Adoption: 23 March 2018
Publication: 25 June 2018

Public
GrecoRC3(2018)5

Third Evaluation Round

Addendum to the Second Compliance Report on the Russian Federation

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 79th Plenary Meeting
(Strasbourg, 19-23 March 2018)

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I. INTRODUCTION

1. This Addendum assesses the additional measures taken by the Russian authorities, since the adoption of the Second Compliance Report, to implement the recommendations issued by GRECO in its Third Round Evaluation Report on the Russian Federation. The Third Evaluation Round covers two distinct themes, namely:

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

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

2. The Third Round Evaluation Report containing twenty-one recommendations (nine in respect of Theme I and eleven in respect of Theme II) was adopted at GRECO's 54th Plenary Meeting (23 March 2012) and made public on 13 August 2012, following authorisation by the Russian authorities (Greco Eval III Rep (2011) 6E, Theme I and Theme II).

3. As required by GRECO's Rules of Procedure, the authorities of the Russian Federation have submitted situation reports on the measures taken to implement the recommendations prior to the adoption of each of the compliance reports below.

4. The Compliance Report, adopted by GRECO at its 64th Plenary Meeting (20 June 2014) and made public on 24 November 2014, concluded that the Russian Federation had implemented satisfactorily three of the twenty-one recommendations, twelve recommendations had been partly implemented and six not implemented. The Second Compliance Report, adopted at GRECO's 73rd Plenary Meeting (21 October 2016) and made public on 21 November 2016, acknowledged that the Russian Federation had implemented satisfactorily eleven of the twenty-one recommendations and ten recommendations had been partly implemented.

5. The Situation Report on measures taken to implement the outstanding recommendations, submitted by the Russian authorities on 31 July 2017 and additional information presented on 18 January 2018 served as a basis for the present Addendum to the Second Compliance Report.

6. GRECO selected the Czech Republic and Slovenia to appoint Rapporteurs for this compliance procedure. The Czech Republic appointed Ms Lenka HABRNÁLOVÁ and Slovenia appointed Ms Vita HABJAN BARBORIČ. The Rapporteurs were assisted in drawing up this addendum by the GRECO Secretariat.

II. ANALYSIS

Theme I: Incriminations

7. It is recalled that GRECO, in its Evaluation Report, addressed nine recommendations to the Russian Federation in respect of Theme I. GRECO has previously concluded that recommendations i, v and ix have been implemented satisfactorily and recommendations ii-iv and

vi-viii have been partly implemented. Compliance with the pending recommendations is assessed below.

8. The authorities inform that draft Federal Law No. 3633-7 "On amendments to the Criminal Code of the Russian Federation and to the Code of the Criminal Procedure of the Russian Federation with a view to strengthening liability for corruption", submitted to the State Duma on 11 October 2016 and considered by GRECO in the Second Compliance Report has not yet been adopted. Some provisions were discussed by the Presidium of the Presidential Council on Combatting Corruption on 14 February 2017 which decided to support those criminalising bribery of domestic and foreign arbitrators (recommendation ii), including non-material advantages in the scope of the bribery provisions (recommendation iv), and extending the two year limitation period for bribery offences (recommendation viii). Other provisions (on the criminalisation of the offer, promise and request for bribes, commercial bribery and trading in influence) were proposed for further discussion and finalisation.

9. Consequently, it was decided to split draft Federal Law No. 3633-7 in two. In July 2017 both new draft Federal Laws were submitted to the State Duma by a member of Parliament. The first draft, aimed at implementing recommendations ii, iv and viii, is due for adoption as a matter of priority, while the second one will be subject to further discussions and revision.

10. The texts of both draft Federal Laws, together with explanatory notes, have been presented for GRECO's scrutiny. As a matter of general observation, GRECO is disappointed with the authorities' decision to review the bribery-related provisions of the Penal Code (PC) by splitting the previous single draft into two separate ones. As will become clear from the subsequent paragraphs of this report, the two draft Federal Laws tackle the elements of the same bribery offences and introduce amendments into the same PC articles. In GRECO's view, such a revision is not conducive to bringing clarity and consistency and may cast doubts over the robustness of the legal framework that is sought. GRECO encourages the authorities to promptly address the outstanding recommendations preferably through a single draft legal act that addresses all the shortcomings identified below. It hopes that the importance the authorities say the country's leadership attributes to implementing GRECO's recommendations will bring much awaited impetus to this work.

Recommendation ii.

11. *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).*

12. In the Second Compliance Report, GRECO had taken note of the adoption in 2015 of legislation to regulate the functioning and status of arbitrators, and of the submission to Parliament on 11 October 2016 of draft legislation extending the scope of the private bribery offences to domestic and foreign arbitrators. With respect to the latter, GRECO was concerned that the relevant provisions (Article 204 PC) were at variance with the requirements of Articles 2 and 3 of the Additional Protocol due, notably, to the omission of the elements of "offering", "promising" and "requesting" an advantage, "accepting an offer or a promise" of "any undue advantage" and of indirect commission of the offences. Also, no concrete steps had been taken to ratify the Additional Protocol to the Criminal Law Convention on Corruption.

13. The authorities now refer to **i)** Articles 202 PC (on abuse of authority by arbitrator/arbitration judge, private notary and auditor) and Article 204 PC, part 1, subparagraphs 1 and 5 (on commercial bribery) of draft Federal Law No. 232807-7 "On Introducing Amendments to the Criminal Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 24 July 2017; and **ii)** Article 204.3 PC (on promise, offer or request to participate in commercial bribery) of draft Federal Law No. 235984-7 "On Introducing Amendments to the Criminal Code of the Russian Federation and to the Criminal Procedure Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 27 July 2017. The two new draft legal acts replace the single draft legal act of 11 October 2016.

Draft Federal Law No. 232807-7
Article 204 PC, Part 1 – Commercial Bribery

Subparagraph 1. The illegal transfer of money, securities or any other property, as well as unlawful rendering of property-related or non-property related services, granting other property or non-property rights, other undue advantages directly or through an intermediary to a person who discharges managerial functions in a profit-making or other organization, as well as to an ***arbitrator (arbitration judge),*** *including to a* ***foreign arbitrator*** *(including when at the direction of this person property is transferred, or property-related or non-property related services are rendered, or property or non-property rights or other advantages are granted to other natural person or a legal entity) for commission of actions (inaction) in the interests of the giver or other persons, if such actions (inaction) comprise a part of his official duties or if such a person by virtue of his/her official position can contribute to such actions (inaction) being committed.*
Subparagraph 5. The illegal receipt of money, securities or any other property, as well as unlawful use of property-related or non-property related services, exercise of property or non-property rights, other undue advantages directly or through an intermediary by a person who discharges managerial functions in a profit-making or other organization, as well as by an ***arbitrator (arbitration judge),*** *including by a* ***foreign arbitrator*** *(including when at the direction of this person property is transferred, or property-related or non-property related services are rendered, or property or non-property rights or other advantages are granted to other natural person or a legal entity) for commission of actions (inaction) in the interests of the giver or other persons, if such actions (inaction) comprise a part of his official duties or if such a person by virtue of his/her official position can contribute to such actions (inaction) being committed.*

Draft Federal Law No. 235984-7
Article 204.3 PC - Promise, offer or request to participate in commercial bribery

1. A promise or an offer to receive an object of commercial bribery or a promise, offer or request to transfer an object of commercial bribery, as well as conspiracy to transfer (receive) an object of commercial bribery (in the absence of elements of crime under Articles 204, 204.1 u 204.2 of this Code) -
shall be punishable with a fine in the amount of up to two hundred thousand rubles, or in the amount of the wage, or any other income of the convicted person for a period of up to five months, or in the amount that is five to ten times the amount of commercial bribe, or by limitation of freedom or a term of up to one year, or by correctional works for a term of up to one year, or by deprivation of freedom for the same term with a fine in the amount that is up to five times the amount of commercial bribe or without such.
2. The same act, if an object of commercial bribery is of sizable amount, -
shall be punishable with a fine in the amount of up to four hundred thousand rubles, or in the amount of the wage, or any other income of the convicted person for a period of up to one year, or in the amount that is five to fifteen times the amount of commercial bribe, or by limitation of freedom for a term of six months to one year, or by correctional works for the same term, or by deprivation of freedom for a term of up to two years with a fine in the amount that is up to five times the amount of commercial bribe or without such.
3. Act provided for by the first part of this Article, if an object of commercial bribery is of a large amount, -
shall be punishable with a fine in the amount of up to eight hundred thousand rubles, or by limitation of freedom for a term of one to two years with a fine the amount of five hundred thousand to two million rubles, or in the amount of the wage, or any other income of the convicted person for a period of six months to two

years with deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years or without such, or by deprivation of freedom for a term of up to four years with a fine in the amount that is up to fifteen times the amount of commercial bribe or without such.
4. Act provided for by the first part of this Article, if an object of commercial bribery is of an especially large amount, -
shall be punishable with a fine in the amount of up to one million five hundred thousand rubles, or by limitation of freedom for a term of three to five years with a fine in the amount of one to four million rubles, or in the amount of the wage, or any other income of the convicted person for a period of one to four years with deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years or without such, or by deprivation of freedom for a term of three to seven years with a fine in the amount that is up to thirty times the amount of commercial bribe or without such.

14. GRECO welcomes the proposed amendments to Articles 202, 204 part 1, subparagraphs 1 and 5 and 204.3 PC, criminalising bribery by domestic and foreign arbitrators. Although those articles go in the right direction, some imperfections persist. Article 204.3 PC omits the elements of "requesting" an undue advantage and of the indirect commission of the offence, and the element of "accepting an offer or a promise" is not properly incorporated. As before, no steps have been taken to ratify the Additional Protocol to the Criminal Law Convention on Corruption. The authorities are urged to fully implement this recommendation, including by expediting the ratification process.

15. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

16. *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).*

17. In the Second Compliance Report, GRECO had welcomed the submission to Parliament on 11 October 2016 of 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". At the same time, it had concerns about the sanctions foreseen for such acts which were significantly lower than those provided for by the legislation then in effect for situations where the bribe was actually handed over.[1]

18. The authorities now refer to Articles 204.3 PC (on promise, offer or request to participate in commercial bribery)[2] and 291.3 PC (on promise, offer or request to receive or transfer a bribe) of draft Federal Law No. 235984-7 "On Introducing Amendments to the Criminal Code of the Russian Federation and to the Criminal Procedure Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 27 July 2017. This draft results from the aforementioned draft legislation of 11 October 2016 being split into two.

[1] E.g. the maximum sanctions for basic cases of active bribery were up to two years' imprisonment with a fine under Article 291, paragraph 1 PC, and up to one year's imprisonment with a fine under draft Article 291.3, paragraph 1 PC.
[2] See paragraph 13.

Draft Federal Law No. 235984-7
Article 291.3 PC - Promise, offer or request to receive or transfer the bribe

1. Promise, offer or request to receive or transfer the bribe, as well as conspiracy to transfer (receive) the bribe (in the absence of elements of crime under Articles 290, 291, 291.1 u 291.2 of this Code) -
shall be punishable with a fine in the amount of up to three hundred thousand rubles, or in the amount of the wage, or any other income of the convicted person for a period of up to nine months, or in the amount which is five to fifteen times as much as the sum of the bribe, or by correctional works for a term of up to one year with deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years or without such, or by deprivation of freedom for a term of up to one year with a fine in the amount which is up to five times as much as the sum of the bribery or without such.

2. The same act, if the bribe is of sizable amount, -

shall be punishable with a fine in an amount of up to five hundred thousand rubles or in the amount of the wage, or any other income of the convicted person for a period of up to one year, or in the amount which is five to twenty times as much as the sum of the bribe, or by correctional works for a term of six months to one year with a deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years, or by deprivation of freedom for a term of up to two years with a fine in the amount which is five to ten times as much as the sum of the bribe or without such.

3. Act provided for by the first part of this Article, committed by a person c through the use of his official position, or if the bribe is offered for committing knowingly unlawful actions (inaction), -

shall be punishable with a fine in the amount of up to one million rubles, or by limitation of freedom for a term of one to two years with a fine in the amount of three hundred thousand - one million five hundred thousand rubles, or in the amount of the wage, or any other income of the convicted person for a period of six months to two years, or by deprivation of freedom for a term of up to three years with a fine in the amount which is five to twenty times as much as the sum of the bribe or without such.

4. Acts provided for by the first, second or third parts of this Article, committed by a group of persons by prior conspiracy or by an organized group, or if the bribe is of a large amount, -

shall be punishable with a fine in the amount of up to two million rubles with deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years, or by limitation of freedom for a term of two to four with a fine in the amount of one to three million rubles, or in the amount of the wage, or any other income of the convicted person for a period of nine months to three years with deprivation of the right to occupy specified posts or to engage in specified activities for a period of up to three years, or deprivation of freedom for a term up to six years with a fine in the amount which is up to thirty times as much as the sum of the bribe or without such and limitation of freedom for a term of up to one year or without such.

5. The same acts, if the bribe is of an especially large sum amount, -

shall be punishable with a fine in the amount of up to five million rubles, or by limitation of freedom for a term of three to five years with a fine in the amount of 750 thousand to 3 million rubles, or in the amount of the wage, or any other income of the convicted person for a period of one to four years, or by deprivation of freedom for a term of up to eight years with a fine in the amount which is thirty times as much as the sum of the bribe or without such and limitation of freedom for a term of up to one year or without such.

19. GRECO takes note of the information provided and acknowledges the positive steps taken to bring the PC provisions criminalising commercial and public sector bribery closer to the requirements underlying this recommendation. Some deficiencies are notable nonetheless. Article 204.3 PC (passive commercial bribery) misses the elements of "request" and of "acceptance of an offer or a promise" of an undue advantage. Article 291.3 PC (active public sector bribery), instead of introducing the elements of "promising" and "offering" an undue advantage (i.e. active bribery), contains the (passive) elements of "promise, offer to *receive* the bribe", and the element of "request" of an undue advantage is not incorporated into Article 290 PC (passive public sector bribery). As for sanctions, GRECO acknowledges that their range is more diverse, but the differences in the treatment of basic forms of corrupt behaviour have not been eliminated as suggested previously.

20. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

21. *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.*

22. In the Second Compliance Report, GRECO had welcomed the new draft legislation submitted to Parliament on 11 October 2016, which included an appropriately explicit reference.

23. The authorities now refer to i) Article 204, part 1, subparagraphs 1 and 5 PC (on commercial bribery)[3] and 290 PC (on bribe taking) of draft Federal Law No. 232807-7 "On Introducing Amendments to the Criminal Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 24 July 2017; and **ii)** Article 204 parts 1.1 and 5.1 PC (on commercial bribery) of draft Federal Law No. 235984-7 "On Introducing Amendments to the Criminal Code of the Russian Federation and to the Criminal Procedure Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 27 July 2017. The two drafts replace the draft legislation of 11 October 2016.

> ***Draft Federal Law No. 235984-7***
> ***Article 204 PC – Commercial Bribery***
>
> *1.1. The unlawful transfer to an employee of a profit-making or another organization or to a person authorized by such organization to act on its behalf of money, securities, other property, as well as unlawful rendering of the property-related services to this person, granting him other property rights (including the cases when at the direction of such person the property is being transferred, the property-related services are being rendered or the property rights are being granted to another natural person or a legal entity) for committing actions (inaction) in the interests of the giver provided such actions (inaction) form a part of his official powers or if such person can facilitate commission of such actions (inaction) by virtue of his office, -*
> *shall be punishable with a fine in the amount of up to two hundred thousand rubles, or in the amount of the wage, or any other income of the convicted person for a period of up to four months, or in the amount that is three to fifteen times the amount of commercial bribe or by limitation of freedom for a term of up to one year, or correctional works for a term of up to one year, or limitation of freedom for a term of up to one year, or deprivation of freedom for the same term with a fine in the amount that is up to thirty times the amount of commercial bribe or without such.*
>
> *5.1. Unlawful receipt by an employee of a profit-making or other organization or by a person authorized by such organization to act on its behalf of money, securities, other property, as well as illegal use of property-related services or other property rights (including the cases when at the direction of such person the property is being transferred, the property-related services are being rendered or the property rights are being granted to another natural person or legal entity) for committing actions (inaction) in the interests of the giver provided such actions (inaction) form a part of his official powers or if such person can facilitate commission of such actions (inaction) by virtue of his office, -*
> *shall be punishable with a fine in the amount of up to five hundred thousand rubles or in the amount of the wage, or any other income of the convicted person for a period of up to six months, or in the amount that is five to twenty times the amount of commercial bribe, or by deprivation of freedom for a term of up to two years with a fine in the amount that is up to ten times the amount of commercial bribe or without such.*

[3] See paragraph 13.

24. GRECO welcomes the broadening of the scope of Articles 204, part 1, subparagraph 1 PC (on active commercial bribery) and 290 PC (on bribe-taking)[4] to include any form of undue advantage, which concords with the recommendation. However, compared to the requirements of the Convention, Article 204, part 5 PC has a narrower scope as it only criminalises the "unlawful use", not the receipt, of any undue advantage, and Article 204 paragraphs 1.1 and 5.1 PC does not provide for any form of undue advantage.

25. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi.

26. *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.*

27. In the Second Compliance Report, GRECO had welcomed the new draft legislation of 11 October 2016 with amended "commercial bribery" provisions, which responded positively to practically all the concerns underlying the recommendation, bar the element of "accepting an offer or a promise" of an undue advantage, which remained missing. GRECO had also expressed misgivings about the sanctions foreseen in the draft legislation for certain bribery acts such as the offer, promise or request of a bribe, which were significantly lower than those provided for by the legislation in effect then for when the bribe had actually been handed over.[5]

28. The authorities now refer to: **i)** Article 204, part 1, subparagraph 1 and 5 PC (on commercial bribery)[6] of draft Federal Law No. 232807-7 "On Introducing Amendments to the Criminal Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 24 July 2017; **ii)** Article 204 parts 1.1 and 5.1 PC (on commercial bribery) and Article 204.3 PC (on promise, offer or request to participate in commercial bribery)[7] of draft Federal Law No. 235984-7 "On Introducing Amendments to the Criminal Code of the Russian Federation and to the Criminal Procedure Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 27 July 2017; and **iii)** amendments to the Criminal Procedure Code (Articles 23 and 151) proposed by the latter draft. Those drafts result from the split into two of the draft legislation of 11 October 2016.

29. With respect to part (i) of the recommendation, GRECO notes several proposed amendments to Article 204 PC (on commercial bribery) as well as the introduction into the PC of new Article 204.3 (on promise, offer or request to participate in commercial bribery). As already stated, GRECO regrets the authorities' decision to tackle the revision of those articles by means of two separate draft acts, neither of which fully meets the recommendation's requirements:

[4] As for Article 291 PC (on bribe-giving), the definition of a bribe contained in the preceding article applies.
[5] 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.
[6] See paragraph 13.
[7] Ibid.

- as concerns Article 204, part 1, subparagraphs 1 and 5 PC (draft Federal Law No. 232807-7) which criminalise the giving and taking of commercial bribes by persons exercising managerial functions in a commercial or other organisation and by domestic and foreign arbitrators, the element of *any* undue advantage is not properly incorporated into the provision criminalising the receipt of a commercial bribe, which is restricted to the "unlawful use" of such an advantage;
- as for Article 204, paragraphs 1.1 and 5.1 PC (draft Federal Law No. 235984-7) which criminalises the giving and receiving by an employee of a commercial or other organisation of a commercial bribe, it omits the elements of indirect commission of the offence, third party beneficiaries and non-material advantages;
- lastly, new Article 204.3 PC (draft Federal Law No. 235984-7) which criminalises the promising, offering or request to participate in commercial bribery excludes the elements of the "request" and of "acceptance of an offer or a promise" of an undue advantage, of the indirect commission of the offence and of third party beneficiaries.

30. GRECO therefore concludes that this part of the recommendation remains partly implemented. The authorities are invited to further refine the draft legal provisions and, above all, to preferably deal with all the proposed amendments by virtue of a single draft legal act so as to secure clarity and consistency. As for sanctions, although their range has been expanded, a considerable difference in treatment of basic forms of corrupt behaviour criticised by GRECO previously still persists.

31. As for the recommendation's part (ii), GRECO is satisfied that its requirements have been met. Pending the adoption of the corresponding draft legal act, it is assessed as partly implemented.

32. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

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

34. In the Second Compliance Report, GRECO had noted, as a welcome development, the submission to Parliament on 11 October 2016 of new draft provisions on "abuse of influence". The planned amendments to the PC were found to be generally in line with the recommendation, except for the fact that they did not sufficiently cover the passive side of trading in influence, i.e. draft Article 291.4, paragraph 2 PC only referred to "an individual's consent to use his or her influence", whereas Article 12 of the Criminal Law Convention requires the criminalisation of the "request, receipt or the acceptance of the offer or the promise of such an advantage".

35. The authorities now refer to Article 291.4 of draft Federal Law No. 235984-7 "On Introducing Amendments to the Criminal Code of the Russian Federation and to the Criminal Procedure Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 27 July 2017:

Article 291.4 - Abuse of influence

1. The consent of an individual to influence over the decision-making of an official, a foreign official or an official of a public international organization, as well as the request or consent to use such influence in connection with the transfer, offer or promise of money, securities, other property, property-related or non-property related services, property or non-property rights, or other undue advantage for himself or other persons, -
shall be punishable with a fine in the amount of up to five hundred thousand rubles, by compulsory works for a term of up to three years, or by deprivation of freedom for a term of up to three years with a fine in the amount which is fifteen times as much as the sum of the bribe.

2. The unlawful transfer, offer or promise to an individual, directly or indirectly of money, securities, other property, rendering him the property-related or non-property related services, granting property or non-property rights, other undue advantage for him or other persons in order to use his influence over the decision-making of an official, a foreign official or an official of a public international organization, -
shall be punishable with a fine in the amount of up to three hundred thousand rubles, or by compulsory works for a term of up to three years, or by deprivation of freedom for a term of up to two years with a fine in the amount which is ten times as much as the sum of the bribe.

36. GRECO takes note of the information provided. New draft Article 291.4 PC is largely in alignment with the recommendation; however, coverage of passive trading in influence is still incomplete: the elements of "receipt" and "acceptance of the offer or promise" of an undue advantage as well as the element of "whether or not the influence is exerted or whether or not the supposed influence leads to the intended result" are omitted. The authorities are called for to rectify those deficiencies and to speedily adopt appropriate legislation.

37. GRECO therefore concludes that recommendation vii remains partly implemented.

Recommendation viii.

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

39. In the Second Compliance Report, GRECO had noted that, following amendments to the sanctioning regime introduced in 2016 by Federal Law No. 324-FZ, the limitation period applicable to active bribery under Article 291 PC increased to six years but only in aggravated cases involving a substantial bribe. While GRECO had endorsed this amendment as going in the right direction, it had regretted that the short limitation period (two years) for basic active bribery cases – which was the main concern underlying the recommendation – had not been extended, as was planned at the time of adoption of the Compliance Report.

40. The authorities now refer to Articles 290, part 1 PC (on bribe-taking) and 291, part 1 PC (on bribe-giving) of draft Federal Law No. 232807-7 "On Introducing Amendments to the Criminal Code of the Russian Federation in order to strengthen liability for corruption", submitted to the State Duma on 24 July 2017:

Article 290 PC – Bribe-taking

"shall be punishable with a fine in an amount of up to one million rubles or in the amount of the wage or other income of the convicted person for a period of up to two years or in an amount which is ten to fifty times as much as the sum of bribe with deprivation of the right to hold specific offices or to engage in specified activities for a term of up to three years, or by corrective works for a term of one to two years with deprivation of the right to hold specific offices or to engage in specified activities for a term of up to three years, or by compulsory works for a term of up to five years with deprivation of the right to hold specific offices or to engage in specified activities for a term of up to three years, or by deprivation of liberty for a term of up to ***four years*** *accompanied by a fine in the amount which is ten to twenty times as much as the sum of the bribe or without such".*

Article 291PC – Bribe-giving

"shall be punishable with a fine in an amount of up to five hundred thousand rubles or in the amount of the wage or other income of the convicted person for a period of up to one year or in an amount which is five to thirty times as much as the sum of bribe, or by corrective works for a term of up to two years with deprivation of the right to hold specific offices or to engage in specified activities for a term of up to three years, or by compulsory works for a term of up to three years, or by deprivation of liberty for a term of up to ***four years*** *accompanied by a fine in the amount which is five to ten times as much as the sum of the bribe or without such".*

41. GRECO welcomes the tightening of the sanction - from two to four years' imprisonment – for basic cases of active and passive bribery, which goes beyond the scope of the recommendation. The suggested reform will re-categorise both crimes as those of medium, not low, gravity and thereby extend the limitation period in their regard from two to six years, as is required. The authorities are urged to rapidly follow through with this reform.

42. GRECO concludes that recommendation viii remains partly implemented.

Theme II: Transparency of Party Funding

43. It is recalled that GRECO in its Evaluation Report addressed twelve recommendations to the Russian Federation in respect of Theme II. At the preceding stages of the compliance procedure, GRECO concluded that recommendations i, ii, v-vii, x and xii had been implemented satisfactorily and recommendations iii, iv, ix and xi had been partly implemented. Compliance with the pending recommendations is dealt with below.

Recommendation iii.

44. *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.*

45. In the Second Compliance Report, GRECO had taken note of a review of cases initiated in response to complaints filed with election commissions and law enforcement bodies. It had again expressed serious doubts as to whether the results of this review – i.e. the absence of cases of abuse of public office in the sphere of political financing in 2013 and 2014 – were representative given the potentially very widespread problem highlighted in the Evaluation Report. GRECO had furthermore noted amendments to the Prosecutor General's Orders on supervision over election legislation and on combating corruption[8] and to Articles 5.8 and 5.69[9] of the Code of

[8] Order No. 264 of 28 May 2015 and Order No. 346 of 1 July 2015.

Administrative Offences (CAO) and emphasised the importance for those to now be effectively applied in practice. While the reported measures were welcomed as steps in the right direction, supplementary information was sought by GRECO on practical measures to address the problems referred to in paragraphs 93 and 94 of the Evaluation Report, including with respect to 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.

46. The authorities now inform of a series of measures taken in pursuit of this recommendation. On 15 April 2017 Federal Law No. 64 FZ "On amending certain enactments of the Russian Federation with a view to improving state policy in the field of combatting corruption" entered into force. It amended Article 29 of Federal Law No. 67-FZ "On the basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation" (LBG) by expanding the anti-corruption duties, prohibitions and restrictions established for public officials[10] to include permanent members of election commissions with a decisive vote. Members are relieved of their duties for non-compliance with those rules.

47. The issues underlying the recommendation have also been prioritised at all levels in the Prosecution Service. In 2016 and the first half of 2017, the implementation of the above Prosecutor General's Orders and of Articles 5.8 and 5.69 CAO had been reviewed. The analysis proved that numerous measures had been taken that included: a) inquiries into citizens' complaints, the vast majority of which turned out to be unsubstantiated (statistics on the exact number of such complaints are not available); b) the launching of administrative procedures where violations had been found and the filing of prosecutors' submissions to put an end to legal infringements; and c) awareness-raising, legal and other training activities (for the complete account of this review, please refer to Annex 1). Overall, in 2016 and the first half of 2017, 32 violations were established by prosecutors in 14 regions and in 11 cases perpetrators were held administratively liable. Additionally, 20 cases were adjudicated by courts under Article 5.8 CAO and 19 cases - under Article 5.69 CAO.[11] According to the Supreme Court, judges did not encounter any practical difficulties when considering those cases. The authorities state that prosecutors found no case of misuse of the media by persons in public office during election campaigns.

48. Moreover, law enforcement bodies have identified six offences under Article 141 PC (on the obstruction of the exercise of electoral rights or of the work of election commissions), and courts have examined three cases of administrative violations under Article 5.45 (on the use of advantages of office during an election campaign or a referendum campaign). The authorities add that allegations of violations are checked not only on the basis of notifications filed with law enforcement bodies but also through their monitoring of the mass media.

49. The Central Election Commission (CEC) held a conference in November 2016 on "The Electoral System of Russia: the formation experience and development prospects", which brought together experts, representatives of public associations, social movements and political parties

[9] On the violation of procedure and conditions of election campaigning in the media (Article 5.8 CAO) and on interference with the work of election commissions or hindering voters from participating in elections (Article 5.69 CAO).

[10] E.g. the obligation to notify incitement to commit corruption offences, to disclose income, property and liabilities and to prevent and resolve conflicts of interest; the prohibition on opening bank accounts abroad, engaging in business activities, participating in the management of commercial and non-profit organisations, on using for non-official purposes information, material means, technical, financial and information support intended for official activities only, etc.

[11] In six of those cases, proceedings were terminated and in the other 33 cases, the perpetrators were given administrative fines.

(http://www.cikrf.ru/news/cec/2016/12/26/03.html). The adoption of legislative measures aimed at countering the misuse of public office in election campaigns was one of the issues discussed. The ideas advanced at this conference were: 1) to further expand the offence of misuse of public office; 2) to reintroduce the obligation on elected officials who stand for election to take mandatory leave for duration of the campaign; 3) to elaborate a CEC instruction to counter the misuse of public office; and 4) to make it compulsory for the media to notify the public of a person's status as election candidate when publicising his/her activities.

50. GRECO takes note of the information provided. It is a positive achievement that election commission members are subject to anti-corruption obligations, restrictions and prohibitions, including those requiring the disclosure and management of conflicts of interest – with promising potential for deterring the misuse of public office in the appointment process and the exercise of duties. Similarly, the number of cases adjudicated by courts under Article 5.8 CAO proves that more prominence is being given to sanctioning violations of procedure and conditions of election campaigning in the media. That being said, the prohibitions established by Article 40 LBG are much broader in scope,[12] but aside from a handful of cases adjudicated by the courts (three under Article 5.45 CAO and six under Article 141 PC), GRECO has seen little evidence that systematic inquiries have been made into the widespread allegations of violations of this article[13] referred to in the Evaluation Report. As for the court statistics under Article 5.69 CAO, these are only of indirect relevance given that this article sanctions interference with the *work of election commissions* and hindering *voters* from *participating in elections*. Moreover, some regulatory lacunae in the regime for preventing the misuse of public office in election campaigning, including campaigning in the media, were recognised by the CEC itself[14]. To conclude, while supporting the steps already taken, GRECO would appreciate receiving more concrete information on the practical implementation of Article 40 LBG, including during the 2018 presidential elections, and on the outcome of the proposals to adopt supplementary measures in the context of this recommendation.

51. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

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

53. In the Second Compliance Report, GRECO found that the significant discrepancy between the disclosure requirements applicable to donations to political parties and entrance/membership fees remained a source of concern. Political party financial reports were to contain detailed information

[12] According to Article 40 LBG, abusing public office in the context of elections is forbidden. That prohibition applies to candidates, registered candidates, other persons who occupy state or elected municipal posts, who are public officials, state or municipal officials, members of management boards of organisations regardless of the form of ownership, journalists, creative staff of mass media organisations. The following *inter alia* constitute abuse of public office: engaging persons who are subordinate to or otherwise dependent on a candidate, using premises occupied by state bodies or bodies of local self-government, using telephone, fax and other telecommunication means, information services, office equipment of state and municipal bodies and institutions, using state or municipal transportation free of charge or at low cost, in order to promote a candidate/list of candidates.

[13] See, for example, references to numerous alleged violations identified by civil society organisations and individual activists: https://www.kartanarusheniy.org/2016-09-18/s/4283795476, https://www.golosinfo.org/ru/articles/110294, https://www.golosinfo.org/ru/articles/111834, https://blog-matveev.livejournal.com/1059568.html, https://www.golosinfo.org/ru/articles/142456, https://www.rbc.ru/politics/15/03/2018/5aaa8ad59a7947c9cd14eba8?from=main.

[14] http://www.cikrf.ru/news/cec/23113/

on donations exceeding 285 EUR (per natural person per year) but only on entrance/membership fees exceeding 89 546 EUR (per natural person per year). The reforms had therefore only partly addressed the recommendation.

54. The authorities now report that Federal Law No. 375-FZ of 5 December 2017 "On amendments to Articles 29 and 34 of the Federal Law "On political parties" entered into force on 1 January 2018. It establishes a single cap on annual entrance/membership fees and on donations to parties by natural persons (4 330 000 RUB/ 61 850 EUR). Moreover, it authorises the CEC to establish thresholds for the publication of information on party members and donors who are natural persons. In pursuance thereof, a resolution setting the disclosure threshold at 100 000 RUB/1 500 EUR for both categories was adopted by the CEC on 21 February 2018.

55. GRECO welcomes the revision of the law "On political parties" which has established a single cap on party entrance/membership fees and on donations to parties by natural persons. This responds to one of the two concerns as expressed in paragraph 95 of the Evaluation Report, by redressing the risk of using entrance/membership fees to *circumvent the upper ceiling* established for donations to political parties by natural persons. As for the second risk, that of *circumventing the disclosure rules*, it was addressed by the CEC resolution, which has established the disclosure threshold for publishing information on party members and donors who are natural persons. The two concerns underlying the recommendation have thus been tackled adequately.

56. Going beyond the scope of the recommendation, GRECO recalls that, in paragraph 99 of the Evaluation Report, it stressed the importance of ensuring consistency between the disclosure requirements of rules governing the financing of parties *and* election campaigns. Furthermore, it considered the disclosure threshold of 1 000 EUR for donations from natural persons in presidential elections to be too high and not apt for ensuring sufficient transparency in the funding of political parties and election campaigns, particularly, at local level[15]. In comparison, the disclosure threshold for donations by natural persons to political parties (under the Federal Law on "Political Parties") and to funds of electoral subjects participating in the State Duma elections were (at the time) set at 500 EUR. GRECO takes the view that a holistic approach is fundamental to the success and credibility of the on-going reform. Piecemeal solutions might (inadvertently) favour the implementation of some GRECO recommendations to the detriment of the other. A holistic approach[16] pre-supposes a thorough, systematic and coherent revision of all political financing rules and regulations which ensures the compliance of all such revisions with all GRECO's recommendations.

57. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation ix.

58. *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.*

[15] Recommendation vii to "*consider lowering the current disclosure thresholds, including of […] 1 000 EUR (donations by natural persons to an electoral fund of a candidate in presidential election) to an appropriate level*" was proposed as a remedy. This recommendation was assessed as implemented satisfactorily in the Compliance Report adopted by GRECO in June 2014.

[16] This was precisely the goal pursued by recommendation i ("*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*"), found to have been implemented satisfactorily in October 2016 in the Second Compliance Report.

59. In the Second Compliance Report, GRECO was concerned that the activities carried out prior to the official nomination of election candidates were not reflected in the relevant financial statements. Note had nonetheless been taken of the draft legislation which intended to align the concepts of "election campaigning", "election campaign" of a candidate/electoral association and "campaign period", all of which were to start on the date of nomination of a candidate/list of candidates.

60. The authorities now recall that the election-related expenses of a political party may only be paid from that party's electoral fund and that in the run-up to an election campaign, a party may only incur expenses in connection with the holding of congresses, party conferences or general meetings for the purpose of nominating election candidates and drawing up party lists. Party financial statements are to reflect such expenditure.

61. On 16 August 2017, the CEC adopted resolution No. 97/836-7 "On amendments to the Recommendation for Preparing a Consolidated Financial Report by a Political Party," which further itemised the expenses for the preparation and holding of congresses, party conferences and general meetings, including in connection with upcoming election campaigns to be reported by a party/its regional branches. On 23 November 2017, a round table on "The experience of applying legislation on financial transparency of activities of political parties" was held by the CEC to present this resolution to political parties. It was clearly stated that failure to report such expenditure would constitute grounds for the CEC to apply to law enforcement bodies to verify the legality of a party's funding. An official CEC notification recapitulating the same message was supposed to be circulated to all parties as well.

62. GRECO takes note of the information provided, which is only partly relevant to the issues at stake. It refers to paragraph 102 of the Evaluation Report which notes discrepancies in how the commencement of the "campaigning" period is determined in various provisions of the key legal act governing elections[17] and the difficulties this creates for qualifying promotional activities conducted between the official commencement of an "election campaign", on the one hand, and the commencement of a candidate's/electoral association's "election campaigning", on the other hand. To ensure that the expenses that might be incurred during this initial stage are accurately and comprehensively recorded, which is the underlying goal of the recommendation, it might be appropriate to explicitly state that campaigning activities may start immediately after the official announcement of the election campaign and that related financial obligations may be taken by a candidate/electoral association with respect to any such campaigning activities but that the actual

[17] According to Article 2, paragraph 2 of the Law "On basic guarantees of electoral rights and the right to participate in referendums of citizens of the Russian Federation" (LBG), "*the campaigning period*" is the period within which the election campaigning/campaigning for a referendum is permitted. According to Article 2, paragraph 4 LBG, "*election campaigning*" is the activity carried out in the course of an "*election campaign*". Pursuant to Article 2, paragraph 19 LBG, the "*election campaign*" commences on the day of the official publication of a decision by an authorized official, a state government or local body to hold the election. Article 2, paragraph 20 LBG also contains a definition of an "*election campaign of a candidate/electoral association*", which commences on the day of the nomination of a candidate/list of candidates and terminates on the day of submission by the candidate/electoral association of the final financial report. Furthermore, Article 49, paragraph 1 LBG stipulates that the "*campaigning period*" of an electoral association commences on the day of the nomination of a candidate/list of candidates; the "*campaigning period*" of a candidate nominated as part of a list of candidates commences on the day of the presentation of such list to the corresponding election commission; and the "campaigning period" of a self-nominated candidate commences from the moment of presentation to the election commission of his/her application to compete in elections. According to Article 48, paragraph 5 LBG, campaigning expenses may only be paid from (corresponding) electoral funds. Pursuant to Article 58, paragraph 1 LBG, such funds may only be set up by an election candidate after informing the election commission in writing of his/her (self-) nomination by an electoral association after the registration by an election commission of its designated representatives for financial matters.

expenses may only be incurred from the moment the candidate/electoral association establishes an electoral fund. Also, it should be ensured that all campaigning-related activities carried out by a candidate from the moment of the announcement of an election campaign and until the submission by him/her of the final financial report to the respective election commission, are adequately recorded, reported and made public.

63. GRECO concludes that recommendation ix remains partly implemented.

Recommendation xi.

64. *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.*

65. In the Second Compliance Report, GRECO had found parts (i) and (iii) of the recommendation to have been implemented satisfactorily. In respect of part (ii), GRECO had acknowledged the positive effect of extending conflicts of interest regulations to election commission members[18]. Nonetheless, since the way the commissions are formed had not been altered[19] and there was no evidence of measures being taken to overcome the significant public mistrust and allegations of them being influenced by the state apparatus (cf. paragraph 108 of the Evaluation Report), GRECO had concluded that this part of the recommendation remained partly implemented.

66. The authorities refer to the conference on "The Electoral System of Russia: the formation experience and development prospects" organised by the CEC in November 2016 (cf. paragraph 49), which included as one of its core agenda items the strengthening of the election commissions' independence. The ideas tabled during this conference were: 1) to provide for the CEC's status in the Constitution or in a separate federal law; 2) to empower the CEC to draw up annual reports containing a summary of law enforcement practices, the analysis of electors' legal culture and any identified infringements; 3) to endow the election commissions with the right of a legislative initiative; 4) to expand the CEC's oversight over lower-level commissions; 5) to elaborate additional measures precluding the interference of municipal bodies in activities of territorial and precinct election commissions; and 6) to develop a "Code of Ethics" for election organisers. The contentious issues of state and municipal officials being members of election commissions and of political parties being involved in their formation were also debated. As already mentioned, the Public Council under the CEC is currently transforming those ideas into concrete proposals for further consideration and action by the state bodies responsible.

67. GRECO welcomes the open dialogue launched by the CEC around the perceived deficit of trust in and independence of the system of election commissions and noted with interest the many avenues for improvement suggested. It is important to secure the commissions' independence

[18] Federal Law No. 64-FZ introducing relevant amendments entered into force on 3 April 2017.

[19] GRECO recalls that of the 15 CEC members,10 are appointed by Parliament - which is composed primarily of representatives of the governing party, - and 5 by the President who usually supports the governing party; members of regional commissions are appointed based on proposals made by political parties or 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 appointed by the President (half their membership can be composed of state and municipal servants); members of lower election commissions are designated at the discretion of the superior election commissions.

from the executive in law and in practice[20] as the key pre-requisite for proper administration of the electoral process and for demonstrating in a palpable, effective and determined manner their resistance to politically motivated manipulation and pressure. The authorities are urged to review the way in which commissions are appointed as suggested previously and to follow through on the many promising initiatives currently being elaborated within the CEC to better safeguard the independence and impartiality of election commissions at all levels.

68. GRECO concludes that recommendation xi remains partly implemented.

III. CONCLUSIONS

69. **In view of the previous compliance reports and information presented above, GRECO concludes that the Russian Federation has implemented satisfactorily or dealt with in a satisfactory manner twelve of the twenty-one recommendations contained in the Third Round Evaluation Report.**

70. With respect to Theme I – Incriminations, recommendations ii-iv and vi-viii remain partly implemented, and with respect to Theme II – Transparency of Party Funding, recommendation iv has been implemented satisfactorily and recommendations iii, ix and xi remain partly implemented.

71. As for incriminations, GRECO is disappointed with the authorities' decision to review the bribery-related provisions of the Penal Code (PC) by splitting the previous single draft legal act into two separate ones, which is not conducive to bringing clarity and consistency and may cast doubts over the robustness of the legal framework that is sought. The authorities are therefore urged to swiftly address the outstanding recommendations preferably through a single draft legal act. GRECO hopes that the importance the authorities say the country's leadership attributes to implementing its recommendations will bring much awaited impetus to this work.

72. More specifically, the proposed amendments to the bribery-related provisions of the PC do not fully conform to the standards of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). For example, the provisions which criminalise the giving and receiving of a commercial bribe by an employee of a commercial or other organisation omit the elements of indirect commission of the offence, of third party beneficiaries and of non-material advantages. The provision on passive commercial bribery by persons exercising managerial functions in the same, and by domestic and foreign arbitrators, only criminalises the "unlawful use", not receipt, of *any* undue advantage. The provisions on the promising, offering or request to participate in commercial bribery exclude the elements of "requesting" an undue advantage and of indirect commission of the offence, and the concept of "acceptance of an offer or a promise" is not properly incorporated. The offence of active public sector bribery lacks the elements of "promising" and "offering", and the offence of passive public sector bribery that of "requesting" an undue advantage. As for the offence of passive trading in influence, it omits the concepts of "receipt", "acceptance of an offer or promise" and of "whether or not the influence is exerted or whether or not the supposed influence leads to the intended result".

73. GRECO is satisfied nonetheless with the proposed removal from the Criminal Procedure Code of the rule whereby, in cases of private sector bribery where harm has been caused exclusively to

[20] Various problems undermining the independence of election commissions of the subjects of federation and of territorial and precinct election commissions are analysed, for example, in http://st.golosinfo.org/2016/07/O-sostoyanii-IKSRF-i-TIK_1.pdf and https://www.golosinfo.org/ru/articles/142070.

the interests of a commercial organisation, it is only upon the application or consent of that organisation that the case can be prosecuted. Furthermore, the proposed extension from two to six years of the limitation period for basic active and passive bribery is welcomed. GRECO calls upon the authorities to spur on these efforts to address the outstanding recommendations, including by ratifying as soon as possible the Additional Protocol to the Criminal Law Convention on Corruption.

74. Regarding the transparency of political funding, GRECO welcomes the revision of the law "On political parties" which has established a single cap for party entrance/membership fees and donations to parties by natural persons. This redresses the risk of using entrance/membership fees to circumvent the upper ceiling established for donations to political parties by natural persons. As for the risk of circumvention of the disclosure rules, it has been redressed by means of a CEC resolution. While welcoming those steps, GRECO stresses the importance of ensuring consistency between the disclosure requirements of rules governing the financing of political parties *and* those governing election campaigns. A holistic approach to the on-going legal reform should be promoted. This pre-supposes a systematic and coherent revision of all political financing rules and regulations and ensuring that revisions comply with all GRECO recommendations. Seeking consistency is also relevant to the issue of the commencement of the "campaigning" period so that financial activity is accurately and comprehensively recorded.

75. With respect to the potential for the misuse of public office in election campaigning, GRECO supports the many steps taken but would appreciate receiving more concrete information on the practical implementation of Article 40 of the Federal Law "On basic guarantees of electoral rights and the right to participate in a referendum of citizens of the Russian Federation", including during the 2018 presidential elections. Last but not least, GRECO underscores the importance of securing the commissions' independence from the executive in law and in practice as the key pre-requisite for proper administration of the electoral process and for demonstrating in a palpable, effective and determined manner their resistance to politically motivated manipulation and pressure. The authorities are urged to review the way in which commissions are appointed as suggested previously and to follow through on the many promising initiatives currently being debated to better safeguard the independence and impartiality of election commissions at all levels.

76. In conclusion, in view of the fact that nine 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-iv and vi-viii (Theme I – Incriminations) and of recommendations iii, ix and xi (Theme II – Transparency of Party Funding), by 31 December 2018 at the latest.

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

Annex I

[English only]

INFORMATION
on the results of the analysis conducted
pursuant to recommendation III on topic II of the third evaluation round
of the Group of States against Corruption

Pursuant to Recommendation iii of the Group of States against Corruption (GRECO) on "Transparency of the financing of political parties", the Prosecutor General's Office of the Russian Federation analyzed the execution in 2016 of orders of the Prosecutor General of the Russian Federation of 28.05.2015 No. 264 "On amendments to the instruction of the Prosecutor General of the Russian Federation No. 339/7 of 06.09.2010 "On the organization of prosecutor's supervision over observance of the legislation on elections" and No. 346 of 01.07.2015 "On amendments to Order of the Prosecutor General of the Russian Federation No. 454 of 29.08. 2014 "On the Organization of Prosecutorial Supervision over Execution of Anti-Corruption Legislation".

The prosecutors of the constituencies of the Russian Federation, city and district prosecutors, other territorial and specialized prosecutors are instructed by the above orders to take comprehensive measures to identify and suppress instances of abuse of official (state) authority related to the financing of political parties and election campaigns, coverage of election campaigns by the mass media; Illegal use of state property and other resources by candidates participating in elections for conducting their election campaigns; violations of restrictions related to official or official position established by Article 40 of Federal Law No. 67-FZ "On Basic Guarantees of Electoral Rights and the Right to Participate in a Referendum of Citizens of the Russian Federation" of 12.06.2002 (hereinafter - Law No. 67-FZ); instances of abuse of official powers for the purpose of obtaining property benefits, giving and receiving bribes, commercial bribery, other corruption crimes, violations of prohibitions, duties and restrictions established by Federal Law No. 273-FZ "On Combating Corruption" of 25.12.2008 committed by state and municipal employees, by persons on public positions of the Russian Federation, public offices of the subjects of the Russian Federation, the positions of heads of municipalities, municipal offices, or in respect of such persons during the organization and conduct of election campaigns; to ensure an objective and comprehensive consideration of applications of citizens and organizations about such facts.

Summarizing of internal memorandums showed that pursuant to mentioned order of the Prosecutor General of the Russian Federation, **the issues of finding and suppression of corruptive violations in period of election campaigning are subject to special control of prosecutors of all levels**.

In order to provide the effective and overall control in this area the founding of temporary working groups was implemented to the operational practice of prosecution authorities.

For example, in period of election campaigning on election of deputies of the 7th State Duma of the Federal Assembly of the Russian Federation and additional election of deputies of the fifth State Assembly – Kurultay of Republic of Bashkortostan in Inorsovskiy electoral district No. 2 and Naryshevskiy electoral district No. 19, deputies of local representative government authorities by prosecutor of Republic of Bashkortostan in order to provide the proper exercising of vested powers, the order dd. July 04, 2016 No. 85 was issued, pursuant to which the working group of the most experienced employees was created, which liaises with law enforcement agencies, courts, election commissions, as well as carries out operational collection and analysis of incoming data about legal status, timely taking actions of prosecutor's reaction, rendering of prompt methodological assistance in law enforcement for territorial prosecutors. The general cluster training workshops regarding organization of this supervision have been held in basic public prosecution offices. The training workshop with participation of territorial prosecutors, representatives of the Ministry of internal affairs of

Republic of Bashkortostan, republican Central election commission has been held in public prosecution office of republic, where the issues of legal order guarantee in election period have been discussed.

For the purposes of prevention of corruption offence commission, it is the usual practice for the prosecutors everywhere to make different arrangements on education in the law and negative attitude formation to corrupt conduct.

For example, this year the seminar class was held by public prosecution office of Voronezh region in the Election commission of the region, in process of which the provisions regarding government service and ant-corruption were explained, as well as practical and theoretical issues of anti-corruption laws application have been discussed.

The prosecutors guarantee acceptance and timely consideration of petitions regarding violation of electoral rights of citizens. Petitions which were submitted in 2016 mostly referred to the issues of disagreement with election commissions' decisions, wrong acts of nominees for deputies, violation of the order of campaign materials distribution, the order of election campaigning. The detailed examination of large majority of petitions showed their inconsistency (the arguments of applicants were not confirmed by objective evidence in process of consideration of petitions).

For example, in September, 2016 the investigation regarding petition of representative of political party "Rodina", Ivanov V.F. on possible violations of electoral legislation in Sverdlovsk region, administrative intervention using, official position advantages in election campaign has been carried out by pubic prosecution office of Sverdlovsk region.

Due to the arguments of applicant, the Governor of Sverdlovsk region in violation of electoral legislation had business trips in period of election campaign by company vehicle to the towns, where election campaigning for all-Russian political party "Yedinaya Rossiya" has been carried out.

It was established in process of investigation that the Governor of Sverdlovsk region has been on annual paid leave in the period mentioned in the petition. His responsibility in mentioned period was devolved on the Chairman of the Government of Sverdlovsk region, who carried out business trips within his powers. The argument of petition regarding usage of company vehicle by the Governor of Sverdlovsk region was not confirmed in process of investigation. Due to the results of investigation no grounds for taking actions of prosecutor's reaction were established.

In the other case the Noginsk city prosecutor's office of the **Moscow region** considered an application on violation of the restrictions established by Article 40 of Law No. 67-FZ by a deputy of the State Duma of the Federal Assembly of the Russian Federation and a deputy of the Moscow Regional Duma. According to the results of the investigation, there no law violations were found. It was established that the presentations of these deputies at the event, dedicated to the 235th anniversary of the Bogorodsky Territory, were not of a propagandistic but of a congratulatory nature.

The prosecutor's office of the Kuedinsky district of the **Perm Region** verified the arguments of the application of a candidate for deputy of the Legislative Assembly of the region sent by the Commissioner for Human Rights in the Perm Krai regarding the use of an administrative resource during the election campaign, namely, that local authorities prevented to have meetings with voters. These arguments were not confirmed. It was established that the applicant did not apply to the local self-government bodies for allocating premises for meetings with voters, but conducted the meetings in the premises of agricultural enterprises with the participation of representatives of the district council.

In cases **when applicants' arguments were found to be valid, the prosecutors took actions for reaction: they commenced administrative proceedings, make submissions on elimination of law infringement, etc**.

For example, the public prosecution office of Primorskiy district of city of **Saint-Petersburg** in 2016 in view of the results of consideration of applicant's petition has elicited the fact of conflict of interests of intra-urban municipal structure head in process of creation of territorial election commission.

It was established that intra-urban municipal structure head did not assume measures for settling the conflict of interests which occurred due to his recommendation of his mother-in-law on March 24, 2016, for nomination as a member of territorial election committee with casting vote and voting on this

issue. Thereafter the last one was appointed to public position of territorial election commissioner by the order of election commission of Saint-Petersburg.

Furthermore, it was established in process of investigation that no legal acts which regulate the procedure of notification about occurrence of vested interest upon performance of duties, which lead or can lead to the conflict of interests by the persons which hold public offices, as well as no procedure of assuming measures on prevention or settlement of such conflict, are worked out.

Pubic prosecution office of district made the submission based on these facts, which has been considered and settled. Mother-in-law of municipal structure head which was appointed to the position of territorial election commissioner was resigned from public position.

It is noteworthy that **due to the taken preventive measures, in the vast majority of the regions, there was no evidence of abuse of official (state) powers** in order to obtain property benefits, giving and receiving bribes, commercial bribery and other corruption-related offenses, violations of prohibitions, obligations and restrictions set by Federal Law No. 273-FZ "On Combating Corruption" of 25.12.2008 committed by state and municipal employees, persons occupying the state positions, public positions of the Russian Federation, as the heads of municipalities, municipal offices, or in respect of such persons during the organization and holding of election campaigns.

However, **in some cases, prosecutors and other law enforcement agencies revealed violations on the results of consideration of applications and at the initiative of inspections** related to abuse of official (state) powers in order to obtain benefits of pecuniary nature during election campaigns.

In total, **in 2016 more than 30 violations of the analyzed categories in 14 Russian regions were revealed, with 19 cases being criminally and legally assessed, in other cases the perpetrators were brought to administrative responsibility**.

For example, on July 01, 2016 the Division of Criminal Investigation of the Russian Federation in **Zabaykalskiy kray** launched a criminal charge against the elections commissioner of village settlement “Artinskoye” M., who made use of her official powers and appropriated funds in the amount of 21 336 rubles, which were allocated for conducting of election for the 4th Council of village settlement “Artinskoye”. By verdict of Uletovskiy district court dd. October 21, 2016, M. was convicted of the crime under part 3, article 160 of the Criminal Code of the Russian Federation (hereinafter referred to as CC of RF), with custodial sentence for 2 years with probationary period of 2 years.

In another case on March 03, 2016 the crime investigator of Karasukskiy interdistrict of Investigation Department of Criminal Investigation Division of Investigation Committee of RF in **Novosibirsk region** launched a criminal investigation due to part 3, article 30, part 2, article 292 (attempted bribery) of CC of RF against S., who on February 02, 2016 proposed T. to pass as an intermediary a grand bribe to the deputy of Baganskiy village council of Novosibirsk region R. for his failure to participate at IX session of this village council, in other words, for his failure to exercise the powers of deputy in voting at election of village council head.

Due to the results of preliminary investigation the criminal proceeding was referred to the court and its hearing is in a process.

In **Sakhalin region** in process of criminal investigation by Criminal Investigation Division of Investigation Committee of the Russian Federation in the region it was established that in the beginning of 2014 the Governor of Sakhalin region created the organized group for gaining of illegal money rewards from the persons who wanted to take part in election for municipal Duma, with intention to assist them in preparation and carrying out of electoral campaign with the use of his managing and administrative powers. The members of organized group got the bribes from 18 persons in the amount from 2 up to 10 million rubles; also they performed the active acts aimed at arrangement of conditions for getting the bribes from 2 persons in the amount from 3 up to 10 million rubles. Now the criminal investigation is in process.

In 2016 two corruption-related crimes carried out by district election commissioners were found out in **Omsk region**.

For example, due to the results of examination carried out by Isilkulskiy interdistrict public prosecution office on January 21, 2016 in a procedure of part 2, article 37 of Code of Criminal Procedure of RF in Isilkulskiy interdistrict of Investigation Department of Criminal Investigation Division of Investigation Committee of RF in Omsk region the material is sent regarding the former district elections commissioner S., who appropriated the funds in the amount of more than 30 thousand rubles, which were issued to him for organization and carrying out of election of Governor of Omsk region, election for the Council of Isilkulskiy municipal district and election for the Council of Isilkulskiy municipal settlement, by entering of misrepresentations into payroll records for payment of additional remuneration to the members of district election commission.

By verdict of Isilkulskiy municipal court dd. May 25, 2016 S. was convicted of the crime under part 3, article 160 of CC of RF (appropriation carried out with the use of official position), and he was imposed the custodial sentence for 2 years and 6 months with probationary period of 2 years.

In **Orenburg region** in 2016 the public prosecutors elicited 4 facts of embezzlement of public funds in period of organization and election campaigning, which were carried out by district elections commissioners, exercising their powers on a temporary basis. The materials of examination in a procedure of part 2, article 37 of Code of Criminal Procedure of RF were provided to investigating authorities, and 4 criminal cases were launched on their ground.

For example, the public prosecution office of Kvarkenskiy district has established that the district elections commissioner U. appropriated twice the funds which were allocated from the state budget for remuneration of labor of members of electoral district, organized in the territory of Kvarkenskiy district (in period of election for the Governor of Orenburg region, as well as in period of election for district Council of Deputies) for the total amount of more than 36 thousand rubles. By verdict of the court dd. July 12, 2016 U. was found guilty of committing of appropriation, and she was imposed the penalty in the amount of 60 thousand rubles with deprivation of rights to carry out the certain activity related to participation in elections commissions for the term of 2 years.

In **Kursk region** in 2016 there were also elicited 4 corruption-related crimes, which were carried out by district elections commissioners in period of organization and election campaigning. For example, it was established the fact of appropriation of funds, obtained in Election commission of Kursk region for covering the expenses related to conducting of election for the 4th State Duma of the Federal Assembly of the Russian Federation and election for the 7th Kursk regional Duma by district elections commissioner (the criminal case was launched by Criminal Investigation Division of the Russian Federation in Kursk region).

In **Saratov region** in period under consideration it was elicited 2 facts of manufacture of false documents on motor vehicle rental by district elections commissioners with the purpose of embezzlement of public funds in their custody. Criminal cases were submitted to the court, and the accused were sentences to imposition of fines.

Numerous violations were elicited in **the Komi Republic**.

As it was established, in 2016 P., as the divisional head of political party “Spravedlivaya Rossiya” in town of Vorkuta, and the deputy of the State Council of the Komi Republic, together with the member of territorial election commission of town of Vorkuta A., fraudulently and with abuse of confidence, proposed the sole proprietor Sh. to win a deputy seat of the council of municipal structure of urban district “Vorkuta” pursuant to party tickets of the party “Spravedlivaya Rossiya” for monetary reward in the total amount of 700 thousand rubles. The funds were obtained by P. on July 27, 2016 in the territory of town of Syktyvkar. The criminal case was launched regarding this fact, and it was submitted to the court in May, 2017 on a charge of P. and A. in attempt at fraud (part 3, article 30, part 3, article 159 of CC of RF).

In the proceedings of Criminal Investigation Division of Investigation Committee of the Russian Federation in the Komi Republic there is the criminal case in its closing investigation stage on a charge of Sh. in bribery taking due to the part 6, article 290 of CC of RF. It has been established that Sh., as the elections commissioner of the Komi Republic, in period from 2006 till 2015 every month had been

getting the bribes from the Deputy Head of the Komi Republic, Ch., in total amount of more than 6,6 million rubles for providing of information for the last one about the process and results of elections at different levels in the territory of republic before their official publication, as well as for ensuring access to the protocols of district commissions on the voting results before entering of its results into the state automated system “Vybory”.

The municipal court of town of Syktyvkar is finishing the hearing of criminal case against the deputy of the State Council of the Komi Republic B., who is under an accusation of commission of crime, set forth in paragraph “в”, part 4, article 204 (corrupt business practices), 289 (illegal engagement in entrepreneurial activities), 169 (obstruction to legal entrepreneurial activity) of CC of RF.

As it was established, B., as the regional coordinating officer of political party LDPR and the member of Coordination Council of regional division of political party LDPR, proposed two sole proprietors to win the deputy seats of municipal structure of urban district “Syktyvkar” pursuant to party tickets of LDPR for illegal gratification in the amount of 3 million rubles. Acting in a capacity of regional division head of LDPR, B. persuaded three members of the party, which won in election by territorial groups, to refuse in a written form from getting of deputy’s seats and to ensure in such a way the seat in the council of urban district to the person, on behalf of whom the corrupt business practices related to the sole proprietors were used. For the purpose of fulfillment of obligations to another sole proprietor, B. persuaded one more elected deputy to refuse from its deputy’s seat after the introductory session of municipal council. The further unlawful practices of B. were put under restraint by law enforcement officials.

In addition to that it was established that B. since 2011 till 2015 as the vice chairman of the Committee of the State Council of the Komi Republic on budget, taxes and economic policy, and then as the chairman of the Committee of the State Council of the Komi Republic on social policy, in spite of the prohibition to take part in economic entity management, has founded through his affiliated persons two commercial organizations, which were engaged in production and installation of outdoor advertisement, took part in management of these organizations and extended patronage to them pursuant to his official position.

The public prosecution office of the Komi Republic has elicited also in 2016 the fact of nonobservance of legal requirements on prevention and regulation of conflict of interests by rector of higher educational establishment, who took part in electoral campaign. In process of examination it was established that the rector used for his personal purposes the rent-free apartment (it was provided for the person, who was not in an employment relations with the university, but who rendered the advisory services for the rector as to the nominee for deputies of the State Council of the Komi Republic). Office of the Prosecutor General of the Russian Federation made the submission to the Ministry of Education and Science of Russia in March, 2016 on the ground of materials of public prosecution office of republic, and the rector was dismissed from his current position in period of such submission’s consideration.

Due to the fact of disposing of dwelling by this person with violation of the procedure, set forth by housing legislation, the Criminal Investigation Division of Investigation Committee of the Russian Federation in the Komi Republic has launched the criminal case due to part 1, article 286 (abuse of office) of CC of RF, which was submitted to the court.

The Volokolamsk city prosecutor's office of **the Moscow region** initiated a criminal case against an official of the Yaropoletskoe Volokolamsk district administration on 22.07.2016 under Article 5.21 (delayed transfer of funds to election commissions) of the Federal Code of Administrative Offenses (hereinafter - the Code of Administrative Offenses of the Russian Federation) on the fact of non-fulfillment of obligations to transfer funds to the election commission. By decision of the magistrate of the Volokolamsk region, the guilty official was brought to administrative responsibility.

Violations of the restrictions established by Article 40 of Law No. 67-FZ took place in **the Republic of Tuva.**

For example, the plenipotentiary representative of the Head - the Chairman of the Government of the Republic of Tuva in the Ulug-Khem district, being a public official, held a meeting with members of

the municipalities of the district using the premises of the municipal district administration for the purpose of collecting signatures for the 6 candidates (overall 8 persons were nominated) for the position of the highest official of the Republic. Following the prosecutor's resolution, by the order of the justice of the peace of 11.08.2016 he was brought to administrative liability under article 5.45 (taking advantage of the office or official position) of the Administrative Code with a fine in the amount of 3 thousand rubles

In May 2016, the Prosecutor's Office of the **Chuvash Republic** established the fact of placing on the facades of a number of medical institutions subordinate to the Ministry of Health of the Republic, the banners with a photo of the Minister of Health of the Republic with a brochure in hand, which has the emblem of the United Russia party and the text: "Together we will make a step towards health", which contribute to the formation of a positive image of the said party among the population. The Prosecutor's Office of the Republic filed a submission to the Chairman of the Cabinet of Ministers of the Chuvash Republic, on the results of consideration of this submission the banners were dismantled, the guilty official was brought to disciplinary responsibility.

The prosecutor of the Pribaikalsky district of the **Republic of Buryatia** revealed the illegal conduct of pre-election campaigning in the performance of his duties as the head of the municipal institution "Education Department of Pribaikalsky district", occupying the position of the municipal service, by sending them the letters of the heads of educational organizations about holding meetings of employees, parents of students with the purpose of informing them of the support of one of the candidates to the State Duma of the seventh convocation. By decision of the justice of the peace, following the district prosecutor's resolution of 14.10.2016, the guilty official was brought to administrative responsibility under Article 5.11 (conducting pre-election campaign by persons whose participation in its conduct is prohibited by the federal law) of the Code of Administrative Offenses of the Russian Federation in the form of a fine.

A single instance of violation of the law requirement related to the participation in the election campaign of a member of the election commission, took place in the **Tomsk region.**

By the decision of the justice of the peace, with the consent of the Prosecutor of the Tomsk region, based on the protocol of the district election commission, the Chairman of the district election commission of Election district №720 (Tomsk district) who collected signatures in support of one of the candidates for the Legislative Assembly of the region was brought to criminal responsibility under Article 5.47 (collection of signatures of voters in prohibited places, as well as collection of signatures by persons who are prohibited by federal law to participate) of the Code of Administrative Offenses.

The violations of this category were elicited by public prosecutors the current year as well.

For example, in May, 2017 the public prosecutor's office of **Altayskiy kray** in process of examination of performance of obligations to submit the information on income, expenses, property and property-related obligations by the deputies of Legislative Assembly of Altayskiy kray, it was established the fact of ownership by one deputy in period of electoral campaign of 2016 in violation of requirements of paragraph 3.3, article 33 of Federal law dd. June 12, 2002 No. 67-FZ "On basic guarantees of electoral rights and rights for participation in referendum of citizens of the Russian Federation" by the shares of the company, located in the Republic of Cyprus. Due to the results of examination dd. May 25, 2017, the public prosecutor's office has made the submission to the Legislative Assembly of Altayskiy kray on elimination of violation of law (under consideration).

The current year the public prosecutor's office of the **Komi Republic** has elicited the fact of violation of anti-corruption legislation in period of conducting of election campaign to the VII State Council of the Komi Republic by the nominee for deputy T., which held the position of chief of the State Pubic Establishment of the Komi Republic (hereinafter referred to as SPE).

In particular, due to the instructions of T. the public officials of SPE accrued accidental benefits for "intensity and high performance" to separate employees, after which these funds were transferred to the fund of unaccounted monetary resources or were spent for the purposes as T. stated. Not less than 20 million rubles in total was accrued under the pretense of accidental benefits, and T. personally has spent not less than 1,9 million rubles herewith.

In addition to that, it was established by the examination that in period of election campaigning T. ha instructed the subordinate staff of SPE under a far-fetched pretext in kind of voluntary donation to enter the funds obtained by him by illegal means against his special electoral account. In a result, T. gave a veneer of legality to ownership, usage and disposal of mentioned funds, and got the opportunity to use them legally upon his election campaigning.

Due to the mentioned facts the criminal cases under part 1, article 285 (abuse of office) and subparagraph “б”, part 3, article 174^1 (legalization (money-washing) of funds or other property gained by the person in a result of commission of crime, exercising the powers vested in him by virtue of his office) of CC of RF were launched against T. by investigating officer of Criminal Investigation Division of Investigation Committee of the Russian Federation in the Komi Republic. The investigation is still in progress.

Due to the results of examination the public prosecutor of Pervomayskiy district of town of Izhevsk (the **Urdmurt Republic**) in February, 2017 has made the submission on elimination of anti-corruption legislation and municipal service legislation regarding the fact of using of office equipment of district administration by deputy head of district, Sh., for the purposes, not related to his official activities, that is, for production of printed agitation material. Under the period of consideration of submission of district public prosecutor, Sh. has resigned from his current position.

In general, the results of generalization give evidence of activation of prosecutor’s supervision in the sphere of consideration. The issue of the order of the Prosecutor General of the Russian Federation dd. July 01, 2015 No. 346 “On amendments into the order of the Prosecutor General of the Russian Federation dd. August 29, 2014 No. 454 “On organization of prosecutor’s supervision of implementation of anti-corruption legislation” allowed to focus attention of public prosecutors and other law enforcement authorities on problems, mentioned in paragraphs 93 and 94 of Appraisal report, and to elicit numerous violations. All established facts of abuse got the proper legal appraisal, all accrued persons were brought to responsibility.

On **the whole, the results of the review show the intensification of the prosecutor's supervision in this area**. The publication of orders of the Prosecutor General of the Russian Federation No. 264 "On Amendments to the Instruction of the Prosecutor General of the Russian Federation No. 339/7 of 06.09.2010 "On the Organization of Prosecutorial Supervision over the Observance of Election Laws" of 28.05.2015 and No. 346 "On Amending the Order of the Prosecutor General of the Russian Federation No. 454 of 29.08.2014 "On the Organization of Prosecutor's Supervision over the Execution of Anti-Corruption Laws" of 01.07.2015 **enabled to focus the attention of prosecutors and other law enforcement agencies on the issues identified in paragraphs 93 and 94 of the Evaluation Report, and to identify numerous violations**. All established facts of abuse of powers were duly assessed, the perpetrators were brought to justice.

The Prosecutor General's Office
of the Russian Federation