authorities now indicate that Turkey still maintains its position expressed in the Second Compliance Report with respect to the automatic – and mandatorily total – nature of the effective regret defence.
14. GRECO takes note of the information provided and concludes that recommendation vii remains partly implemented.

Theme II: Transparency of Party Funding

Recommendations i to ix.

15. *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 (recommendation i);*
- *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 (recommendation ii);*
- *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 (recommendation iii);*
- *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 (recommendation iv);*
- *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 (recommendation v);*
- *to introduce independent auditing of party accounts by certified experts (recommendation vi);*
- *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 (recommendation vii);*
- *(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 (recommendation viii); and*

- to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates (recommendation ix).

16. It is recalled that in the Second Compliance Report and the *Interim* Compliance Report, in respect of recommendations i, iii to vii and ix reference was made to the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, which envisaged amendments to Law no. 2820 on Political Parties (hereafter “the LPP”) and Law no. 298 on Basic Provisions on Elections and Voter Registers. The draft bill had been prepared by a working group established under the Ministry of Justice and submitted to the Prime Minister. However, due to the busy political agenda, the draft bill had not been transmitted to the Council of Ministers for approval before being submitted to Parliament. With respect to recommendation ii, a “Draft Guidebook to Financial Audit of Political Parties” was under preparation by the Court of Accounts. Finally, with respect to recommendation viii, the Court of Accounts had established a special unit – the “24th Group Presidency” – in order to carry out the financial audit of political parties. GRECO had regretted that the draft bill had still not been submitted to Parliament and had noted that work regarding the preparation and supervision of party accounts was on-going, but not yet completed. It had concluded that recommendations ii, iii, iv, vii and viii remained partly implemented and that recommendations i, v, vi and ix remained not implemented.
17. The authorities now report that despite the general elections held on 7 June 2015, a government could not be formed and the President of the Republic decided to call for new elections, which were held on 1 November. In the meantime, the Parliament only performed its legislative duties in urgent situations concerning national security or electoral affairs. The Council of Ministers, which is also provisional and with limited powers did not, therefore, transmit the draft bill to Parliament.
18. Following the 1 November elections, the new government came into office and announced its programme to the Parliament on 25 November 2015. This programme includes a title on “transparency”, which foresees the rapid implementation of the “transparency package” prepared by the previous government (see paragraph 16). It is planned to amend the Law on Basic Provisions on Elections and Voter Registers and the Law on Political Parties to make the financing of political parties and election campaigns more transparent. Following these amendments, political parties’ financial statements and donations will have to be declared electronically, the electoral accounts will be supervised and the results of this supervision will be announced on an online platform. Political parties’ expenditure will also be made more transparent. The government, as well as the ruling party during the election campaign, declared on various occasions that transparency in the financing of political parties was one of the top priorities of the reform agenda. It is thus expected that the “transparency package” will be adopted shortly.
19. As regards recommendation ii, the authorities indicate that work on the “Draft Guidebook to Financial Audit of Political Parties” is still on-going. The draft has been submitted to the presidency of the Court of Accounts and revisions are in progress. In the meantime, auditors inform political parties verbally and in writing about the application principles of the guidebook
20. Finally, with respect to recommendation vii, the Law on Presidential Elections adopted in 2012 was applied for the first time during the presidential elections of August 2014. Financial documents were submitted by candidates to the Supreme Board of Elections, which analysed them and made public its report on 22 November 2014 on its website¹.

¹ http://www.ysk.gov.tr/cs/groups/public/documents/document/ndq0/mda5/~edisp/yskpwc1_4444009133.pdf

21. GRECO takes note of the information provided and welcomes the priority given by the new government to the transparency of political financing. It looks forward to assessing the relevant details of the draft laws contained in the “transparency package” in its next report. Regarding recommendation ii, GRECO regrets that progress is slow and that the “Draft Guidebook to Financial Audit of Political Parties” has not yet been adopted. Finally, as regards recommendation vii, the supervision of electoral accounts performed and published by the Supreme Board of Elections is a good first step. However, GRECO recalls that this recommendation also calls for monitoring of the campaign financing of parliamentary and local elections. GRECO expects that a swift adoption of the “transparency package” will ensure progress in these areas as well.
22. In the meantime, GRECO concludes that recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.

III. CONCLUSIONS

23. **In light of the above, GRECO concludes that Turkey has not made any tangible progress in the implementation of the eleven recommendations found to be not or partly implemented in the *Interim Compliance Report*.** Out of a total of seventeen recommendations, six recommendations remain implemented satisfactorily. Seven recommendations remain partly implemented and four not implemented.
24. Specifically, with respect to Theme I – Incriminations, recommendations i, ii, iii, iv, vi and viii have been implemented satisfactorily and recommendations v and vii remain partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.
25. In relation to Theme I (Incriminations), GRECO welcomed the adoption of a new legal framework for the criminalisation of corruption offences already in the Second Compliance Report, as well as further amendments to the jurisdictional rules and the ratification by Turkey of the Additional Protocol to the Criminal Law Convention on Corruption, noted in the *Interim Compliance Report*. Nevertheless, GRECO regrets that shortcomings remain with regard to the provisions on private sector bribery and the special defence of effective regret.
26. In so far as Theme II (Transparency of Party Funding) is concerned, GRECO welcomes that the newly elected government declared in its programme released on 25 November 2015 that the matter was among its top priorities and that the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, which aims to address GRECO recommendations, will be enacted soon. It looks forward to receiving more concrete information on the content of the draft bill by its next report. Moreover, regulatory measures aimed at providing advice to political parties have not been adopted yet. Therefore, GRECO once more urges the authorities to enhance their efforts to carry through the reforms initiated and to pay particular attention to the effectiveness of measures planned.
27. In view of the above, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
28. Pursuant to paragraph 2(i) of Rule 32 of the Rules of Procedure, GRECO requests the Head of Delegation of Turkey to provide a report regarding the action taken to implement the pending

recommendations (i.e. recommendations v and vii regarding Theme I and recommendations i to ix regarding Theme II) by 30 September 2016.

29. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii) b), to request the President of the Statutory Committee to send a letter to the Permanent Representative of Turkey to the Council of Europe, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
30. Finally, GRECO invites the authorities of Turkey 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.