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Third Evaluation Round

Second Compliance Report on the Russian Federation

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

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"Transparency of Party Funding"

Adopted by GRECO
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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of the Russian Federation to implement the 18 pending recommendations issued in the Third Round Evaluation Report on the Russian Federation (see paragraph 2), covering two distinct themes, namely:

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

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

2. The Third Round Evaluation Report was adopted at GRECO's 54th Plenary Meeting (20-23 March 2012) and made public on 13 August 2012, following authorisation by the Russian Federation (Greco Eval III Rep (2011) 6E, Theme I and Theme II). The Third Round Compliance Report was adopted by GRECO at its 64th Plenary Meeting (16-20 June 2014) and made public on 24 November 2014, following authorisation by the Russian Federation (Greco RC-III (2014) 1E).

3. As required by GRECO's Rules of Procedure, the authorities of the Russian Federation submitted a Situation Report on measures taken to implement the recommendations. This report was received on 21 December 2015 and served, together with the information submitted subsequently, as a basis for the Second Compliance Report.

4. GRECO selected the Czech Republic and Slovenia to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Ms Lenka HABRNÁLOVÁ on behalf of the Czech Republic and Ms Vita HABJAN BARBORIČ on behalf of Slovenia. They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO, in its Evaluation Report, had addressed 9 recommendations to the Russian Federation in respect of Theme I. In the subsequent Compliance Report, GRECO concluded that i and ix had been implemented satisfactorily or dealt with in a satisfactory manner, recommendations vi and viii had been partly implemented and recommendations ii-v and vii had not been implemented. Compliance with the pending recommendations is dealt with below.

Recommendation ii.

6. *GRECO recommended to ensure that bribery of domestic and foreign arbitrators is criminalised unambiguously and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*

7. GRECO recalls that at the stage of the Compliance Report, the recommendation had not been implemented. The authorities had referred, first, to the Draft Federal Law "On Amendments to certain legislative acts of the Russian Federation" in connection with the adoption of the Federal Law "On Arbitration in the Russian Federation", developed jointly by the Ministry of Justice, the Ministry of Economic Development, the Russian Union of Industrialists and Entrepreneurs and the Chamber of Commerce of the Russian Federation, in order to criminalise bribery of arbitrators under the chapter covering crimes against the public service, in articles 290 (bribe-taking), 291 (bribe-giving), 291.1 (mediation in bribery) and 304 PC (provocation of a bribe/commercial bribe). Second, reference was made to the Draft Federal Law "On Making Amendments to Legislative Acts of the Russian Federation with a View to Reinforcing Liability for Corruption" elaborated by the Prosecutor General's Office, under which it was proposed to supplement the Penal Code (hereafter PC) with article 202.2 criminalising the bribery of arbitrators under the chapter covering crimes against the interests of service in commercial and other entities. GRECO acknowledged those reform initiatives but noted several shortcomings in both draft legal acts. Moreover, they had not yet been formally submitted to Parliament.

8. As far as ratification of the Additional Protocol to the Criminal Law Convention on Corruption is concerned, the Ministry of Justice had prepared a draft action plan ("Roadmap") aimed at improving the existing legislation for the purposes of aligning it with the Additional Protocol. However, the planned measures had not yet materialised.

9. The authorities now report that Federal Laws No. 382-FZ "On Arbitration (Arbitration Proceedings) in the Russian Federation" and No. 409-FZ "On Amending Certain Legislative Acts of the Russian Federation in Connection with the Adoption of the Federal Law 'On Arbitration (Arbitration Proceedings) in the Russian Federation'" were adopted on 29 December 2015 and entered into force on 1 September 2016. These laws regulate the procedure for arbitration proceedings, establish the status of arbitrators and their obligations, regulate the issue, execution and cancellation of decisions of the arbitration court, the procedures for the establishment of permanent arbitration institutions and the implementation of their activities, including the fixing of minimum requirements for internal documents, structure and organisation. The authorities explain that these laws are meant to create a legal framework for the future criminalisation of bribery of arbitrators and for the ratification of the Additional Protocol to the Criminal Law Convention on Corruption. They clarify that Law No. 409-FZ is based on the draft law presented in the Compliance Report (i.e. the first draft law mentioned in paragraph 7 above) which, however, underwent some changes in the legislative process. In contrast to the draft, Law No. 409-FZ does not criminalise bribery of arbitrators under the Chapter of the PC covering crimes against the public service, i.e. in articles 290, 291, 291.1 and 304 PC. Instead, it is planned to extend the application of articles 202 (abuse of powers) and 204 PC (commercial bribery) to arbitrators/arbitration judges, including foreign arbitrators. Shortly before the examination of the present report, the authorities presented a draft law prepared by the Prosecutor General's Office which foresees such an extension. This Draft Federal Law No. 3633-7 "On Making Amendments to the Penal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation in Order to Strengthen Responsibility for Corruption" was submitted by a member of parliament to the State Duma of the Federal Assembly of the Russian Federation on 11 October 2016, after consultations with relevant stakeholders.

10. GRECO takes note of the reported adoption of legislation to regulate the functioning and status of arbitrators, and of the submission to Parliament of draft legislation extending the scope of the private bribery offences to domestic and foreign arbitrators. While these are clearly steps in the right direction, GRECO is concerned that the relevant provisions (in article 204 PC) fall short of

the requirements of Articles 2 and 3 of the Additional Protocol concerning, notably, the omission of the elements of "offering", "promising" and "requesting" an advantage and "accepting an offer or a promise" of "any undue advantage", and of indirect commission of the offences (see the current text of the relevant provisions of article 204 PC under recommendation vi below). Finally, it would appear that no concrete steps directed at the ratification of the Additional Protocol to the Criminal Law Convention on Corruption have been taken yet. GRECO invites the authorities to further amend the draft legislation and to carry through the reform process.

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

Recommendation iii.

12. *GRECO recommended to introduce the concepts of "offering", "promising" and "requesting" an advantage and "accepting an offer or a promise" in the provisions of the Criminal Code on active and passive bribery, in line with the Criminal Law Convention on Corruption (ETS 173).*

13. GRECO recalls that in the Compliance Report it had concluded that the recommendation had not been implemented. While GRECO took the view that the planned amendments to the active and passive bribery provisions under articles 291, paragraph 1 and 290, paragraph 1 PC – foreseen in the Draft Federal Law "On Making Amendments to Legislative Acts of the Russian Federation with a View to Reinforcing Liability for Corruption" – were generally in line with the recommendation (bar the omission of the element of "request" in the provision on passive bribery), it noted that the draft law was still to be formally presented to Parliament. The authorities had also referred to Resolution No. 24 of the Plenum of the Supreme Court "On Court Practice in Cases of Bribery and Other Corruption Offences" and its paragraph 14, according to which the "promise" or "offer" of a bribe were to be categorised as "creating conditions" for committing corruption offences or as "preparation" for giving or receiving a bribe, depending on the circumstances. GRECO stressed that this was at variance with the Criminal Law Convention on Corruption, which considers the actions of "offering", "promising" and "requesting" an advantage and "accepting an offer or a promise" as sufficient actions to compose the completed bribery offence.

14. The authorities now report that the above-mentioned draft law was not adopted. Instead, they refer to Federal Law No. 324-FZ "On Amending the Penal Code of the Russian Federation and the Criminal Procedure Code of the Russian Federation" aimed at improving criminal liability for corruption crimes, prepared by the Supreme Court at the initiative of the Prosecutor General's Office (adopted on 3 July 2016 and entry into force on 15 July 2016). It amends the PC provisions on "Mediation in Bribery" so as to criminalise promising and offering such mediation (cf. article 291.1, paragraph 5 PC). The authorities furthermore reiterate that according to Resolution No. 24 of the Plenum of the Supreme Court, the "promise" or "offer" of a bribe constitute the crime of "preparation" of a bribery offence. Finally, the authorities state that the illegal offer or promise on behalf of or in favour of a legal entity may entail administrative liability under article 19.28 of the Code of Administrative Offences, which has proved effective and is to be further amended by the Draft Federal Law No. 865589-6.

15. Furthermore, the Draft Federal Law No. 3633-7 presented by the authorities shortly before the examination of the present report includes a new draft article 291.3 PC criminalising the "promising, offering or requesting to accept or to hand over a bribe, as well as conspiracy with the view to handing over (receiving) a bribe (in the absence of elements of crimes stipulated in articles 290, 291, 291.1 and 291.2 of the present Code)".

16. GRECO notes with concern that the recent amendments to the corruption-related provisions of the PC – through Federal Law No. 324-FZ – have not introduced the concepts of "offering", "promising" and "requesting" an advantage and "accepting an offer or a promise" into the basic bribery provisions, as recommended, but have only criminalised promising and offering mediation in bribery. This is a significant step backwards compared to the previous draft amendments to the PC presented in the Compliance Report. As far as the reference made by the authorities to administrative liability – which is limited to legal persons – is concerned, GRECO underlines that it has repeatedly stressed the need and importance of dealing with acts of corruption under the criminal justice system, in keeping with the Criminal Law Convention on Corruption.

17. That said, GRECO welcomes the submission to Parliament of new draft legislation aimed at criminalising the "promising, offering or requesting to accept or to hand over a bribe, as well as conspiracy with the view to handing over (receiving) a bribe". While this draft goes in the direction recommended, GRECO has misgivings about the sanctions foreseen for such acts under the draft legislation which are significantly lower than those provided for by current legislation for situations where the bribe has actually been handed over.[1] It refers in this respect to the concerns it has expressed on various occasions about the different treatment of basic forms of corrupt behaviour. Moreover, GRECO invites the authorities to further refine the draft provisions to make it clear that they explicitly cover the acceptance of an offer or a promise, and to carry through the reform process.

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

Recommendation iv.

19. *GRECO recommended to broaden the scope of the bribery provisions of the Criminal Code so as to ensure that they cover clearly any form of (undue) advantage (in the meaning of the Criminal Law Convention on Corruption, ETS 173), including any non-material advantages – whether they have an identifiable market value or not.*

20. GRECO recalls that, in line with the Criminal Law Convention on Corruption, draft legislation had been prepared to include a reference to any form of undue advantage in the notion of a bribe as contained in article 290, paragraph 1 PC (bribe-taking) and with respect to article 291 PC (bribe-giving), However, as neither of the two drafts presented had been officially submitted to Parliament, GRECO had concluded in the Compliance Report that the recommendation had not been implemented.

21. The authorities now refer, firstly, to "practical recommendations on the application of the legislation of the Russian Federation for the purposes of seizure of property from the briber or other person obtained as a result of bribery and forfeiture of illegally obtained benefits of property and non-property nature from such individuals", developed by the Ministry of Justice jointly with the Ministry of Internal Affairs, the Prosecutor General's Office, the Investigative Committee and the government Institute of Legislation and Comparative Law. According to these recommendations, non-property benefits obtained illegally by the briber or another person as a result of a bribe are to include improved social status, promotion and career development, favourable work or service appraisals, awards and titles, work or service certification.

[1] e.g. the maximum sanctions for basic cases of active bribery are up to two years' imprisonment with a fine under the present article 291, paragraph 1 PC, and up to one year's imprisonment with a fine under draft article 291.3, paragraph 1 PC.

22. Secondly, according to the authorities, court practice shows that non-material advantages which do not have an identifiable market value are covered by the criminal law provisions on bribery. They state that in 2015, 121 persons were sentenced for bribery involving non-material advantages.[2]

23. Thirdly, the authorities refer to Draft Federal Law No. 3633-7 which replaces the term "services of property nature, granting of other property rights" in the bribery provisions by the term "services of property or non-property nature, granting of other property or non-property rights, undue advantages".[3]

24. GRECO takes note of the information provided. The practical recommendations referred to by the authorities only concern the range of property and other benefits obtained as a result of bribery which can be subject to seizure or forfeiture. As far as the bribery provisions of the PC are concerned, and which are targeted by recommendation iv, GRECO notes that the authorities report in this respect that court practice confirms that the bribery provisions of the PC cover non-material advantages. However, GRECO refers to the Evaluation Report which stressed in this respect that corruption acts involving any – including non-material – advantages need to be *explicitly* criminalised under the bribery provisions. GRECO is concerned about the fact that the reference to any form of undue advantage, included in the draft provisions presented in the Compliance Report, has not been maintained in the new law amending the PC (i.e. the Federal Law No. 324-FZ mentioned above under recommendation iii). That said, GRECO welcomes that new draft legislation has now been submitted to Parliament which includes such an explicit reference.

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

Recommendation v.

26. *GRECO recommended to ensure that the bribery offences of the Criminal Code are construed in such a way as to cover, unambiguously, instances where the advantage is not intended for the official him/herself but for a third person, whether natural or legal.*

27. GRECO recalls that, the Draft Federal Law "On Making Amendments to Legislative Acts of the Russian Federation with a View to Reinforcing Liability for Corruption" (cf. above under recommendation iii) included amendments to the passive bribery provisions under article 290, paragraph 1 PC, to unambiguously cover situations where an undue advantage is not intended for the bribe-taker him/herself but for a third person, whether natural or legal. However, as the draft law had not yet been officially presented to Parliament, GRECO concluded in the Compliance Report that the recommendation had not been implemented.

28. The authorities now report that Federal Law No. 324-FZ, which entered into force on 15 July 2015, amended the active and passive bribery provisions of articles 290, paragraph 1 and 291, paragraph 1 PC to include third party beneficiaries as follows:

[2] The authorities refer to court statistics available on the web-site of the Judicial Department at the Supreme Court (http://www.cdep.ru/index.php?id=150&item=3420).
[3] Draft article 290, paragraph 1 PC.

Article 290 of the Penal Code – Bribe-taking
"1. Receipt by an official, a foreign official, or an official of a public international organisation, whether personally or through an intermediary, of a bribe in the form of money, securities, other property or illegal rendering of services of property nature, granting of other property rights, ***including when the bribe is transferred on the instruction of an official to another natural or legal person,*** *for commission of acts/failures to act in favour of the briber or the persons s/he represents, if such acts/failures to act fall within the official powers of the official or if s/he is able, through his/her official position, to facilitate such acts/failures to act, as well as general patronage or connivance in the civil service ..."*

Article 291 of the Penal Code – Bribe-giving
"1. The giving of a bribe to an official, a foreign official, or an official of a public international organisation, whether personally or through an intermediary, ***including when the bribe is transferred on the instruction of an official to another natural or legal person,*** *..."*

29. The authorities add that the term "on the instruction of an official" does not imply any written or formal act means that the official is aware of the fact that the bribe is given to a third party. It is to be understood as meaning "with the knowledge/consent of the official", thus ensuring that it can be established that the bribery act was committed with intent.

30. GRECO notes that the active and passive bribery provisions of the PC have been amended to include an explicit reference to third party beneficiaries. GRECO accepts the authorities' explanation that the term "on the instruction of an official" does not require a formal act by the official but establishes that the official had knowledge of the bribe being given to a third party, in line with the requirements of the Criminal Law Convention on Corruption.[4]

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

Recommendation vi.

32. *GRECO recommended (i) to align the criminalisation of bribery in the private sector, as provided for in article 204 of the Criminal Code, with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), in particular as regards the categories of persons covered, the different forms of corrupt behaviour, the coverage of indirect commission of the offence, of instances involving third party beneficiaries and of non-material advantages; and (ii) to abolish the rule that in cases of bribery offences in the private sector which have caused harm exclusively to the interests of a commercial organisation, prosecution is instituted only upon the application of this organisation or with its consent.*

33. GRECO recalls that the recommendation had been considered partly implemented in the Compliance Report. With respect to part (i) of the recommendation, a new draft article 204 PC had been elaborated to remedy several shortcomings identified in the Evaluation Report. However, several deficiencies remained and the draft amendments had not been officially submitted to Parliament GRECO therefore concluded that this part of the recommendation had not been implemented. Concerning part (ii) of the recommendation, Federal Law No. 302 (adopted on 2 November 2013) abolished clauses 2 and 3 of Note No. 1 to article 201 PC – which contained the rule that, in cases of bribery offences in the private sector which have caused harm exclusively to the interests of a commercial organisation, prosecution is instituted only if requested by that organisation or with its consent. While acknowledging that positive development, GRECO remained concerned that it may be offset by the co-existence of the old

[4] Cf. the Explanatory report to the Criminal Law Convention, paragraph 36.

criminal procedure rules. It therefore called on the authorities to amend the Criminal Procedure Code (namely, article 23) so as to mirror the amendments introduced in the PC. GRECO concluded that this part of the recommendation had been partly implemented.

34. Regarding part (i) of the recommendation, the authorities now report that Federal Law No. 324-FZ, which entered into force on 15 July 2015, introduced new provisions on bribery in the private sector in the PC which read as follows:

> ***Article 204 of the Penal Code – Commercial Bribery***
>
> *"1. Illegal transfer to a person performing managerial functions in a commercial or other organisation of money, securities, other property, rendering of services of property nature, granting of other property rights, including when on the instruction of that person such property is transferred or services are rendered or property rights are granted to another natural or legal person, in return for the commission of acts/failures to act in the interests of the briber or other persons, if such acts/failures to act fall within the official powers of that person or if s/he is able, through his/her official position, to facilitate such acts/failures to act ..."*
>
> *"5. Illegal receipt by a person performing managerial functions in a commercial or other organisation of money, securities, other property, and equally illegal using of services of property nature or other property rights, including when on the instruction of that person such property is transferred or services are rendered or property rights are granted to another natural or legal person, in return for the commission of acts/failures to act in the interests of the briber or other persons, if such acts/failures to act fall within the official powers of that person or if s/he is able, through his/her official position, to facilitate such acts/failures to act …"*

35. The authorities add that Federal Law No. 324-FZ also introduced new provisions on "Mediation in Commercial Bribery" and "Promise or Offer of Mediation in Bribery" (article 204.1 PC).

36. Moreover, the authorities refer to Draft Federal Law No. 3633-7 which foresees several amendments to the private sector bribery provisions of article 204 PC. In particular, the draft extends the range of possible bribe-takers to "employees of a profit-making or another organisation or persons authorised by such an organisation to act on its behalf";[5] it widens the concept of a bribe to also include "services of non-property nature", "granting of other non-property rights" and "undue advantages"; and it makes it clear that the active and passive bribery offences can be committed either "personally (directly) or through an intermediary (indirectly)". In addition, the draft law foresees a new article 204.3 PC which criminalises the "promising or offering to accept a commercial bribe or promising, offering or requesting to hand over a commercial bribe, as well as conspiracy with the view to handing over (receiving) a commercial bribe (in the absence of elements of crimes stipulated in articles 204, 204.1 and 204.2 of the present Code)".

37. Regarding part (ii) of the recommendation, the authorities again refer to Draft Federal Law No. 3633-7 according to which article 23 of the Criminal Procedure Code would be abolished, to mirror the amendments already introduced into the PC.

38. GRECO takes note of the information provided. The new provisions on bribery in the private sector represent a significant step backwards compared to the drafts presented in the Compliance Report. None of the elements of the first part of the recommendation have been taken into account, except for an explicit reference being made to third party beneficiaries. The new provisions restrict the private sector bribery offences to persons performing managerial functions and to the actual transfer or receipt of a bribe; they do not make it clear that any – including non-material – advantages are covered; they do not mention indirect commission of the

[5] As well as arbitrators, see above under recommendation ii.

offences. In this respect, the introduction of provisions on mediation in commercial bribery – which do not criminalise acts of bribery themselves – is insufficient to satisfy the requirements of the recommendation.

39. That said, GRECO welcomes that the new draft legislation recently submitted to Parliament includes amended draft provisions on "commercial bribery" which respond positively to practically all the above concerns and is also in line with the requirements of part (ii) of the recommendation. However, GRECO has misgivings about the sanctions foreseen in the draft legislation for certain bribery acts such as the offer, promise or request of a bribe, which are significantly lower than those provided for by current legislation for situations where the bribe has actually been handed over.[6] GRECO furthermore invites the authorities to further refine the draft provisions so as to make it clear that they explicitly cover the acceptance of an offer or a promise, and to carry through the reform process. In light of the above, both parts of the recommendation can now be considered as partly implemented.

40. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

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

42. GRECO recalls that in the Compliance Report, plans to criminalise trading in influence as a separate offence under the PC had been reported. However, in view of several remaining deficiencies in draft article 291.2 PC as well as the fact that the draft had not been officially submitted to Parliament, GRECO had concluded that the recommendation had not been implemented.

43. The authorities now report that with the involvement of the courts of general jurisdiction of all levels, the Supreme Court has conducted an analysis of judicial practice during the period 2013 to 2014 with respect to criminal cases falling under articles 159 (fraud), 201 (abuse of powers), 204 (commercial bribery), 285 (abuse of office), 286 (exceeding official powers), 290 (bribe-taking), 291 (bribe-giving) and 291.1 PC (mediation in bribery). It came to the conclusion that in various instances of trading in influence, the above offences had been applied in practice, including in cases where perpetrators promised or offered to exert influence on officials for illegal remuneration, even when they did not intend or have an opportunity to exert such influence. The authorities also refer to Resolutions of the Plenum of the Supreme Court, in particular to the Resolution No. 24 of 9 July 2013 "On Judicial Practice on Cases of Bribery and Other Corruption Offences" which i.a. clarifies that the actions of persons other than public officials who are involved in bribery are categorised as mediation in bribery (article 291.1 PC). Finally, they state that some courts expressed the view that the introduction of specific criminal law provisions on trading in influence would entail difficulties as a result of competition with other related offences (such as those mentioned above), in defining the mental element of the crime, in gathering evidence, etc.

44. The authorities furthermore refer to the recent Draft Federal Law No. 3633-7 which includes new draft provisions on "abuse of influence" which read as follows:

[6] E.g. the maximum sanctions for basic cases of active bribery are up to two years' imprisonment with a fine under the present article 204, paragraph 1 PC, and up to one year's imprisonment with a fine under draft article 204.3, paragraph 1 PC.

Article 291.4 of the Penal Code – Abuse of influence
"1. Illegal handing over, offering or promise to an individual personally (directly) or through an intermediary (indirectly) of money, securities, other property, rendering of property-related services or services of non-property character, granting of property-related or non-property rights or other undue advantages for him or her or other persons with a view to using his or her influence on taking a decision by a public official, a foreign public official or an official of a public international organization shall be punishable with a fine in the amount of fifteen to thirty times the amount of the sum of a bribe, or with compulsory work for a term of up to three years, or with deprivation of freedom for a term of up to two years with a fine in the amount which is up to ten times the amount of the sum of a bribe.
2. An individual's consent to use his or her influence on taking a decision by a public official, a foreign public official or an official of a public international organisation in connection with handing over, offering or promise of money, securities, other property, property-related services or services of non-property character, property-related or non-property rights or other undue advantages for him or her or other persons shall be punishable with a fine in the amount of twenty to forty times the amount of the sum of a bribe, or with compulsory work for a term of up to three years, or with deprivation of freedom for a term of up to three years with a fine in the amount which is up to fifteen times the amount of the sum of a bribe."

45. GRECO takes note of the information provided. It acknowledges that the authorities have carried out an extensive analysis of court practice and reported on decisions on various cases which may be assimilated with trading in influence. That said, GRECO takes the view that it is impossible to conclude without any doubt that all cases of trading in influence in the meaning of Article 12 of the Criminal Law Convention on Corruption are comprehensively and consistently applied across the country. Most of the cases referred to by the authorities – as well as the Resolutions of the Plenum of the Supreme Court they also refer to – concern instances of bribery, including participation and mediation in bribery, or other situations where a public official was directly involved (e.g. cases of abuse of office) whereas trading in influence in the meaning of Article 12 of the Convention on Corruption is a non-bribery based offence which also and typically targets situations where neither the influence peddler nor the other person (who e.g. offers or provides an advantage to the influence peddler) is a public official. Finally, while GRECO takes due note of practitioners' practical concerns about how to apply specific trading in influence provisions, it is convinced that adequate solutions can be found, as in other European countries that have included such provisions in their criminal legislation. To conclude, GRECO wishes to stress that the recommendation clearly requires the criminalisation of trading in influence as such, i.e. as a separate offence. It is therefore highly regrettable that Federal Law No. 324-FZ has not maintained the draft provisions on trading influence which were included in the previous draft presented in the Compliance Report.

46. Against this background, the recent submission to Parliament of new draft provisions on "abuse of influence" is a welcome development. The planned amendments to the PC are generally in line with the recommendation, except for the fact that they do not sufficiently cover the passive trading in influence; draft article 291.4, paragraph 2 PC only refers to "an individual's consent to use his or her influence", whereas Article 12 of the Convention requires that the "request, receipt or the acceptance of the offer or the promise of such an advantage" is covered.

47. GRECO therefore concludes that recommendation vii has been partly implemented.

Recommendation viii.

48. *GRECO recommended to extend the two year minimum limitation period for bribery offences under articles 291 and 184 of the Criminal Code.*

49. GRECO recalls that the recommendation had been assessed as being partly implemented in the Compliance Report. By virtue of Federal Law No. 198, (adopted on 23 July 2013), the statute of limitation for the crimes established by article 184 PC (bribery in sport and commercial entertainment contests) had been increased to ten years, in line with the requirements of the recommendation. As concerns article 291 PC (bribe-giving), information on two draft amendments had been submitted: one developed by the Prosecutor General's Office and another by the Ministry of Justice. Under the former, it was proposed to extend the statute of limitation under article 291 PC to three years and under the latter, to six years. Given the existence of two contradictory drafts and the fact that neither had been officially submitted to Parliament, it could not be concluded that this part of the recommendation had even been partly implemented.

50. The authorities now indicate that the two draft laws presented in the Compliance Report have not been submitted to Parliament. They refer instead to Federal Law No. 324-FZ which increased the maximum sanction available for active bribery involving a substantial bribe (i.e. a bribe exceeding a value of 25 000 RUB/approximately 350 EUR) under article 291, paragraph 2 PC to five years' imprisonment. Hence, the limitation period for such aggravated bribery offences has been increased automatically to six years. The authorities add that no changes were made with respect to basic cases of active bribery offences (covered by article 291, paragraph 1 PC) as they do not present a great public danger and occur quite rarely in practice. Official data from the Judicial Department at the Supreme Court shows that, in 2015, 5 388 persons were sentenced for active bribery and 274 of them (5%) were sentenced for basic offences falling under article 291, paragraph 1 PC. The authorities believe that an increase in the sanctions available for such basic offences to more than three years' imprisonment – which would then lead to a longer limitation period – would not be justified and proportionate.

51. GRECO notes that following amendments to the sanctioning regime introduced by Federal Law No. 324-FZ, the period of limitation for the commission of active bribery offences under article 291 PC increased to six years but only in aggravated cases involving a substantial bribe. While GRECO acknowledges the amendment which goes in the direction recommended, it regrets that the short limitation period (two years) for basic cases of active bribery – which was the main concern underlying the recommendation – has not been extended, as was planned at the time of the adoption of the Compliance Report.

52. GRECO concludes that recommendation viii remains partly implemented.

Theme II: Transparency of Party Funding

53. It is recalled that GRECO in its Evaluation Report had addressed 12 recommendations to the Russian Federation in respect of Theme II. The Compliance Report concluded that recommendation vii had been implemented satisfactorily, recommendations ii-vi and viii-xii had been partly implemented and recommendation i had not been implemented. Compliance with the pending recommendations is dealt with below.

Recommendation i.

54. *GRECO recommended to examine the various laws and regulations pertaining to election campaign financing at federal level so as to eliminate duplications and inconsistencies and to provide for a clear and robust legal framework.*

55. In the Compliance Report GRECO found that the recommendation had not been implemented. A legislative reform had been launched which was meant to address the gaps and shortcomings in different legal acts regulating elections and their financing. Furthermore, the regulations of the Central Election Commission (hereafter CEC) had undergone a review, and more than 100 of its regulations had been identified as requiring abrogation. However, most of the information presented by the authorities did not seem to respond directly to the concerns underlying this recommendation. The legal framework had not been simplified, nor had duplications and inconsistencies been eliminated, and no examination of the various laws and regulations pertaining to election campaign financing seemed to have been undertaken for those specific purposes.

56. The authorities now report that their efforts were further pursued with the adoption, and entry into force on 25 November 2014, of Federal Law No. 355-FZ "On amendments to some legislative acts of the Russian Federation pertaining to financial statements of political parties, electoral associations, candidates in elections to state and self-governing bodies" which amended Federal Law No. 67-FZ On Basic Guarantees of Electoral Rights and the Right to Participate in Referendums of Citizens of the Russian Federation" (LBG).

57. As a result, first, subparagraph "e" of section 58, paragraph 5 LBG has been repealed. It had stipulated that electoral funds could be formed, *inter alia,* by contributions received from the election commissions, leading to the inconsistencies in the legal framework described in paragraph 91 of the Evaluation Report. Second, the duplication of some provisions in Federal Law No. 19-FZ "On elections of the President of the Russian Federation (LPRE), Federal Law No. 20-FZ "On elections of deputies of the State Duma of the Federal Assembly of the Russian Federation" (LSDE) and the LBG was eliminated. In particular, the procedure for the formation and activities of the control and audit services at the election committees, as well as the categories of persons prohibited from making donations to the election funds are now regulated solely in the LBG. As far as publication requirements placed on the public media are concerned, an analysis by the CEC of the relevant legislation and practice during federal election campaigns in 2011 and 2012 came to the conclusion that there is no contradiction between the LBG and the special election laws. Under the LBG, the state all-Russian media are obliged to publish information on the receipt and use of electoral funds within three days – and they had done so in practice –, but there is deliberately no such timeframe imposed on other media in order to keep costs down.

58. The authorities furthermore state that the CEC analysed the use of its normative acts. Subsequently, on 23 September 2015 it adopted Resolution No. 308/1768-6 "On Declaring Certain Acts of the Central Election Commission of the Russian Federation Null and Void" and thereby annulled 110 CEC decisions which were no longer applicable or relevant.

59. GRECO acknowledges the adoption of Federal Law No. 355-FZ which amends several laws regulating different elections and their financing. It would appear that the main inconsistencies and duplications in the electoral laws which had been identified in the Evaluation Report have thus been removed. GRECO furthermore welcomes the annulment of 110 CEC decisions considered no longer relevant. It would appear that these measures respond to the main concerns underlying the recommendation, i.e. that a consistent and clearer/less complex legal framework for election campaign financing at federal level should be established. That said, GRECO encourages the authorities to keep this matter under review and to reflect on possibilities to further simplify the legislation, for the sake of clarity and legal certainty.

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

Recommendation ii.

61. *GRECO recommended to carry out an independent inquiry into political financing (comprising both general party and election campaign financing) in respect of financial flows outside the regulated area and, based upon its conclusions, to design the necessary remedial action.*

62. GRECO recalls that on the basis of the CEC Resolution No.146/1102-6 of 24 October 2012, a study focusing on political financial flows outside of the regulated area had been commissioned by means of an open public tender to a team of independent experts. The suggestions formulated at the end of the study referred to the desirability of enhancing the disclosure of data on donations and donors and of further expanding the mechanisms and tools at the CEC's disposal to prevent, identify and sanction possible illegal financial flows. According to the authorities, the aforementioned suggestions had already been taken into account in different reform initiatives. However, GRECO had taken the view that more information was needed on the scope, contents and findings of the study in order to ascertain its compliance with the recommendation. Similarly, the information on measures taken in pursuance of the study's conclusions and suggestions required further clarification. It was also unclear whether the study had already been published and/or shared and discussed with political parties. For these reasons, GRECO had concluded that the recommendation had only been partly implemented.

63. The authorities now submit excerpts from the study on political financial flows outside of the regulated area as well as a detailed list of the measures suggested in the study and of the action taken in response. *Inter alia*, in line with the conclusions of the study, disclosure and accounting requirements have been further developed, the role of election commissions in the supervision of party and campaign financing has been strengthened and the regime of sanctions has been reinforced, including by the introduction of a set of new provisions into the Code of Administrative Offences (CAO). More details are provided in the sections of this report dealing with the implementation of certain other recommendations. Finally, the authorities report that on 30 July 2014, the text of the study was placed on the official website of the CEC's Russian Centre for Training in Election Technologies.[7]

64. GRECO takes note of the information provided on the study on political financial flows outside of the regulated area, of its publication on the Internet and on the measures taken to follow up on its conclusions (see below under certain specific recommendations).

65. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

66. *GRECO recommended to take appropriate measures to ensure that the regulation of party and election campaign financing is not undermined by the misuse of public office.*

67. GRECO recalls that in the Compliance Report, note was taken of new rules on the filling in of wire transfer forms for making donations to parties and election subjects (previously, the use of deficient banking programmes had been an obstacle) and of the reported increase in the share of funding provided to some political parties by legal entities. Furthermore, cases under the relevant provisions of the PC and the CAO in the years 2012 and 2013 had been subject to review, and

[7] See http://www.rcoit.ru/technologies/detail.php?ID=18121.

three administrative cases under article 5.45 CAO (taking advantage of official powers or status in the period of election and referendum campaign) had been initiated but no criminal cases. However, GRECO had not been persuaded of the thoroughness of this exercise as it was only based on cases that had been initiated and not on complaints received. Also, the three reported cases did not seem to be representative of the potentially very widespread problems highlighted in the Evaluation Report. Moreover, no data had been provided on the measures taken in connection with the specific problems identified during elections or any other problems referred to in paragraphs 93 and 94 of the Evaluation Report. GRECO therefore concluded that the recommendation had been only partly implemented.

68. The authorities now state that cases of alleged violations of the law in terms of abuse of official position in the sphere of financing of political parties and election campaigns during 2013 and 2014 have been analysed, based on the complaints and appeals received by the CEC and election commissions of constituent entities of the Russian Federation, the Prosecutor General's Office, the Investigative Committee, the Ministry of Internal Affairs and the Federal Security Service. The analysis did not reveal any evidence of abuse of official position in the sphere of financing of political parties and election campaigns.

69. The authorities furthermore report on amendments[8] to the Order of the Prosecutor General No. 339/7 of 6 September 2010 "On Organisation of Prosecutorial Supervision over Observance of Legislation on Elections", under which prosecutors are obliged to take measures with respect to the detection and prosecution of abuse of official position related to the financing of political parties and election campaigns, misuse of media coverage for election campaigns; illegal use of state property and other resources by election candidates for conducting their election campaigns; violation of constraints associated with the job or official position established by section 40 LBG, paying special attention to the consideration of appeals submitted by citizens and organisations in such cases. In addition, Order of the Prosecutor General No. 454 of 29 August 2014 "On Organisation of Prosecutorial Supervision over Execution of Legislation on Combating Corruption" was also amended,[9] to require that comprehensive measures are taken to detect and suppress abuse of job or official position for the purposes of obtaining material benefits, giving and receiving bribes, commercial bribery and other corruption offences, violations of prohibitions, obligations and restrictions established by Federal Law No. 273-FZ "On Combating Corruption", which are committed by state and municipal employees, persons with state positions of the Russian Federation, state positions of constituent entities of the Russian Federation, positions of heads of municipalities, municipal positions, or in respect of such persons in the organisation and conduct of election campaigns; as well as to provide reliable and thorough consideration of appeals submitted by citizens and organisations on such facts.

70. Finally, the authorities refer to the adoption on 9 March 2016 of Federal Law No. 66-FZ which amended article 5.8 CAO on the violation of the procedure and conditions of election campaigning by public officials, to extend its scope to cover all media (previously the legislation covered only the TV and radio channels and printed media), and which introduced article 5.69 CAO on interference with the work of election and referendum commissions and their powers, resulting in the violation of their statutory rules of procedure, or hindering voters from participating in elections/referenda.

71. GRECO acknowledges that a review of cases has also been conducted on the basis of complaints received by the election commissions and law enforcement bodies. That said, it again

[8] By Decree of the Prosecutor General No. 264 of 28 May 2015
[9] By Order of the Prosecutor General No. 346 of 1 July 2015

has serious doubts as to whether the results of this review – i.e. no cases of abuse of official position in the sphere of financing of political parties and election campaigns during the years 2013 and 2014 – are representative of the potentially very widespread problem highlighted in the Evaluation Report (see paragraph 93). GRECO furthermore takes note of the amendments to the Orders of the Prosecutor General on supervision over legislation on elections and on combating corruption and to the CAO provisions on the violation of the procedure and conditions of election campaigning by public officials and on interference with the work of election and referendum commissions. It is crucial that the amended rules are now effectively applied in practice. While the reported measures are welcomed as steps in the right direction, GRECO expects further information on practical measures taken to address the problems referred to in paragraphs 93 and 94 of the Evaluation Report (including abuse of the public media and public facilities, state power being misused to intimidate political opponents and the lack of enforcement of the guarantees intended to prevent the misuse of power by public officials).

72. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

73. *GRECO recommended to take appropriate measures to ensure that membership fees are not used to circumvent the transparency rules applicable to donations.*

74. GRECO recalls that it was established in the Compliance Report, that on 18 June 2014 the State Duma had adopted the Draft Federal Law No. 385644-6 "On introducing amendments to the Federal Law 'On Political Parties'". The draft provided for an amendment to sub-clause "a" of clause 1 of section 29 of Federal Law No. 95 "On Political Parties" (LPP) which read as follows: "a) the admission and membership dues, if their payment is provided for by the charter of the political party. The amount of the admission and membership dues payable by one party member shall not exceed the maximum limit of donations from one natural person established by clause 8 of section 30 of this Federal Law." GRECO welcomed the caps established for donations by a natural person to a political party per year (i.e. 4 million 330 000 RUB/approximately 89 546 EUR) that would thus also apply to entrance and membership dues of party members. However, as the amendments were yet to enter into force, GRECO had concluded that the recommendation had been partly implemented.

75. The authorities now report that the above-mentioned draft law was finally adopted on 28 June 2014 and became Federal Law No. 185-FZ "On Amending the Federal Law 'On Political Parties'". It entered into force on 11 July 2014. The content of the bill was changed to some extent during the adoption procedure. In its final version, the law provides for new rules for the disclosure of information on payers of entrance and membership fees. According to the amended paragraphs 5 and 6 of section 34 LPP, if within a calendar year a member of a political party has paid entrance and/or membership fees in excess of the maximum possible annual amount of donations from a natural person (i.e. 4 million 330 000 RUB/approximately 89 546 EUR), the financial statements of the political party and its regional branches must disclose the following information: surname, name, patronymic of the party member, name of the constituent entity of the Russian Federation, place of residence of the party member, as well as the total amount of contributions made by the member of a political party. The authorities add that Resolution No. 265/1607-6, adopted by the CEC on 24 December 2014, revises the form for the consolidated financial statements of political parties accordingly (new Part "B" of Appendix No. 2). They also stress that in accordance with section 35, paragraph 3 LPP the consolidated financial statements submitted by political parties – including the appendices – are placed on the CEC website. Regarding the fact that in contrast to

the draft legislation presented in the Compliance Report, Federal Law No. 185-FZ did not introduce caps on entrance and membership dues, the authorities indicate that during the legislative process members of parliament had pointed out that such a measure would violate the rights of political parties.

76. GRECO notes that increased transparency of entrance and membership fees has been provided for to some extent by requiring political parties to submit detailed information on such fees and those who pay them, if they exceed the threshold for donations that a natural person may annually make to one party. GRECO accepts that the amendments foreseen in the draft law which was presented in the Compliance Report – i.e. the application of the donation caps also to entrance and membership fees – have been replaced by those new transparency rules which are a step in the right direction. That said, GRECO is concerned about the significant discrepancy between the disclosure requirements applicable to donations and entrance and membership fees. Namely, that parties' financial reports must contain detailed information on donations whose amount exceeds approximately 285 EUR (paid by one natural person during a year), on the one hand, and on entrance and membership fees whose amount exceeds approximately 89 546 EUR (paid by one natural person during a year), on the other hand. The reforms implemented therefore only partly address the reasons underlying the recommendation, i.e. the opportunities created by the legal framework for circumventing the disclosure rules on donations.

77. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

78. *GRECO recommended to elaborate practical guidelines to political parties on the valuation of in-kind donations.*

79. GRECO recalls that it had been satisfied with the circulation (newsletter of 2013) to all political parties of information on the legal requirements applicable to the valuation of permissible in-kind donations received by a party (its regional branch) so they can be included in the annual consolidated and financial (accounting) reports. The objective was to remind the parties of the two options provided for in the regulations for valuation: proper documentation (invoices, bills or other financial documents) *or* valuation via an independent expertise. As concerns the first option, GRECO had recalled that it had been reported (cf. the Evaluation Report, paragraph 97) that substantial variations had been observed in the valuation of similar in-kind donations by the different political parties, and it had taken the view that additional guidance might be needed in order to prevent situations where in-kind donations are used to circumvent the rules on donation limits. GRECO had concluded that the recommendation had been partly implemented.

80. The authorities now refer to a meeting held on 18 December 2014 by the CEC with representatives of political parties on issues relating to financial statements, including questions regarding the evaluation of in-kind donations. Party representatives were also invited to report to the CEC on problems encountered with regard to such evaluations, and no reports have been received. In addition, on 10 March 2015, the CEC sent a letter (Ref. 15-11/821) to the registered political parties containing a copy of the newsletter of 2013 (cf. the preceding paragraph) and inviting them to report to the CEC on challenges faced by political parties when reflecting in-kind donations in their accounts. The responses received indicate that parties have not encountered any problems in this area. On the basis of an analysis of the situation by the CEC, the Council on Evaluation Activity at the Ministry of Economic Development then decided, on 23 June 2015, that no further measures were necessary in this area. Finally, in December 2015, during a meeting

with representatives of political parties concerning party financing, the CEC provided political parties with practical, written recommendations for evaluating in-kind donations. In accordance with the recommendations entitled "Memo Assessment of in-kind donations", proper documentation by political parties of in-kind donations requires identifying their market price which must be proved by documentation on prices for such donations on the date when they were entered into the accounts. The recommendations specify, *inter alia*, that the relevant sources of information on market prices are official stock-exchange quotations (transactions made), information of the state authorities on statistics and authorities regulating prices, as well as information on market prices published or made available by the media.

81. GRECO takes note of the information provided, according to which the CEC has submitted to the political parties the written information already referred to in the Compliance Report as well as practical, written recommendations for evaluating in-kind donations. While GRECO takes the view that the requirements of the recommendation have thus been fulfilled, it encourages the authorities to follow closely the practice of political parties in order to detect and remedy possible difficulties in the evaluation of in-kind donations in the future.

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

Recommendation vi.

83. *GRECO recommended to ensure that loans granted to political parties are not used to circumvent political financing regulations, in particular when their terms deviate from customary market conditions and when they are fully or partially written off.*

84. GRECO recalls that the Draft Federal Law No. 385644-6 (cf. above under recommendation iv) included amendments to the LPP which were meant to ensure that loans – including when their terms deviate from customary market conditions or when they are fully or partly written off - granted to political parties are not used to circumvent political financing regulations. In the Compliance Report, GRECO had noted that the extent to which parties could benefit from such loans would be made proportional to donations received from natural persons and legal entities, , that there would be a requirement to report on the terms and conditions of each loan and, if the obligation under a loan or credit agreement was terminated for reasons other than its reimbursement, reimbursement by another person or repaid by means of another loan, the sum of the non-performed obligation would be made subject to conditions on illegal donations. Pending the entry into force of the new legal provisions, GRECO had concluded that the recommendation had been partly implemented.

85. The authorities now refer to Federal Law No. 185-FZ which entered into force on 11 July 2014 (cf. above under recommendation iv) and contains amendments to sections 29 (finances of a political party), 30 (donations to a political party and its regional branch) and 34 LPP (financial reporting by a political party) which correspond to those included in the Draft Federal Law No. 385644-6 and presented in the Compliance Report. Pursuant to the new provisions, a political party and its regional branches are thus entitled to conclude loan and credit agreements for an amount not exceeding five times the amount that can be received (established by section 30, paragraph 8 LPP) in annual donations from one natural person and one legal entity, respectively. If the obligation under such an agreement is terminated for reasons other than its reimbursement, reimbursement by another person or repaid by means of another loan, the sum of the non-performed obligation is subject to the provisions of section 30 LPP on illegal donations – they are to be returned or transferred to the state budget. The information on the receipt and expenditure

of funds by a political party covered by section 34 must now include information on loan and/or credit agreements concluded by a party, the lender (creditor), the requisite details and terms, the principal amount (less interest), the annual interest rate, the property pledged and the guarantees and sureties issued to secure obligations, as well as information on the performance of liabilities under such agreements in the reporting period.

86. The authorities add that Resolution No. 265/1607-6, which was adopted by the CEC on 24 December 2014 (cf. above under recommendation iv), revised the form for consolidated financial statements of political parties accordingly. They furthermore report on practical measures to ensure supervision of loan agreements by the CEC and election commissions of the constituent entities of the Russian Federation. As civil legislation allows for possible multi-year loan agreements (facility agreements), the special software of the automated subsystem for the supervision of political party financing of the State Automated System of the Russian Federation "Vybory" has been improved, *inter alia*, by introducing automated control over the return by the political parties and their regional branches of the previously borrowed funds on the basis of the submitted financial statements and the issue of related warnings. According to the authorities, the new automated system may have a preventive effect as, since its introduction, no cases of non-repayment of borrowed funds or of late repayment by political parties have been identified.

87. GRECO welcomes the entry into force of amendments to the LPP which are aimed at ensuring that loans granted to political parties are not used to circumvent political financing regulations, including when their terms deviate from customary market conditions and when they are fully or partly written off. The new rules introduce thresholds for the receipt of such loans that are proportional to donations from natural persons and legal entities, a requirement to report on the terms and conditions of each loan and require that the sum of the non-performed obligation is subject to conditions on illegal donations, if the obligation under a loan or credit agreement is terminated for reasons other than its reimbursement, reimbursement by another person or repaid by means of another loan. In addition, practical measures have been taken to ensure proper reporting on loans by political parties and supervision by the election commissions.

88. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation viii.

89. *GRECO recommended (i) to clarify the concept of an alliance between a political party and a public association; (ii) to seek ways of increasing the transparency of funding provided to organisations such as interest groups and non-incorporated public associations whose purpose is to support a political party, including during election campaigns.*

90. GRECO recalls that the recommendation had been considered partly implemented in the Compliance Report. Concerning part (i) of the recommendation, it was planned to clarify the concept of an alliance between a political party and a public association by virtue of the previously mentioned Draft Federal Law No. 385644-6. According to the draft, section 26, paragraphs 1h) and 1.1 LPP would stipulate that such an alliance can only be formed "for the purpose of participation in an election". Furthermore, for the purpose of implementing section 32, paragraph 3 of Federal Law No. 7 "On non-profit organisations," the Ministry of Justice had approved financial reporting forms and guidelines for non-profit organisations – which include those that are related to political parties – with a view to increasing transparency with respect to their funding. Nevertheless, GRECO remained concerned that, in times of elections, non-profit entities set up to support parties and campaigns were not subject to the same monitoring regime

and disclosure rules as the political parties themselves. Bearing in mind also that the above draft legislation had not yet entered into force, GRECO had concluded that this part of the recommendation had been partly implemented.

91. As regards part (ii) of the recommendation, the authorities had reported on a number of measures taken, e.g. the holding of biannual meetings by representatives of the CEC and of political parties on the preparation and submission of their financial statements, dealing among other things with the financing by parties of other legal entities (such as youth and women's associations, research foundations, etc.) and any support with financial implications from such entities to the parties themselves so as to avoid for example the circumvention of the rules on donations. However, GRECO had taken the view that virtually nothing meaningful had been done to increase the transparency of funding provided to non-incorporated public associations and interest groups, which operate without accounts due to their specific legal nature and whose purpose is to support a political party during or outside an election campaign. GRECO therefore concluded that this part of the recommendation had not been implemented.

92. Regarding part (i) of the recommendation, the authorities now refer to Federal Law No. 185-FZ which entered into force on 11 July 2014. Pursuant to section 26, paragraph 1.1 LPP in its amended form, an association or alliance between a political party and another public association (which is not a political party) registered in accordance with the legislation "with the aim to act jointly in the formation of lists of candidates for elections of deputies of representative bodies of municipal institutions" requires a written agreement. Before the reform, it provided for several possible aims. The authorities explain, by reference to the Explanatory Note to the above law, that it has thus been clarified that the only permitted purpose for establishing an alliance between a political party and another public association is the joint involvement in elections.

93. Regarding part (ii) of the recommendation, the authorities now report that the CEC, jointly with the Ministry of Justice, the State Duma, the Council of the Federation and the Presidential Administration, has examined the advisability of prohibiting the receipt and spending/use of monetary funds and other property by public associations which are not legal entities. They came to the conclusion that under existing legislation, such associations may not have their own accounts or financial assets, nor are they entitled to carry out cash transactions; only transactions from the funds of the members of such associations are possible and, if they are connected to a political party, they are subject to the transparency rules for party financing. The authorities also refer to the relevant CAO provisions, i.e. articles 5.20 (illegal campaign financing, outside the electoral fund) and 5.66 (unlawful financing of activities of a political party). Finally, the authorities state that the question of whether it is possible for political parties to include in their financial statements information on financial support received from public associations which are not legal entities was discussed by representatives of the CEC and of political parties during a meeting on 22 December 2015. They came to the conclusion that the existing legal framework was sufficient and required no changes. It was also stressed that – in line with the above-mentioned conclusions by the CEC and other state bodies – only transactions that involve the transfer of funds belonging to the *members* of such associations to political parties are permitted and that it is not possible to separate such donations from other donations in party accounts.

94. With respect to part (i) of the recommendation, GRECO accepts the explanations provided by the authorities that the recent amendments to the LPP clearly limit the purpose of an alliance concluded – in writing – between a political party and a public association to joint involvement in elections at municipal level. While GRECO concludes that the requirements of this part of the recommendation have thus been fulfilled, it encourages the authorities to follow up on the

concerns it had raised in the Compliance Report about the fact that non-profit entities – with goals in common with a political party – in times of elections are not subject to the same monitoring regime and disclosure rules (i.e. the requirement to submit information on donors and expenditure) as the political parties themselves.

95. As concerns part (ii) of the recommendation, GRECO takes note of the information provided on the consultation process among several stakeholders including the CEC, other state bodies and political parties, and on the existing legal restrictions, namely with regard to illegal financing of political parties and election campaigns, and in respect of public associations without legal personality, which may not acquire financial assets. However, GRECO remains concerned about possible shadow financing of and by such associations as well as interest groups, as described in the Evaluation Report and which may well take other forms than that of direct donations. The recommendation is aimed at transparency measures which have not been taken to date. GRECO urges the authorities to keep this question under review and to address the concerns described in the Evaluation Report. That said, given that the recommendation was limited to "seeking ways of increasing transparency" in this area, GRECO must conclude that this part of the recommendation has been dealt with in a satisfactory manner.

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

Recommendation ix.

97. *GRECO recommended to introduce clear provisions determining the commencement of the "campaigning" period so that the financial activity during this period is accurately and comprehensively recorded.*

98. GRECO recalls that in the Compliance Report, it had observed that instead of reforming the pertinent electoral law – to determine more clearly the commencement of the "campaigning" period – the authorities had prepared draft amendments to the CAO only in respect of political parties. Draft articles 5.64 to 5.67 CAO applied exclusively to the general finances of political parties and reporting thereon and did not relate to the financing and conduct of election campaigns. Nevertheless, since some steps had been taken in an attempt to address the concerns expressed in the Evaluation Report, GRECO had concluded that the recommendation had been partly implemented.

99. The authorities now report that Federal Law No. 355-FZ (cf. above under recommendation i) which entered into force on 25 November 2014, amended article 5.19 CAO (use of illegal material support in financing the election campaign) so as to extend administrative liability to citizens before they acquire the status of candidates or of authorised persons for financial matters in the electoral process. Furthermore, the CEC amended the forms for the quarterly financial statements on the current activities of political parties so as to require disclosure of the funds transferred to each candidate or electoral association separately (instead of the total amount of funds transferred by the party in the framework of an election campaign). The authorities also refer to consideration being given to further complementing the CEC's forms and acts, in particular in relation to the payment of expenses for the holding of congresses or conferences organised for the nomination of candidates.

100. In addition, the authorities report that the CEC has developed draft legislation amending section 2, paragraph 4 LBG to clarify the concept of "election campaigning", namely by reference to activities carried out during the election campaign of a candidate or electoral association. The

authorities stress that such a concept would be consistent with the concept of the "election campaign" of a candidate or electoral association – which starts on the date of nomination of a candidate/list of candidates and ends on the date of submission of the final financial statements (cf. section 2, paragraph 20 LBG) – and with the concept of the "campaign period" – which starts on the date of nomination of a candidate/list of candidates or registration of an initiative group for a referendum and ends one day before election day (cf. section 49, paragraph 1 LBG). The draft legislation has been submitted to relevant state authorities for approval.

101. GRECO takes note of the information provided according to which several measures have been taken to increase transparency of financial transactions in the pre-electoral process and to extend administrative liability for illegal actions. Furthermore, the authorities have reported on draft legislation which would amend electoral law by harmonising the concept of "election campaigning" with the concepts of the "election campaign" of a candidate or electoral association and of the "campaign period", all of which would start on the date of nomination of a candidate/list of candidates. On the one hand, GRECO acknowledges that the authorities have thus initiated a process directed at amending the electoral law, which was clearly expected by the recommendation. On the other hand, GRECO is not convinced that its main concern would be adequately addressed by the draft presented, namely that campaign activities carried out before the official nomination of candidates need to be reflected in the relevant financial reports.

102. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

103. *GRECO recommended (i) to ensure that political parties are subject to independent auditing in respect of their party and election campaign accounts by certified auditors, in line with the federal legislation; and (ii) to provide for the compliance of such auditing practices with international standards.*

104. GRECO recalls that the recommendation had been considered partly implemented in the Compliance Report. Concerning part (i) of the recommendation, it was planned to oblige political parties to carry out independent auditing, under certain conditions, by virtue of the Draft Federal Law No. 385644-6. As regards part (ii) of the recommendation, the authorities had presented the Draft Federal Law No. 316841-6 "On amendments to […] the Federal Law 'On auditing in terms of introduction of International Auditing Standards'" which provided for the application of the international auditing standards approved by the International Accounts Federation.

105. Regarding part (i) of the recommendation, the authorities now refer to Federal Law No. 185-FZ (entry into force on 11 July 2014) which amended section 34 LPP to provide for mandatory audit by an audit organisation of a political party's annual accounting (financial) statements and consolidated financial report if the party has received government funding or if the total annual donations amount to at least 60 million RUB/approximately 1 250 460 EUR or its expenditure in a calendar year is at least 60 million RUB. In those cases, mandatory audit also applies to annual accounting (financial) statements of the regional branches, other registered structural subdivisions of a given political party, as well as information on the receipt and spending of funds of a political party submitted by the regional branches, other registered structural subdivisions of the political parties to the election commissions of constituent entities of the Russian Federation. Within ten working days from the date of signing the audit report, a political party must submit a copy to the CEC, which within fifteen days places on its official website information on the performance of the audit, on the audit organisation, and the audit report. The authorities add that

the new rules will apply for the first time to the financial statements of the political parties participating in the 2016 elections.

106. Regarding part (i) of the recommendation, the authorities refer to the adoption, on 1 December 2014, of Federal Law No. 403-FZ "On Amending Certain Legislative Acts of the Russian Federation" (entry into force on 2 December 2014). It amended section 7, paragraph 1 of Federal Law No. 307-FZ "On audit activities" requiring audit activities to be conducted in accordance with the international auditing standards that are mandatory for audit organisations, auditors, self-regulating organisations of auditors and their employees, as well as with the auditing standards of self-regulated organisations of auditors. In addition, on 11 June 2015 the government adopted Resolution No. 576 "On Approving the Regulations on Recognition of International Standards on Auditing Applicable in the Russian Federation" which contains further details of the documents containing the international auditing standards to be applied (to be placed on the website of the Ministry of Finance).

107. GRECO is satisfied with the information provided on the completion of the legislative reform aimed at subjecting the general finances of political parties to independent auditing compliant with international audit standards – which had already been welcomed in the Compliance Report. It acknowledges that this requirement is based on objective and transparent criteria, notably the level of income generated or the level of disbursement of funds, fully in line with the requirements of the Federal Law "On accounting activities".

108. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

109. *GRECO recommended (i) to designate an independent body to supervise effectively the implementation of the regular financing of political parties and to provide it with adequate powers (including the ability to apply sanctions) and resources; (ii) to strengthen the independence of the election commissions in relation to the supervision of party and election campaign financing; (iii) to increase the financial and personnel resources available to the election commissions in order for them to ensure a more substantial and pro-active monitoring of the financial reports covering both general party and election campaign financing.*

110. GRECO recalls that in the Compliance Report it had been found that the recommendation had been partly implemented. Regarding part (i) of the recommendation, GRECO had welcomed the foreseen transfer of power for imposing sanctions for violations of the general party funding rules away from the Ministry of Justice. That said, the system of dual external control over general political financing split between the CEC and the Federal Tax system appeared to have been maintained. Furthermore, as the draft legislation was pending before the Parliament, GRECO had concluded that this part of the recommendation had only been partly implemented. As for part (ii) of the recommendation, despite some procedural changes foreseen by the draft legislation, no strengthening of the independence of the election commissions in relation to the supervision of party and election campaign financing could be ascertained. Notably, the way in which the commissions were elected had not changed. With regard to part (iii) of the recommendation, an increase in the number of staff of the CEC's Administrative Office and the conclusion of an agreement between the CEC and the national Financial Intelligence Unit had been achieved. However, GRECO had observed that the increases in personnel did not appear to have led to in-depth checks and complex analysis being carried out and no additional financial resources had

been allocated specifically for that purpose. It had concluded that this part of the recommendation had been partly addressed.

111. As concerns part (i) of the recommendation, the authorities now report that Federal Law No. 355-FZ (entry into force on 25 November 2014) entrusted the CEC and the election commissions of the constituent entities of the Russian Federation with the supervision of general party financing (starting from January 2015) and excluded the Federal Tax Service from such functions. It furthermore established administrative liability for infringements of rules on general financing of political parties, their regional branches and other registered structural units (new articles 5.64-5.68 CAO). The administrative proceedings under those articles can only be initiated by authorised members of relevant election commissions, cases are then considered by first instance judges. In addition, Federal Law No. 231-FZ "On Amending Certain Legislative Acts of the Russian Federation"(adopted on 13 July 2015) endowed the election commissions with the right to request information on the participants in the authorised capital of donors (legal entities) from the registers of holders of registered securities. Finally, the authorities report on several measures taken to further improve the interaction and exchange of information between the CEC and the Federal Tax Service for the purpose of supervising party and campaign financing which include providing remote access to the website of the Federal Tax Service, and the Interdepartmental Electronic Interaction System and the State Automated System of the Russian Federation "Vybory" (for example, to verify information on donors).

112. Regarding part (ii) of the recommendation, the authorities reiterate that the above-mentioned reform, according to which only authorised members of election commissions are competent to institute cases on administrative offences relating to the legislation on political parties, is intended to strengthen the independence of election commissions in the sphere of supervision over party funding. They add that by virtue of Federal Law No. 285-FZ of 5 October 2015, conflict of interest regulations for members of election commissions have been included in section 29 LBG (new paragraphs 15.3 and 15.4). Finally, the authorities report that the CEC, in cooperation with the relevant state agencies, analysed the situation in 2015 and came to the conclusion that no further measures were necessary given the already existing statutory guarantees for the independence of the members of election commissions who have a deciding vote and for the employees of election commissions carrying out the audit of financial statements of candidates, electoral associations and political parties.

113. In respect of part (iii) of the recommendation, the authorities indicate that on 28 May 2015 the CEC approved the "Procedure of Verification of Information on Donors of Monetary Funds and Other Property to Political Parties, Regional Branches of Political Parties" which clarifies the procedure to be observed and which was also submitted to the election commissions of the constituent entities of the Russian Federation. The authorities furthermore state that several legal amendments adopted in pursuance of GRECO's recommendations have led to an increase in substantial audits by election commissions. For example, the necessity to supervise the return of borrowed funds (cf. above under recommendation vi) has resulted in an increasing number of audits of information on creditors (lenders). In this connection, the authorities also report that in order to prevent shadow financing, Federal Law No. 355-FZ introduced a prohibition on political parties, their regional branches and other structural subdivisions to conclude transactions with a number of specified persons (cf. section 31, paragraph 41 LPP), and, from 1 January 2015, the CEC obliges election commissions to monitor sources of funds and property received by political parties, their regional branches and other registered structural subdivisions as a result of transactions.

114. GRECO takes note of the information provided. As regards part (i) of the recommendation, it is satisfied that the reforms initiated at the time of the adoption of the Compliance Report have been complemented to ensure that the responsibility for supervising general party financing is no longer split between several bodies but lies solely with the election commissions. Moreover, their competences and their role in administrative enforcement proceedings have been strengthened and measures have been taken to foster cooperation and exchanges of information with the Federal Tax Service. GRECO is hopeful that the measures reported will contribute to more effective and substantial monitoring of party finances. As for part (ii) of the recommendation, GRECO takes the view that the above reforms, as well as the reported introduction of conflict of interest regulations for members of election commissions, may have some positive effects.; However, as it had previously done in the Compliance Report, GRECO wishes to stress that the way in which the commissions are elected has not changed[10] and there is no evidence of any specific measures having been taken to overcome the significant public mistrust expressed through allegations that the election commissions are subject to influence by the state apparatus (see paragraph 108 of the Evaluation Report). GRECO therefore concludes that this part of the recommendation has only been partly implemented. Regarding part (iii) of the recommendation, it would appear that several measures taken to ensure more substantial monitoring of party and campaign financing – including e.g. the adoption of rules of procedure and the extension of monitoring to the return of borrowed funds, to sources of funds and property received as a result of transactions, etc. – have contributed to an increase in substantial audits performed by election commissions. Bearing in mind the increases in personnel already reported in the Compliance Report, GRECO concludes that the requirements of this part of the recommendation have now been fulfilled. However, it wishes to stress that pro-active, in-depth supervision of party and campaign funding is an on-going challenge, and it encourages the authorities to keep the effectiveness of the current regime under review and to take further appropriate measures, as necessary.

115. GRECO concludes that recommendation xi remains partly implemented.

Recommendation xii.

116. *GRECO recommended (i) to define the infringements of general party funding rules; (ii) to ensure that pertinent party representatives can be held liable for infringements of party and campaign funding rules; (iii) to review the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive.*

117. GRECO recalls that the recommendation had been considered partly implemented in the Compliance Report. The authorities had referred to the draft legislation to establish administrative liability for the infringement of rules on general financing of political parties, their regional branches and other registered structural units (draft articles 5.64-5.67 CAO), and provide for personal liability of representatives of political parties. As regards part (i) of the recommendation, GRECO had welcomed the definition of concrete infringements and concluded that, when adopted, the new provisions would clearly respond to the requirements of the recommendation. Concerning part (ii) of the recommendation, GRECO noted that the draft legislation adequately

[10] GRECO recalls that the CEC members are appointed by Parliament - which consists primarily of representatives of the governing party - and by the President who usually supports the governing party; members of regional commissions are appointed based on proposals made by political parties, other public associations, on condition that half of them are appointed by the regional legislative body and the other half by a senior public official of the federal subject concerned (half of their membership can be composed of state and municipal servants); members of lower election commissions are composed at the discretion of the superior election commissions.

responded to the part of the recommendation focusing on the sanctioning of infringements pertaining to general party funding since it foresaw the possibility to impose sanctions on persons responsible for the conduct of party financial activities, party (chief) accountants and, for some specific infringements, any party member. However, as the draft was pending before Parliament and no measures had been taken with respect to infringements by party representatives of campaign financing rules, GRECO had concluded that this part of the recommendation had also been partly implemented. Regarding part (iii) of the recommendation, with respect to general party finances GRECO welcomed the planned introduction of administrative sanctions in the form of more flexible monetary fines to be imposed on parties. That said, the correlation between sections 39/41 LPP (suspension of activity and liquidation of a political party) and draft articles 5.64-5.67 CAO needed to be clarified. The newly proposed sanctions (2 000 RUB/approximately 41.93 EUR to 50 000 RUB/approximately 1 048 EUR) appeared insignificant for infringements involving potentially much larger amounts, and no new information had been provided in respect of the sanctions applicable for violations of the rules on election campaigns. GRECO had therefore concluded that this part of the recommendation had not been implemented.

118. The authorities now report, with regard to part (i) of the recommendation, that Federal Law No. 355-FZ (entry into force on 25 November 2014) complemented the CAO with articles 5.64-5.68 which provide for administrative liability in the field of general party funding, through specified offences: violation of the procedure and statutory limits for the submission of information on the receipt and spending of funds and of the consolidated financial statements (including the submission of incomplete or deliberately falsified information); the use of illegal funds and other assets for financing party activities (e.g. funds received from sources prohibited under the law or in excess of established caps); the financing of a political party through fake persons; and violation of the period established for the return of illegal donations.

119. Regarding part (ii) of the recommendation, the authorities stress that under the new CAO provisions, both political parties (their regional branches) as such and party officials can be held liable for infringements of the party funding rules. In addition, other natural and legal persons can be held liable in case of illegal funding. Moreover, with regard to campaign financing, the authorities report that Federal Law No. 355-FZ amended article 5.19 CAO (use of illegal material support for an election campaign) to ensure that this offence is no longer restricted to candidates, election associations and authorised representatives on financial issues but is also applicable to other citizens, legal entities and officials.

120. In respect of part (iii) of the recommendation, the authorities again refer to the changes made to the relevant CAO provisions. Namely, as far as violations of the rules on general party funding are concerned, the new CAO provisions (articles 5.64-5.68) foresee administrative sanctions in the form of monetary fines to be imposed on political parties or party officials. It is to be noted that the level of fines has been raised as compared to the draft presented in the Compliance Report and now depends on the type and seriousness of the offence. The highest fines are available for violation by political parties of the requirements on mandatory audit (article 5.68, paragraph 1 CAO: fines to the amount of 500 000 RUB/approximately 10 480 EUR to 1 million RUB/approximately 20 960 EUR can be imposed on the parties). The authorities add that the correlation between sections 39/41 LPP (suspension of activity and liquidation of a political party) and articles 5.64-5.68 CAO, in law and in practice, have been analysed. It would appear that no cases of simultaneous application of both sanctioning regimes have been identified and according to the authorities, such simultaneous application is excluded under Russian law. It is also planned to include this principle in the 2008 Agreement on the procedure for interaction of

the CEC, the election commissions of the constituent entities of the Russian Federation, the Ministry of Justice and its territorial bodies.

121. Turning to violations of the rules on campaign funding, the administrative fines foreseen in articles 5.17-5.21 and 5.50 CAO have been increased tenfold; the highest maximum fines available (under article 5.18 CAO, for legal entities) amounting to 1 million RUB/approximately 20 960 EUR.

122. GRECO welcomes that new provisions are now in place which provide for administrative liability in the field of general party funding through clearly defined offences (articles 5.64-5.68 CAO), as required by part (i) of the recommendation. Regarding part (ii) of the recommendation, GRECO is satisfied that under the new provisions, party officials (as well as other natural and legal persons in certain cases) can be held liable for infringements of the rules on both general party funding and campaign funding (amended article 5.19 CAO). Turning to part (iii) of the recommendation, GRECO notes, with respect to general party financing, the introduction of administrative sanctions in the form of more flexible monetary fines and, with respect to campaign financing, the significant increase of the fines available. GRECO is hopeful that the amended regime will prove its efficiency in practice.

123. GRECO concludes that recommendation xii has been implemented satisfactorily.

III. CONCLUSIONS

124. **In view of the conclusions contained in the Third Round Compliance Report on the Russian Federation and in light of the above, GRECO concludes that the Russian Federation has now implemented satisfactorily or dealt with in a satisfactory manner eleven of the twenty-one recommendations contained in the Third Round Evaluation Report.** The other ten recommendations have been partly implemented.

125. With respect to Theme I – Incriminations, recommendations i, v and ix have been implemented satisfactorily or dealt with in a satisfactory manner and recommendations ii-iv and vi-viii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, ii, v-vii, x and xii have been implemented satisfactorily, recommendation viii has been dealt with in a satisfactory manner and recommendations iii, iv, ix and xi have been partly implemented.

126. In so far as incriminations are concerned, GRECO is deeply concerned that, as far as the implementation of GRECO's recommendations is concerned, the recent reform of the corruption-related provisions of the Penal Code represents a significant step backwards compared to the previous draft legislation referred to in the Compliance Report. Notably, the amendments to the provisions on public sector bribery – which entered into force on 15 July 2016 – no longer include all the various forms of corrupt behaviour, nor do they explicitly cover any (including non-material) undue advantages. The same is true for the draft provisions on private sector bribery which, in addition, are restricted to persons performing managerial functions, contrary to the requirements of the Criminal Law Convention on Corruption (ETS 173). Moreover, the amendments did not introduce specific provisions on trading in influence, as had been foreseen in the previous draft. Finally, the authorities' plans to criminalise bribery of arbitrators and to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to extend the limitation period for bribery offences, have not yet fully materialised. The only tangible progress achieved since the adoption of the Compliance Report is the introduction of the concept of third party

beneficiaries in the bribery provisions. Against this background, the submission to Parliament of new draft legislation aimed at strengthening liability for corruption is a welcome development. The draft, if adopted, would address many of the above concerns. That said, some further refinements are necessary to ensure full compliance with GRECO's recommendations, and GRECO has misgivings about the sanctions foreseen in by the draft legislation for certain bribery acts such as the offer, promise or request of a bribe, which are significantly lower than those available under current legislation for situations where the bribe has actually been handed over. It refers in this respect to the concerns it has expressed on various occasions about such different treatment of basic forms of corrupt behaviour. The authorities are urged to take account of the remaining concerns and to carry through the reform process initiated.

127. Regarding the transparency of political funding, GRECO welcomes that several draft laws which had already been presented in the Compliance Report have in the meantime been enacted, with some changes. The Federal Law "On Political Parties" has been amended to increase transparency of party funding from different sources such as membership fees and loans, to require independent audit of party accounts and assign the supervision of party financing mainly to the election commissions. The Federal Law "On Basic Guarantees of Electoral Rights and the Right to Participate in Referendums of Citizens of the Russian Federation" and the special election laws have been subject to review in order to remove duplications and inconsistencies. Moreover, a reform of the Code of Administrative Offences has introduced specified offences providing for administrative sanctions in the field of general party financing, significantly increased the fines available for violations of campaign financing rules and extended administrative liability to a wider range of party officials. As a complement, several practical measures have been taken, including amendments by the Central Election Commission to the forms for party accounts and annulment of numerous normative acts which were no longer relevant. While acknowledging the progress achieved, GRECO notes that the above reforms are only yet partial and need to be continued. It would appear, for example, that insufficient measures have been taken to ensure that the regulation of political financing is not undermined by the misuse of public office, to ensure that membership fees are not used to circumvent the transparency rules applicable to donations, and to strengthen the independence of the election commissions. GRECO calls upon the authorities to persist in their efforts to address the outstanding recommendations as soon as possible.

128. In conclusion, in view of the fact that ten recommendations have not yet been fully implemented, GRECO, in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of the Russian Federation to submit additional information regarding the implementation of recommendations ii to iv and vi to viii (Theme I – Incriminations) and of recommendations iii, iv, ix and xi (Theme II – Transparency of Party Funding), by 31 July 2017 at the latest.

129. Finally, GRECO invites the authorities of the Russian Federation to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make the translation public.