

Strasbourg, 16 May 2012

Public
Greco RC-III (2012) 6E

Third Evaluation Round

Second Compliance Report on Slovenia

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 55th Plenary Meeting
(Strasbourg, 14-16 May 2012)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures, by the authorities of Slovenia taken since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Slovenia. It is recalled that the Third Evaluation Round covers 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 35th Plenary Meeting (7 December 2007) and made public on 13 June 2008, following authorisation by Slovenia (Greco Eval III Rep (2007) 1E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 46th Plenary meeting (26 March 2010) and made public on 15 September 2010, following authorisation by Slovenia ([Greco RC-III \(2009\) 1E](#)).
3. As required by GRECO's Rules of Procedure, the Slovenian authorities submitted their Second Situation Report with additional information regarding actions taken to implement the recommendations that were partly implemented or not implemented, according to the Compliance Report. This report, which was received on 11 October 2011, together with updates sent on 17 February 2012, served as a basis for the Second Compliance Report.
4. GRECO selected Germany and Finland to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Markus BUSCH, Head of Division, Economic, Computer, Corruption-related and Environmental Crime, Ministry of Justice (Germany) and Mr Kaarle LEHMUS, Inspector General of the Police, National Police Board (Finland). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 6 recommendations to Slovenia in respect of Theme I and that recommendations i, ii and vi were considered as implemented satisfactorily, recommendation v was deemed to be dealt with in a satisfactory manner in the Compliance Report. The remaining recommendations are dealt with below.

Recommendations iii and iv.

6. *GRECO recommended to abolish the requirement of double criminality with respect to the offences of bribery and trading in influence.*

7. *GRECO recommended to extend the scope of Article 122 of the Criminal Code in order to allow for the exercise of jurisdiction over bribery and trading in influence offences committed outside Slovenia by/or involving Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens.*
8. GRECO recalls that these recommendations were considered as partly implemented in the Compliance Report. Although Slovenia had effectively extended its jurisdiction over corruption offences committed abroad, GRECO considered that the need for approval by the Minister of Justice to prosecute cases where the requirement of dual criminality was not fulfilled could lead to the risk of a political decision in such instances. Moreover, GRECO had doubts whether the approval of the Minister of Justice covered all instances of active bribery and trading in influence committed by Slovenian citizens abroad, which would not necessarily target Slovenia or one of its citizens.
9. The authorities now report that amendments to the Criminal Code were adopted on 2 November 2011; they will enter into force on 15 May 2012. Pursuant to these amendments, the condition of dual criminality is no longer required when the offence is deemed to be a criminal offence according to an international treaty or the general principles of law of the international community (Article 13 (3) CC)¹. Broad jurisdiction would be established on that basis, independently of the nationality of the offender or of whether the offence is committed against Slovenia or one of its citizens. In such cases, the perpetrator may be prosecuted in Slovenia, with the permission of the Minister of Justice of Slovenia (Article 14 (7) CC)². This is a formal requirement which would not hamper prosecution of the offence in question, if such an offence is criminalised under an international text or principles of law.
10. GRECO notes that it is possible for Slovenia to establish jurisdiction for offences committed abroad – independently of the nationality of the offender, or of whether the offence targets Slovenia or one of its citizens – if the offence is criminalised by an international treaty or on the basis of the general principles of law of the international community which criminalise certain offences, the Criminal Law Convention on Corruption (ETS 173) being one of such instruments. Dual criminality is no longer required in those instances (recommendation iii). This should better assist Slovenia to extend its competence to prosecute corruption offences committed abroad, in particular, in connection with bribery and trading in influence offences committed outside Slovenia by/or involving Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens (recommendation iv). That said, GRECO notes, that the assumption of a broad jurisdiction for offences committed outside Slovenia and the lifting of the requirement of dual criminality is dependent on permission from the Minister of Justice. As mentioned before, GRECO already warned, in its Compliance Report (paragraph 18) of the risk of a political decision being involved in such cases. This concern continues to be of relevance with the new amendments to the CC. While GRECO takes note of the explanations provided by the authorities stressing that the need for permission from the Minister of Justice is a merely formal requirement which should not hamper the prosecution of criminal cases, it considers that there is no established practice which sufficiently substantiates this interpretation. Moreover, the need for permission from the

¹ Article 13, paragraph 3, Criminal Code:

The Criminal Code of the Republic of Slovenia is applicable to anyone who commits abroad any criminal offence that is prosecuted under an international treaty or according to the general principles of law recognised by the international community, irrespective of the place where the criminal offence was committed.

² Article 14, paragraph 7, Criminal Code:

In cases under paragraph 3 of Article 13 of this Criminal Code, the perpetrator may be prosecuted only with the permission of the Minister of Justice.

Minister of Justice is an additional requirement provided by the Slovenian CC which is not foreseen in the Convention.

11. GRECO concludes that recommendations iii and iv remain partly implemented.

Theme II: Transparency of Party Funding

12. It is recalled that GRECO in its Evaluation Report addressed 13 recommendations to Slovenia in respect of Theme II. Following the adoption of the Evaluation Report, the authorities reported on amendments underway with respect to key legislation in this area, i.e. the Elections and Referenda Campaigns Act (2007) and the Political Parties Act (1994, as amended). At the time of adoption of the Compliance Report the draft amendments were still undergoing discussion; pending their formal adoption and further legislative adjustments, the recommendations addressed to Slovenia were assessed as either partly (recommendations i, ii, iv, v, vi, vii, viii, ix, x, xi, xii, xiii) or not implemented (recommendation iii).
13. The authorities now report that a new Government was elected in December 2011; the draft amendments to the Elections and Referenda Campaigns Act (2007) and the Political Parties Act (1994, as amended) are still under discussion.
14. In particular, no new updates have been provided concerning the draft amendments to the Elections and Referenda Campaigns Act (2007), other than those already highlighted, and assessed by GRECO in the Compliance Report of 2010 (Greco RC-III (2009) 1E). The authorities stress that no political consensus has been achieved since then to advance reform, including, *inter alia*, through the adoption of the proposed amendments.
15. With respect to the Political Parties Act (1994, as amended), some new information has been provided. In this connection, it is recalled that, at the time of adoption of the Compliance Report in 2010, the authorities did not submit any details concerning the concrete amendments proposed to the Political Parties Act. The authorities now bring some more light to the proposed reforms, but also explain that there is a certain level of disagreement concerning the draft prepared by the Ministry of the Interior and sent to other institutions for consultation (for example, regarding the proposed ban on corporate donations).
16. GRECO regrets the lack of substantial progress in this field. More than four years after the adoption of the Third Round Evaluation Report on Slovenia, reform seems to have stalled and none of the proposed changes to upgrade legislation on party funding has yet materialised in practice.

Recommendation i.

17. *GRECO recommended to require parties and election campaign organisers to disclose their income and expenditure in greater detail, including the nature and value of individual (cash and in-kind) donations and loans.*
18. GRECO considered this recommendation as partly implemented in the Compliance Report. The changes proposed in the draft amendments to the Elections and Referenda Campaigns Act contained specific provisions to better identify the income received and the expenditure made by campaign organisers during election campaigns. No information was available with respect to the reporting requirements on political parties.

19. The authorities of Slovenia now report new details concerning the draft amendments to the Political Parties Act, which include requirements concerning the acquisition of loans. In particular, limitations are proposed with respect to loans from abroad. In addition, it will only be possible to acquire loans at banks and saving-banks under the same conditions as those provided for any other legal person. If the annual quota of the loan exceeds three average monthly salaries (4,638.27 EUR), the political party is to disclose in its annual report, details on the identity of the lending institution, as well as on the total amount lent. Moreover, the draft amendments provide for the obligation to disclose the nature and value of individual donations exceeding one average monthly salary (donations over 1,546.09 EUR)³.
20. GRECO takes note of the new information provided. GRECO welcomes the fact that the proposed amendments to the Political Parties Act include specific requirements concerning the disclosure of loans by political parties, an issue which had not been addressed before. GRECO also acknowledges that provision has been made in the draft to better disclose individual donations, notably by lowering the disclosure threshold of donations from individuals, i.e. from three average salaries to one average salary (1,546.09 EUR). It is recalled that the Third Evaluation Round Report (paragraph 107) signalled that hardly any donation exceeded the three average salaries threshold and that, as a result, the only information available to the public was the total sum of collected donations. Although the new developments reported are promising, the draft amendments are yet to be adopted.
21. Concerning transparency requirements imposed on campaign organisers, GRECO notes that no significant developments have taken place since the adoption of the Compliance Report. The amendments to the Elections and Referenda Campaigns Act, which include provisions concerning the identification of income and expenses of election campaigns, are still to be adopted.
22. Pending adoption of the relevant legislative amendments, GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

23. *GRECO recommended to (i) require parties to provide separate details on the finances of organisations within the party structure as part of their annual and campaign reports, and; (ii) to adequately regulate the involvement of entities outside the party structure, related directly or indirectly to the party, in election campaigns.*
24. GRECO concluded in the Compliance Report that this recommendation was partly implemented. Some steps had been taken to address the first part of the recommendation as the draft amendments to the Elections and Referenda Campaigns Act contained provisions requiring election reports to include details on costs incurred during election campaigns by organisations within the party structure. However, no information was provided as to the need to ensure that the income and expenditure of the aforementioned type of organisations is tracked in the parties' annual accounts. This fell short of the requirements of the first part of recommendation ii. Furthermore, no step had been taken to address the second part of recommendation ii, notably, the lack of regulation concerning campaigning or fundraising by entities outside the party structure.

³ Salary rates published in the Official Gazette on 20 February 2012.

25. The authorities of Slovenia now indicate that the draft amendments to the Political Parties Act require political parties to include, in their annual reports, separate data on financial operations of organisations within the party structure.
26. GRECO notes that Slovenia has drafted provisions (in the proposed amendments to the Elections and Referenda Campaigns Act and the Political Parties Act, respectively) to require that election and annual reports provide separate details on the finances of organisations within the party structure. This improvement is to be welcomed as it aims to meet the first part of recommendation ii. However, these are only proposed amendments, which need to materialise in practice. With respect to the second part of recommendation ii, GRECO regrets that no steps have been taken to regulate the involvement of entities outside the party structure, related directly or indirectly to the party, in election campaigns.
27. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

28. *GRECO recommended to facilitate public access to the unabridged annual reports of political parties.*
29. GRECO concluded in the Compliance Report that this recommendation had not been implemented as no concrete action had been taken to facilitate public access to the unabridged annual reports of political parties.
30. The authorities of Slovenia now stress that the draft amendments to the Political Parties Act establish that the annual reports of political parties are to be published, in full, on the official website of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES).
31. GRECO welcomes the fact that provision has been made in the draft amendments to the Political Parties Act to publish the unabridged annual reports of political parties. However, the proposed amendments are yet to be adopted and their implementation to be secured in practice.
32. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

33. *GRECO recommended to assess whether there is a need to adjust the current spending limits for election campaigns, in order to promote transparency of the actual costs of campaigns.*
34. GRECO concluded in the Compliance Report that this recommendation was partly implemented as the authorities intended to adjust the spending limits for election campaigns, by raising their level, so that they would better match the real cost of running an election campaign in Slovenia. However, the proposed amendments which were made to the Elections and Referenda Campaigns Act to that effect, had yet to be adopted.
35. The authorities of Slovenia have not reported any new development concerning the implementation of this recommendation.

36. Pending adoption of the draft amendments to the Elections and Referenda Campaigns Act, which propose the adjustment of spending limits for election campaigns, GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

37. *GRECO recommended to seek ways to increase transparency as regards substantial corporate donations to political parties, and acts and decisions which could be beneficial to these donors.*
38. GRECO concluded in the Compliance Report that this recommendation was also partly implemented. The draft amendments to the Elections and Referenda Campaigns Act set forth an obligation for campaign organisers to report details on all donations received from legal persons, independently of their value; it also included a ban on donations from legal persons operating under public law (i.e. State bodies, self-governing local community bodies, legal persons of public law, humanitarian organisations, religious communities, public enterprises as defined by the Law on Transparency of Financial Relations, business organisations in which the State or a self-governing local community's invested capital exceeds 25%, and enterprises in which those organisations have a majority share according to the Law on Business Organisations). However, the aforementioned draft had yet to be adopted. Moreover, more information was requested concerning the transparency of corporate donations outside electoral periods.
39. The authorities of Slovenia now report that a proposal has been made, in the draft amendments to the Political Parties Act, to completely ban corporate donations. The authorities also stress that this proposal is highly controversial.
40. GRECO notes that no real progress has been made in this area. GRECO takes note of the proposal made to ban all corporate donations (in the draft amendments to the Political Parties Act), which appears to supersede the reported intention of the authorities to only limit donations from legal persons operating under public law and to increase the transparency of all other corporate donations (as foreseen in the draft amendments to the Elections and Referenda Campaigns Act). GRECO notes that the decision of whether to ban or not corporate donations is a matter which the Slovenian authorities are to consider and that, in any event, falls out of the scope of the Third Round Evaluation. In particular, corporate donations are dealt with in Article 5 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. The aforementioned provision does not include any requirement as to an outright ban on corporate donations; this is an option which is left to the States to decide according to what best suits the national context with the ultimate aim of preventing big money from being in command of political decision making.
41. In view of the existing uncertainty and the co-existence of contradictory proposals being made in this area of concern, GRECO concludes that Slovenia is still at a very early stage of implementation of this recommendation. GRECO, therefore, considers recommendation v as not implemented.

Recommendation vi.

42. *GRECO recommended to (i) to undertake a comprehensive audit of the finances of political parties represented in Parliament, both as regards public and private funding, in accordance with international audit standards; (ii) to provide more resources to the Court of Audit to carry out these audits, as well as those of election campaign organisers; and (iii) to give the Court of Audit*

a mandate and resources to investigate routine party finances and to enhance its capacity to investigate campaign finances.

43. GRECO assessed this recommendation as partly implemented in the Compliance Report since, although there were plans underway to enhance the capacity of the Court of Audit to investigate campaign finances (third component of recommendation vi), these plans were yet to materialise in practice, including by increasing the resources of the Court of Audit (second component of recommendation vi). Moreover, no information had been provided concerning the capacity of the Court of Audit to investigate routine party finances, nor to carry out a comprehensive audit of the finances of political parties represented in Parliament (first component of recommendation vi).
44. The authorities of Slovenia now report that, pursuant to the draft amendments of the Elections and Referenda Campaigns Act and the Political Parties Act, the Court of Audit will be given responsibility and powers to investigate both routine party finances (for those parties receiving a public subsidy of more than 10,000 EUR) and campaign finances. The draft amendments to the Political Parties Act also envisage specific rules on the work programme that the Court of Audit is to develop concerning the review of routine party finances, in order to ensure that all parties are under public scrutiny (annual and four-year schedule for routine audits, as well as *ad hoc* audits when suspicions of false information provided in the annual reports arise, or if the Commission for the Prevention of Corruption proposes that the Court of Audit do so).
45. GRECO notes the proposals tabled to ensure a comprehensive audit of party finances, as per the first part of recommendation vi. GRECO also takes note of the plans to entrust the Court of Audit with greater investigative powers concerning routine party finances and campaign finances, in line with the last part of recommendation vi. GRECO, however, regrets that no information has been provided as to whether the Court of Audit will be vested with the adequate resources to accomplish its new responsibilities in this area, in line with the second part of recommendation vi.
46. GRECO concludes that recommendation vi remains partly implemented.

Recommendations vii, xi and xiii.

47. *GRECO recommended to clarify the jurisdiction and scope of competences of all authorities entrusted with supervisory tasks as regards party and campaign finances.*
48. *GRECO recommended to consider providing an institutionally independent entity with the responsibility for imposing sanctions for political finance offences.*
49. *GRECO recommended to examine the advisability of entrusting a single, independent body (whether existing or yet to be created) with the mandate and resources to effectively supervise, investigate and enforce political finance regulations.*
50. GRECO recalls that the authorities of Slovenia had implemented these recommendations partly according to the Compliance Report as, although concrete legislative proposals had been made to better clarify and strengthen the institutional framework with respect to monitoring/sanctioning of political finance regulations, such legislative proposals had yet to be formally adopted and effected in practice.
51. The authorities of Slovenia stress that the draft amendments to the Elections and Referenda Campaigns Act and the Political Parties Act foresee that oversight of the activities of political

parties will be coordinated as follows: the Inspectorate of the Republic of Slovenia for Internal Affairs would be responsible for registration of political parties (verifying status and organisation of a political party), the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES) would be responsible for publishing annual reports of political parties, and the Court of Audit would be given full monitoring responsibility over political finances. Finally, the Circuit Court in Ljubljana would be responsible to decide, at the initiative of the Court of Audit, on misdemeanours committed with regard to the funding of political parties.

52. GRECO notes that a reworked definition of responsibilities has been proposed in the area of party funding; however, the legislative initiatives giving effect to such restructuring, still need to be adopted. Moreover, it will be imperative to ensure that the responsible institutions are provided with adequate resources to effectively fulfil their tasks.
53. GRECO concludes that recommendations vii, xi and xiii remain partly implemented.

Recommendation viii.

54. *GRECO recommended to (i) increase the maximum level of sanctions included in the Political Parties Act and the Elections and Referenda Campaigns Act to ensure that these can be effective, proportionate and dissuasive in practice and (ii) ensure that donations received in violation of the Elections and Referenda Campaigns Act and/or Political Parties Act are not kept by the party.*
55. GRECO also assessed this recommendation as partly implemented in the Compliance Report. Some steps had been taken to increase the maximum level of sanctions included in the Elections and Referenda Campaigns Act; however the proposed amendments had to be adopted. Moreover, nothing was reported as to changes in the sanctions provided by the Political Parties Act. Finally, GRECO considered that more had to be done to ensure that donations received in violation of the relevant party/campaign funding obligations were not kept by the party.
56. The authorities of Slovenia now report that, in addition to the draft amendments to the Elections and Referenda Campaigns Act already referred to at the time of adoption of the Compliance Report, the proposed amendments to the Political Parties Act also envisage an upgrade of the sanctioning regime in this area, including by increasing the applicable monetary fines.
57. GRECO takes note of the plans of the authorities to increase monetary fines in the event of infringements of the applicable legislation in this area, and thereby to concur with the requirements of the first part of the recommendation. However, the proposed legislative amendments still need to be adopted. GRECO regrets the lack of any concrete measure to ensure that donations received in violation of the Elections and Referenda Campaigns Act and/or Political Parties Act are not kept by the party, as per the second part of the recommendation.
58. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

59. *GRECO recommended to provide sanctions for all infringements of the Elections and Referenda Campaigns Act, in particular for accepting funds from non-permitted sources and of non-permitted amounts, for intentionally submitting a false, incorrect or incomplete report and for*

undertaking campaign activities outside the campaign period which extend into the prescribed election campaign period.

60. GRECO concluded, in the Compliance Report, that pending adoption of the new sanctioning provisions included in the draft amendments to the Elections and Referenda Campaigns Act, this recommendation was partly implemented.
61. The authorities of Slovenia have not reported any new developments as to the adoption of draft amendments to the Elections and Referenda Campaigns Act.
62. Pending adoption of the draft amendments to the Elections and Referenda Campaigns Act, GRECO concludes that recommendation ix remains partly implemented.

Recommendations x and xii.

63. *GRECO recommended to raise awareness on the possibility to impose sanctions for violations of the campaign finance provisions even after an election campaign organiser ceases to exist in this capacity.*
64. *GRECO recommended to raise public awareness on the importance of political funding and the damage caused by questionable political finance practices.*
65. GRECO concluded in the Compliance Report that these recommendations had only been partly implemented. GRECO welcomed some of the initial steps taken by the authorities to increase public awareness on the importance of political funding and the damage caused by questionable political finance practices. However, GRECO considered those steps as some preliminary measures which had to be further intensified once the amendments to the Elections and Referenda Campaigns Act and the Political Parties Act were adopted.
66. The authorities of Slovenia have not reported any new developments concerning implementation of recommendations x and xii.
67. GRECO can only reiterate its position, as expressed in the Compliance Report, and therefore concludes that more determined action clearly needs to be taken in respect of awareness-raising; for that reason, recommendations x and xii remain partly implemented.

III. CONCLUSIONS

68. **In view of the conclusions contained in the Third Round Compliance Report on Slovenia and in view of the above, GRECO concludes that Slovenia has implemented satisfactorily or dealt with in a satisfactory manner in total only four of the nineteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and vi have been implemented satisfactorily, recommendation v has been dealt with in a satisfactory manner and recommendations iii and iv remain partly implemented. Regarding Theme II – Transparency of Party Funding, not one single recommendation has been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations i-iv and vi-xiii have been partly implemented and recommendation v has not been implemented.
69. Concerning incriminations, Slovenia introduced new amendments to the Criminal Code in 2011 to, *inter alia*, further facilitate the prosecution of corruption offences committed abroad. However,

concerns remain as to the role that the Minister of Justice is to play when granting permission for such prosecutions to be initiated in Slovenia, and in particular, the risk of political interference.

70. In so far as the transparency of political funding is concerned, Slovenia has not made any substantial progress since the adoption of the Compliance Report in 2010. There are two drafts underway to introduce improvements in this area, i.e. the draft amendments to the Elections and Referenda Campaigns Act and the Political Parties Act. These drafts are meant to provide for greater transparency of party and campaign accounts – including individual donations and loans, clearer oversight responsibilities and enhanced powers of the Court of Audit, and increased monetary sanctions for failure to comply with the law. It is most regrettable that no concrete material improvements have occurred over recent years and the two proposed drafts have not been adopted. Slovenia clearly needs to take more convincing action in this field.
71. To sum up, Slovenia has not made any tangible progress in Theme II – Transparency of Party Funding as compared to the situation assessed in the first Compliance Report more than two years ago (and well over four years since the adoption of the Evaluation Report). More particularly, none of the thirteen recommendations addressed to the country in the aforementioned area has been implemented satisfactorily or dealt with in a satisfactory manner. Under these circumstances, GRECO has no choice but to consider the situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Slovenian delegation to provide a report on the progress made in implementing recommendations iii and iv (Theme I – Incriminations) and recommendations i to xiii (Theme II – Transparency of Party Funding), as soon as possible, however – at the latest – by 30 November 2012, pursuant to paragraph 2(i) of that Rule.
72. GRECO invites the authorities of Slovenia 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.