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## Third Evaluation Round

### Addendum to the Second Compliance Report on Romania

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

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"Transparency of Party Funding"

Adopted by GRECO  
at its 75<sup>th</sup> Plenary Meeting  
(Strasbourg, 20-24 March 2017)

## I. INTRODUCTION

1. This Addendum assesses further measures taken by the authorities of Romania since the adoption of the previous Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Romania. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
  - Theme I – Incriminations: Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
  - Theme II – Transparency of party funding: Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 49<sup>th</sup> Plenary Meeting (3 December 2010) and made public on 15 March 2011, following authorisation by Romania (Greco Eval III Rep (2010) 1E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Romanian authorities submitted situation reports with information regarding actions taken to implement the recommendations within the framework of the compliance procedure. GRECO selected Turkey and the Russian Federation to appoint Rapporteurs for the compliance procedure.
4. The first Compliance Report was adopted by GRECO's 58<sup>th</sup> Plenary Meeting (7 December 2012) and made public on 11 February 2013, following authorisation by Romania ([Greco RC-III \(2012\) 18E](#)). GRECO acknowledged that substantial reforms, which had the potential of achieving compliance with the pending recommendations, were underway: a new Criminal Code would be entering into force which was significant for the implementation of recommendations under Theme I and substantial legal reform was also noted in respect of Theme II (party funding). GRECO invited the Romanian authorities to submit additional information regarding the implementation of pending recommendations.
5. The Second Compliance Report was adopted by GRECO's 66<sup>th</sup> Plenary Meeting (12 December 2014) and made public on 14 April 2015 ([Greco RC-III \(2014\) 22E](#)). As regards Theme I (Incriminations), GRECO was pleased to note that the new Criminal Code had entered into force, together with further amendments made earlier. Although some improvements were desirable, Romania had enhanced its compliance with the Criminal Law Convention. With respect to Theme II (Transparency of Party Funding), GRECO concluded that Romania had not made substantial progress. The vast majority of recommendations issued under Theme II had still not been implemented satisfactorily or dealt with in a satisfactory manner. As a result, GRECO considered the overall response as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and decided to apply Rule 32 ("non-compliance procedure") and asked Romania to further information on the progress made concerning the pending recommendations (both Themes).
6. In the Interim Compliance Report, adopted by GRECO's 69<sup>th</sup> Plenary Meeting (16 October 2015) and made public on 22 December 2016 ([Greco RC-III \(2015\) 13E](#)), GRECO concluded that, with respect to Theme I (incriminations), that no further progress had been achieved. However, with respect to Theme II (Transparency of Party Funding), a number of recommendations had been

complied with as a result of amendments to the legislation in this respect. This positive development made GRECO conclude that the overall level of compliance with the recommendations was no longer “globally unsatisfactory” and the application of Rule 32 (“non-compliance procedure”) was discontinued.

7. In view of the fact that a large number of recommendations were yet to be implemented and that some important gaps needed to be addressed, GRECO, nevertheless asked Romania to submit additional information regarding the implementation of pending recommendations. This information was sent by Romania on 30 September 2016.
8. The current Addendum, drawn up by Mr Faris KARAK (Turkey) and Mr Sergei SHULGA (Russian Federation), assisted by the GRECO Secretariat, assesses the further implementation of the pending recommendations since the adoption of previous compliance reports.

## II. ANALYSIS

### Theme I: Incriminations

9. It is recalled that GRECO in its Evaluation Report addressed seven recommendations to Romania in respect of Theme I. Out of these, four recommendations have been implemented satisfactorily (recommendations ii, iii, v and vii). The remaining recommendations are dealt with below.
10. GRECO notes that, on 31 January 2017, the government adopted an Emergency Ordinance making amendments to the Criminal Code and the Code of Criminal Procedure regarding, *inter alia*, the removal of the notion of “commercial relations” as part of the offence of conflicts of interest (as a consequence of which, an official would be able to grant benefits to commercial companies in which he/she holds or held certain interests). Whilst this Government Emergency Ordinance was subsequently withdrawn on 16 February 2017, GRECO has followed these developments closely as they have an impact on Romania’s obligations under the Criminal Law Convention on corruption (see also paragraph 69 of the conclusions).

#### Recommendation i.

11. *GRECO recommended criminalising active and passive bribery in the public sector and trading in influence so as to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence.*
12. GRECO recalls that this recommendation was not implemented in the previous compliance reports as no legislative change had been taken in order to cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official’s competence.
13. The Romanian authorities indicate that no progress towards the implementation of this recommendation has been achieved yet. However, they state that in the course of the first half of 2017, the Ministry of Justice intends to implement a technical assistance project to assess compliance of existing legislation with the provisions of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The outcome of the project will be analysed by the competent authorities, including by practitioners, in order to determine both its implications on national legislation and impact on pending corruption cases.

The authorities indicate that GRECO's remaining recommendations will be taken into account during the process.

14. GRECO takes note of the information provided by the Romanian authorities. While noting the authorities' intention to tackle recommendation i, as well as other pending recommendations under Theme I, as part of the aforementioned technical assistance project, GRECO considers that, for the moment, no progress has been achieved towards the implementation of the recommendation at issue.

15. GRECO concludes that recommendation i remains not implemented.

Recommendation iv.

16. *GRECO recommended to ensure that the incrimination of bribery in the private sector – including in the New Criminal Code – covers as bribe-taker the full range of persons who work, in any capacity, for private sector entities whether legal persons or not.*

17. GRECO recalls that this recommendation was considered not implemented in previous compliance reports as no adequate legislative changes on this particular shortcoming had occurred.

18. The Romanian authorities do not refer to any progress regarding this recommendation but state that they intend to deal with this recommendation as a part of the aforementioned technical assistance project (see paragraph 13).

19. GRECO takes note of the information provided by the Romanian authorities and their intention to tackle this recommendation as a result of the above-mentioned technical assistance project. However, GRECO notes the absence of any development for the moment as to the implementation of recommendation iv and refers to its earlier detailed considerations contained in the Second Compliance Report.

20. GRECO concludes that recommendation iv remains not implemented.

Recommendation vi.

21. *GRECO recommended i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery and trading in influence in cases of effective regret; ii) to clarify the conditions under which the defence of effective regret can be invoked; iii) to abolish the restitution of the bribe to the bribe-giver in such cases.*

22. GRECO recalls that this recommendation was considered partly implemented in previous compliance reports. The Romanian authorities had conducted an analysis of cases in which effective regret had been applied, which appeared to confirm GRECO's concerns for this recommendation. The authorities had also amended the wording of the provisions on effective regret contained in Articles 290 and 292 NCC, which had improved the situation in respect of the outcome of undue advantage, in a way which responded to the third part of the recommendation. However, Romania had not amended the automatic – and mandatorily total – exemption from punishment nor taken any measures to clarify the conditions under which the defence of effective regret can be invoked.

23. The Romanian authorities do not report any new developments towards the implementation of this recommendation. However, they state their intention to work on it as part of the above-mentioned technical assistance project (paragraph 12).
24. GRECO takes note of the information provided by the Romanian authorities and their intention to implement this recommendation in relation to the aforementioned technical assistance project. However, for the time being, no progress has been made towards the full implementation of recommendation vi.
25. GRECO concludes that recommendation vi remains partly implemented.

## Theme II: Transparency of Party Funding

26. It is recalled that GRECO addressed 13 recommendations to Romania in respect of Theme II. Out of these, eight recommendations (ii, vi-xi and xiii) have been implemented satisfactorily. The remaining recommendations are dealt with below.
27. GRECO recalls that Law No. 334/2006 on the financing of political parties and electoral campaigns was amended by law No. 113/2015. As noted in detail in the Interim Compliance Report, this law takes on board several concerns raised by GRECO in the Evaluation Report.
28. The Romanian authorities now indicate that, on 13 January 2016, the Government approved, through Government Decision No. 10/2016, new Methodological Norms for the application of Law No. 334/2006 on the financing of political parties and election campaigns (hereafter, the Methodological Norms). Given the substantial changes to the legislation on the financing of political parties and election campaigns, the previous Government Decision was repealed. Government Decision No. 10/2016 mainly regulates the following: (a) the procedure and format for recording, tracking and publishing donations, contributions, loans and own revenues and expenditures of political parties; (b) granting and using subsidies from the state budget; (c) the specific procedure and format for registration, accounting and transparency of revenues and expenses during the electoral campaign; (d) registration and attributions of financial agents; (e) the control procedure and methodology; (f) categories of documentation and methodology for reimbursement of the amounts spent for the electoral campaign; (g) misdemeanours and penalties and which stakeholders establish the misdemeanours.

### Recommendation i.

29. *GRECO recommended (i) to clarify how the financial activity of the various types of structures related to political parties is to be accounted for in the accounts of political parties; (ii) to examine ways to increase the transparency of contributions by "third parties" (e.g. separate entities, interest groups) to political parties and candidates.*
30. GRECO recalls that this recommendation was considered partly implemented in previous compliance reports. As regards the first part of the recommendation, GRECO was satisfied that amendments to Law No. 334/2006 on the financing of political parties and election campaigns had improved the situation regarding the consolidation of information in a uniform manner, in line with the recommendation. However, insofar as the second part of the recommendation is concerned, GRECO regretted that no new measures had been introduced to deal with the need for more transparency when it comes to contributions by third parties to political campaigning.

31. The Romanian authorities now submit that Law No. 334/2006 does establish a ban on campaigning applicable to persons other than political parties and election candidates. Article 36 paragraph 4 of the law provides that “expenses related to propaganda materials shall be borne solely by their beneficiaries – independent candidates, political parties or political alliances”. Moreover, paragraph 5 prohibits the production and dissemination of propaganda material under conditions other than those stipulated by law. The authorities add that this approach was strengthened by Law No. 78/2016, amending and completing Law No. 334/2006. In accordance with Article 52 paragraphs 1 and 4 and Article 53 paragraph 1 of the amended law, violations by any natural or legal person of the quantity of propaganda materials produced constitutes an offence punishable by a fine ranging from RON 10 000 to 25 000 (approximately EUR 3 370 to 11 230) and the confiscation of the equivalent value of the provided means. The production or payment, by third parties, of propaganda materials represents misdemeanours and the measures (sanctions) applied by the supervisory authority (PEA) is to be made public on their website.

*Law No. 334/2006, as amended by Law No. 78/2016*

*Article 36 - (4) Expenses related to the production of propaganda materials shall be borne solely by their beneficiaries - independent candidates, political parties or political alliances.*

*(5) The production and dissemination of propaganda materials under other conditions than those provided by this law is prohibited.*

*Article 52 - (1) The violations of the provisions of Art. 5 para. (3) - (5), Art. 6, art. 7, Art. 8 para. (1), (2) and (4), Art. 9, Art. 10, Art 11, Art. 12, Art. 13, Art. 14 para. (2) and (3), Art. 15 para. (1) and (3), Art. 16 para. (1) and (3), Art. 17 para (1), (2) and (4), Art. 31, Art. 32 para. (1), Art. 33 para (1) and (2), Art. 34 para. (5), (6), (8), (9), (11), (12) and (14), Art. 36 para. (2) – (4) and (6), Art. 39 para. (1), Art. 47 para. (4), Art. 51 para. (2) and Art. 60 para. (3) represent an offence punishable by a fine ranging from RON 10 000 to 25 000.*

*(4) The penalties may apply, as appropriate, to the political party, political alliance, and organisation of citizens belonging to national minorities, independent candidates, financial agent and / or donor who has violated the provisions of para. (1) - (3).*

*Article 53 - (1) In the situations mentioned at Art. 52 para. (1) - (3), the person who has committed the contravention shall transfer to the state budget the money and/or the value equivalent of the assets and services which were the object of the contravention, on the basis of the decision of the Permanent Electoral Authority.*

32. GRECO recalls that only the implementation of the second part of this recommendation remains to be assessed. It takes note of previous information provided during the compliance procedure whereby donations in the form of “propaganda materials” from third parties had been banned. New information has now been provided in addition to this: Law No. 78/2016, amending Law No. 334/2006 on the financing of political parties and campaigns, has introduced sanctions (fines) for providing “propaganda materials” not produced by political parties or independent candidates and the confiscation of the equivalent value in cash for the materials concerned. This means that the production or payment by third parties of “propaganda materials” is a misdemeanour, a situation that may most certainly have a preventive effect on third parties providing such contributions. While it still leaves open the question of other forms of support from third parties to political parties and independent candidates and it would be preferable to deal with the issue of third parties in clearer terms (e.g. definition of third parties; definition of persons who are directly or indirectly connected with political parties – with a distinction between natural and legal persons; rules on donations to political parties and candidates made by third parties; rules on costs that third parties can make in election campaigns for different elections; a third party registration mechanism), the measures taken are a way of limiting contributions from third parties. Considering that this recommendation does not require more than examining ways to deal with

this issue, GRECO considers that the measures taken are adequate in response to this part of the recommendation.

33. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation iii.

34. *GRECO recommended to require political parties to present their consolidated accounts to the Permanent Electoral Authority and to make an adequate summary available to the public.*

35. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed the adoption of Article 49 of Law No. 334/2006 in May 2015 and amendments adopted in June 2015, which provide for the submission of the financial statements to the Permanent Electoral Authority (PEA) in its capacity as political finance supervisor. GRECO also welcomed that the same law requires publication of the summaries of the financial statements on the PEA's website. That said, GRECO considered the stipulated timing (deadlines) for the submission of information to the PEA was not precise enough and that it was not possible to assess the adequacy of the summary information to be submitted to the PEA for publication as the detail of the information to be included had not been fixed at the time.

36. The Romanian authorities now indicate that on 13 January 2016, the Government approved, through Government Decision No. 10/2016, new Methodological Norms for the application of Law No. 334/2006 on the financing of political parties and election campaigns (hereafter, the Methodological Norms). Furthermore, they reiterate that, pursuant to Article 49 paragraphs 3 and 4, the annual financial statements of political parties, including their local branches, must be submitted to the PEA within 15 days of their registration with the tax authorities and that the PEA must publish these statements and summaries of them within five days of their submission. They further indicate that, according to Article 46 paragraph 1 of the Methodological Norms, certified copies of the simplified statements have to be submitted to the PEA within 15 days of the registration with the tax authorities. To date, the simplified annual financial statements of 21 political parties have been published on the PEA's website.<sup>1</sup> These statements include an abridged balance sheet, an abridged account of the outcome of the exercise and the notes to the simplified annual financial statements. According to the authorities, the data published by the PEA is therefore adequate and synthetic enough to meet the recommendation of GRECO.

37. Moreover, Law No. 144/2016 has amended and supplemented Law No. 544/2001 on free access to information of public interest to the effect that political parties receiving funding from public funds are assimilated to public institutions and are under the obligation to provide interested persons, upon request, information on their activity, including their financial activity. As a result of the above-mentioned amendment, each political party receiving funding from public funds must communicate *ex officio* the following public information: (a) normative acts governing the organisation and functioning; (b) organisational structure, competences of the departments, the working programme, audiences; (c) the name and surname of leadership and the official responsible for disseminating public information; (d) contact details (name, address, telephone, fax, e-mail and web address); (e) financial sources, budget and balance sheet; (f) programmes and strategies; (g) list of public documents; (h) list of documents produced and/or managed by law; (i) modalities to contest the decision if a person considers the right to access information of public interests was breached. Access to this information is done by: (a) display at the headquarters or by publishing it in the Official Gazette or in the media, in their own publications,

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<sup>1</sup> <http://www.roaep.ro/finantare/raportari-obligatorii-privind-activitatea-curenta-a-formatiunilor-politice/>

and website; (b) consultation on the premises of the institution or public authority, in places specially designed for this purpose.

38. GRECO welcomes the adoption of the Methodological Norms for the application of Law No. 334/2006 on the financing of political parties and election campaigns according to which simplified annual statements have to be submitted to PEA within 15 days of their registration with the tax authorities. It notes that simplified annual statements include an abridged balance sheet, an abridged account of the outcome of the exercise and the notes to the simplified annual financial statements. GRECO also considers positive that Law No. 144/2016 has imposed on political parties receiving public funds to make public, *inter alia*, their financial sources, budget and balance sheet. In view of this and considering that the PEA, as political finance supervisor, has access to the annual financial statements submitted to the tax authorities and must publish on its website summaries of the financial statements shortly after their registration with the tax authorities, GRECO considers that the scope of recommendation iii has now been covered.

39. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

40. *GRECO recommended to take appropriate measures i) to ensure that in-kind donations to parties and election campaign participants (other than voluntary work by non-professionals) are properly identified and accounted for at their market value, as donations; ii) to clarify the legal situation of loans.*

41. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed, in respect of the first part of the recommendation, the fact that, according to Law No. 334/2006 as amended in May 2015 and republished in June 2015, donations of goods and services provided free of charge are to be reflected in the accounts of political parties at their actual value, based on market prices, in the case of both movable and to immovable property assets, and that the valuation of goods and services is to be done by authorised valuers, as opposed to valuation by internal committees, along the lines of rules to be determined in a future government decision. However, it drew the authorities' attention, *inter alia*, to Article 10 in Law No. 334/2006 which appeared to follow a different approach. On the second part of the recommendation, GRECO considered that the legal situation concerning loans was not sufficiently clarified.

42. The Romanian authorities refer again, in respect of the first part of the recommendation, to the text of Article 6 paragraphs 5 and 6 of Law No. 334/2006:

*Law No.334/2006 Law No. 334/2006, as republished on 23 June 2015 and amended by Law No. 78/2016  
Article 6 - (5) The market value of movable and immovable assets donated to the party as well as and services free of charge are included in the value of donations within the limits provided in para. (1), (2) and (3)  
(6) The assessment of goods and services set out in para. (5) shall be made by certified appraisers according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods, approved with amendments by Law no. 99/2013, as amended and supplemented.<sup>2</sup>*

<sup>2</sup> Through evaluation, according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods means the activity value estimation, contained in a document called evaluation report carried out by an authorized according to specific standards of this activity and specific ethics of the profession. Judgment of the National Union of Certified Appraisers Romania no. 3 of 19 May 2012 approving the assessment standards mandatory for members of the National Association of Certified Appraisers in Romania. International Valuation Standards IVS (International Valuation Standards) approved in art. 1 letter a) are based on the concept of market value.

43. The authorities specify that, in practice, any donation in money, irrespective of the value, is to be registered in accordance with Article 10 of the newly adopted Methodological Norms of Law No. 334/2006. Donations in kind are to be registered using the same forms, at a market value established by assessors authorised by law.

*Methodological Norms of Law No. 334/2006, approved by Government Decision No. 10/2016*

*Article 10 - (4) All donations, regardless of the amount, form and subject, are recorded and highlighted by political parties in the accounting, according to regulations, with record date on which the donation contract was concluded, first and last names of donors, their identification data or names of legal persons, unique registration code or tax identification, their citizenship or nationality, by case.*

*(5) All donations, other than money, will be recorded in the accounts at market value at the conclusion of the donation established by evaluation reports prepared by the assessors authorized by law.*

44. As regards the second part of the recommendation, the authorities refer to the legal regime of loans as a source for funding of political parties which is governed by Article 3 paragraph 2 to 7 and Article 7 of Law No. 334/2006, as republished, with subsequent amendments:

*Law No. 334/2006, as republished on 23 June 2015 and amended by Law No. 78/2016*

*Article 3 - (2) Political parties can borrow money only on the basis of authentic notarial acts, under penalty of nullity, accompanied by documents attesting the handover, the contract having to provide for the manner and deadline of the refund.*

*(3) The deadline stipulated under paragraph (2) shall not exceed 3 years.*

*(4) Loans and refunds can be made only via bank transfer.*

*(5) Cash loans which are not repaid within the period specified in para. (3) can constitute (can be transformed into) donations only with the consent of the parties and only if the ceiling imposed for donations in that year provided by art. 5 para. (1) is not reached, up to that ceiling.*

*(6) Loans which have a value greater than 100 minimum gross salaries are subject to the conditions laid down in art. 9.*

*(7) Lending by political parties, political or electoral alliances and independent candidates to natural or legal persons is prohibited.*

*Article 7 - (1) Loans received by a political party in a fiscal year may not exceed 0.025% of the revenue provided for in the state budget for that year.*

*(2) Loans received by a political party from an individual in a year can be up to 200 minimum gross salaries, at the value of 1 January of the same year.*

*(3) The funds of loans received by a political party from a person in a year can be up to 500 minimum gross salaries, at the value of 1 January of the same year.*

*(4) The total value of loans to political parties made by legal entities directly or indirectly controlled by another person or a group of natural or legal persons shall not exceed the limits provided in para. (1) - (3).*

*(5) The provisions of art. 5 para. (7) - (9) and of the art. 10 para. (1) - (3) shall apply accordingly.*

45. The authorities add that the primary legal framework governing loans used for financing political parties and electoral campaigns is specified under Articles 16 and 28 paragraph 2 of the Methodological Norms:

*Methodological Norms of Law No. 334/2006, approved by Government Decision No. 10/2016*

*Article 16 - (1) Political parties may conclude contracts covering consumption loan money, according to law, only through authentic notarial inscriptions.*

*(2) A political party is obliged to request from the legal person who is a lender a declaration on chargeable liabilities to the state budget, social insurance budget or local budgets, and to keep this statement for a period of at least 3 years from the date of the loan.*

(3) Political parties may have only the quality of the borrower.  
 (4) Proof of receipt of loan-teaching can be done by any private documents certifying the bank transfer.  
 (5) The amounts covered loans not repaid within the period prescribed by the contract, may constitute donations by consent, unless it was achieved that year ceiling for donations provided by art. 6 para. (1) of Law no. 334/2006, republished, up to that ceiling.  
 (6) Payment of loan is proved by payment order signed by the borrower and the paying credit institution concerned."

Article 28 - (3) Loans that will be used by candidates as contributions to the campaign must meet the following conditions:

- a) to comply with the limits set by law for loans to political parties;
- b) should only be made through bank accounts."

46. GRECO takes note of the information provided by the Romanian authorities. As regard the first part of the recommendation, GRECO notes that the authorities state that, in practice, all donations in money and all donations in kind are to be registered, in accordance with Article 10 of the Methodological Norms of Law No. 334/2006, and that in-kind donations are to be registered at their market value as established by assessors. GRECO is satisfied that the explanation concerning in-kind donations meets the concerns of the first part of the recommendation.
47. As to the second part of the recommendation, GRECO is pleased that Law No. 334/2006 (as amended) read in conjunction with the newly adopted Methodological Norms for this Law clarifies the legal situation concerning loans in respect of political parties. It follows that this part of the recommendation has also been complied with.
48. GRECO concludes that recommendation iv has been implemented satisfactorily.
- Recommendation v.
49. *GRECO recommended i) to require that all donations be, as a rule, recorded and included in the accounts of political parties and campaign participants; ii) to introduce a requirement that all donations above a certain threshold be made through the banking system.*
50. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed the fact that, on the first part of the recommendation, Law No. 334/2006, as amended and subsequently republished in June 2015, established under Article 12 a requirement for all donations to be recorded with all the relevant information, including the donors' identity. At the same time, GRECO was concerned about the redundancy and inconsistency of some connected rules in place. Furthermore, it appeared that similar arrangements on the registration and identification of all donations had not been made for contributions to candidates.
51. As to the second part of the recommendation, GRECO found that, while Article 9 referred to the use of the banking system for donations made to political parties, the arrangements of Article 28 pursued another objective than imposing similar obligations for candidates and the financing of their campaigns.
52. The Romanian authorities now state, in respect of the first part of the recommendation, that, in addition to the registration obligation, the recently adopted Methodological Norms on Law No. 334/2006 clearly set out the forms necessary to ensure the effective implementation of the recommendation: donations are registered in specific forms, depending on the type of donor (natural or legal person). Moreover, the contributions of candidates to electoral campaigns are to be registered using a separate form.

*Methodological Norms of Law No. 334/2006, approved by Government Decision No. 10/2016*

*Article 10 – (1) When accepting donations, regardless of the manner and form in which they were made, political parties are required to verify and record the identity of donors, according to these methodological norms.*

*(2) In case of natural donors, political parties are obliged to ensure verification and recording of donor identity in the standard form set out in Annex. 3.*

*(3) If case of legal donors, political parties are obliged to ensure verification and recording of donor identity in the standard form set out in Annex. 4.*

*(4) All donations, regardless of the amount, form and subject, are recorded and highlighted by political parties in the accounting, according to regulations, with record date on which the donation contract was concluded, first and last names of donors, their identification data or names of legal persons, unique registration code or tax identification, their citizenship or nationality, by case.*

53. The authorities also point out that Article 28 paragraph 2 of the Methodological Norms provides that the donations used by candidates as contributions to the campaign must meet the following conditions: comply with the limits set out by law for donations to political parties; be received only on their bank account if their value exceeds 10 minimum gross salaries; be accompanied by declarations from donors related sources, if not originating from their own income; and comply with the procedure laid down in Article 10 paragraphs 1 to 3. They also cite paragraph 9 of the same provision, which specifies that when filing an electoral campaign contribution, financial agents must verify and record the contributor using a separate, specific standard form. This form includes the following information: name, surname, identity card number, nationality of the contributor; constituency where the contributor candidates; position for which the contributor candidates; amount of the electoral contribution; provenance of the donation; date of filing the electoral contribution; name, surname, identity card number, and signature of the financial agent; registration date of the contributor. The relevant legal provisions of the Methodological Norms are the following:

*Methodological Norms of Law No. 334/2006, approved by Government Decision No. 10/2016*

*Article 11 - (1) Political parties may receive monetary donations from the same person, if their total value exceeds 10 annual national minimum gross salaries, only through their own bank accounts.*

*(2) Payment orders and sheets disbursement of donations made through bank accounts will include obligatory mention of the donation and the political party which is granted, the identification of the natural donor or names of legal persons, unique codes for recording or their tax identification, citizenship or nationality, as the case.*

*Article 12 - (1) Political parties may receive monetary donations from the same person, if the total annual value is less than 10 minimum gross salary per country, in cash, according to Law No. 70/2015 for strengthening the financial discipline on the cash receipts and cash payments and amending and supplementing Government Emergency Ordinance No. 193/2002 concerning the introduction of modern payment systems.*

*(2) All donations in cash are collected only on the basis of receipts which will include mention of the donation and the political party which is granted, the identification of the natural donor or name of legal persons, unique codes registration or their tax identification, as the case.*

*Article 28 - (2) The donations used by candidates as contributions to the campaign must meet the following conditions:*

- a) to comply with the limits set by law for donations to political parties;*
- b) be received only in their bank accounts if their value exceeds 10 national minimum gross salaries;*
- c) be accompanied by declarations from donors' related source, if not originating from their own income.*
- d) comply with the procedure laid down in Art. 10 para. (1) - (3)."*

54. Finally, the authorities indicate that, according to Article 28 paragraph 3, Article 30 paragraph 1 and Article 38 paragraph 1 of Law No. 334/2006, campaign contributions and expenditures are made exclusively through bank accounts.
55. GRECO takes note of the information provided by the Romanian authorities. As regards the first part of the recommendation, it welcomes the fact that the Methodological Norms approved in 2016 have created standard forms for donations depending on whether they are made by natural or legal persons, which the PEA can scrutinise. Furthermore, it notes that the details of all donors must be recorded in political parties' books, regardless of the rules on public disclosures. In addition, Article 28 paragraph 2 of the Methodological Norms now provides for a number of requirements for donations used by candidates as contributions to electoral campaigns, which appear to be comparable to those for political parties. Consequently, the first part of the recommendation has been implemented.
56. As to the second part of the recommendation, GRECO notes that Article 28 paragraph 2 of the Methodological Norms specifies that, similarly to donation made to political parties, donations used by candidates as contributions to a campaign must be made through bank accounts when they exceed 10 national minimum gross salaries. However, campaign contributions have to be transferred to a bank account opened for this purpose, in accordance with Article 28 paragraph 3 of Law No. 334/2006; any additional amount which a political party decides to give to the campaign has to be placed on this bank account, pursuant to Article 30 paragraph 1; and all campaign expenditures must exclusively be made from this bank account, in accordance with Article 38 paragraph 1. That said, the threshold for donations via the banking system (10 national minimum gross salaries) mentioned under Article 28 paragraph 2 of the Methodological Norms is the same as for political parties. GRECO had found it to be disproportionately high in the context of the country (one national minimum gross salary is approximately EUR 237). Thus, the second part is not more than partly complied with and GRECO once more invites the Romanian authorities to review the threshold.
57. GRECO concludes that recommendation v remains partly implemented.
- Recommendation xii.
58. *GRECO recommended to increase the penalties applicable in accordance with Law No. 334/2006 on the financing of activities of the political parties and election campaigns and thus to ensure that all infringements are punishable by effective, proportionate and dissuasive sanctions.*
59. GRECO recalls that this recommendation was considered partly implemented. At the time of the adoption of the Evaluation Report, the system of sanctions was based on administrative fines, forced transfer into the state budget of the amounts concerned or the value equivalent to goods or services involved in infringements, and imprisonment of one to three years in case of false statements. The amendments to Law No. 334/2006, as republished in June 2015, had not led to significant improvements, e.g. the upper maximum of the fines contemplated had remained unchanged (approximately EUR 2 200 to 5 600). GRECO found that, overall, despite some improvements Law No. 334/2006, as revised in May 2015, had not provided for sufficiently effective, proportionate and dissuasive sanctions.
60. The Romanian authorities now point out that several new contraventions have been established through Law No. 78/2016 of 28 April 2016 amending and supplementing Law No. 334/2006:

- failure to observe the two years deadline to complete the task of acquiring office buildings as premises for the political party;
- failure to make cash donations with a value exceeding 10 national minimum gross salaries through bank accounts;
- making a financial contribution, with a value greater than 500 national minimum gross salaries, on 1 January of that year, by a non-political formation, when associating with a political party;
- making a financial contribution, with a value greater than the equivalent of 0.006% of the revenues provided in the state budget for that year, by a non-political formation, when associating with a political party;
- failure of political parties, to publish in the Official Gazette of Romania, Part I, the total amounts subject to financial contributions to the associations with non-political formations until 30 April, next year;
- failure of the political party to open, through the financial agent, one bank account at national level for national referendum or at county/Bucharest level for local referendum, within five days from the commencement of the referendum campaign;
- failure to observe the legal obligations on the contributions for referendum campaign;
- failure of the financial agents to carry out their legal attributions;
- failure to observe the legal regime of financial agents – the eligibility and incompatibility criteria with the quality of candidate;
- failure to register the financial agent within the deadline provided by the law;
- failure of the political parties and independent candidates to comply with the obligation to report to the PEA the status of debt payment recorded in the electoral campaign until full payment thereof;
- failure of political parties to comply with the obligation to provide, electronically, the mandatory reporting to be published in the Official Gazette of Romania, Part I, according to Article 5 paragraph 4, Article 13 paragraph 1 and 2, Article 15 paragraph 3, Article 16 paragraph 3, Article 17 paragraph 4 and Article 47 paragraph 3, as well as the declarations referred to in Article 28 of Law No. 334/2006, republished, as amended and supplemented.

61. The authorities also refer to Article 52 of Law No. 334/2006:

*Law No. 334/2006, as republished on 23 June 2015 and amended by Law No. 78/2016*

*Article 52 - (1) Violations of the provisions of Art. 5 para. (3) - (5), Art. 6, Art. 7, Art. 8 para. (1), (2) and (4), Art. 9, Art. 10, Art. 11, Art. 12, Art. 13, Art. 14 para. (2) and (3), Art. 15 para. (1) and (3), Art. 16 para. (1) and (3), Art. 17 alin. (1), (2) and (4), Art. 31, Art. 32 para. (1), Art. 33 para. (1) and (2), Art. 34 alin. (5), (6), (8), (9), (11), (12) and (14), Art. 36 para. (2) - (4) and (6), Art. 39 para. (1), Art. 47 alin. (4), Art. 51 alin. (2) and Art. 60 para. (3) shall be offences, unless they are committed in such circumstances as to be considered as crimes under criminal law, and punishable by a fine of 10 000 lei to 25 000 lei [approximately €2 245 to €5 615].*

*(2) Violations of the provisions of Art. 3 para. (2)-(4) and (6) - (10), Art. 25 para. (2) Art. 28, Art. 29, Art. 30, Art. 37, Art. 38, Art. 43 para. (2) - (4), Art. 45, Art. 47 para. (1), (2) and (5), Art. 49 para. (1)-(3) and (5) and 50 para. (2) shall be offences, unless they are not committed under such conditions as to be considered as crimes under criminal law, and punishable by a fine of 15 000 to 50 000 lei [approximately €3 370 to €11 235].*

*(3) The violations of the provisions of Art. 8 para. (3) shall be offences, unless they were committed under such conditions as to be considered a crime according to criminal law, and punishable by a fine of 100 000 lei to 200 000 lei [approximately €22 470 to €44 945].*

*(4) The penalties may apply, as appropriate, to the political party, political alliance, and organisation of citizens belonging to national minorities, independent candidates, financial agent and/or donor who has violated the provisions of para. (1) - (3).*

62. The authorities indicate that Government Decision No. 10/2016 also introduced three new contraventions as follows:

*Methodological Norms of Law No. 334/2006, approved by Government Decision No. 10/2016*

*Article 2 - (1) The following shall be offences, unless they are not committed under such conditions as to be considered as crimes under criminal law:*

*a) the use by political parties of other sources of income than those provided by Law No. 334/2006, republished;*

*b) violation by political parties of the obligation to keep for a minimum of three years declarations of legal persons who act as donor or lender;*

*c) violation by political parties, political alliances and organisations of national minorities of the obligation to repay the unspent money to candidates or reimbursed by the Permanent Electoral Authority.*

*(2) The offences in para. (1) is punishable by a fine of 10 000 to 50 000 lei [approximately €2 245 to €11.235].*

*(3) The offences referred to in para. (1) are found by controllers of the Permanent Electoral Authority and the sanctions are applied by decision of the Permanent Electoral Authority.*

*(4) In cases provided in para. (1) the offender transfers to the state budget the sum of money and/or cash value of goods and services which were the subject of infringement, based on the decision of the Permanent Electoral Authority.*

63. The authorities further state that, for better understanding of the mechanism of sanctions implemented by the PEA, the above-mentioned legal provisions should be read in conjunction with Article 12 paragraph 2 of Law No. 14/2003 on political parties, as republished, according to which local bodies can represent a political party to third parties at the local level and can open bank accounts and be responsible for their management. The authorities indicate that, using this reasoning, a well-developed case-law has established the contravention liability of political parties' local organisations, the amounts of the fines prescribed by law being more than dissuasive for the county organisations of a political party. Moreover, the authorities consider that the reasoning applied by GRECO on the need to decrease the threshold for making donations through bank accounts (the situation of the country) can be used to justify the current level of fines that can be imposed for violations of the legal framework pertaining to political financing. The evolution of sanctions imposed by the PEA is directly related to the regulatory framework in the matter. Thus, after the entry into force of legislative changes in 2015, during the period July 2015 – September 2016, the PEA applied sanctions to 14 political parties amounting to RON 1 630 515.31 (approximately EURO 366 325).<sup>3</sup>
64. GRECO welcomes the addition of new contraventions, notably under Government Decision No. 10/2016 (such as the use by political parties of sources other than those provided in law or the failure to keep records for three years of legal persons acting as donor or lender) and notes that a specific range of fines has been added, ranging from RON 10 000 to 50 000 (approximately EUR 2 245 to 11 235). It also notes from the information provided by the Romanian authorities that political parties' local organisations are also covered by fines on political financing. Taking all this into account, GRECO is of the opinion that the situation has improved considerably as compared with the situation when the Evaluation Report was adopted, but the levels of the existing penalties remain largely the same.
65. GRECO concludes that recommendation xii remains partly implemented.

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<sup>3</sup> Part of the sanctions is being enforced or appealed to the competent court. The amount of sanctions does not include sanctions to be imposed following the local election campaign in 2016.

### III. CONCLUSIONS

66. In view of the conclusions contained in the previous Third Round Compliance Reports on Romania and in light of the above, GRECO concludes that to date, Romania has implemented satisfactorily or dealt with in a satisfactory manner fifteen of the twenty recommendations contained in the Third Round Evaluation Report.
67. With respect to Theme I – Incriminations, recommendations ii, iii, v and vii have been implemented satisfactorily, recommendation vi remains partly implemented and recommendations i and iv remain not implemented. With respect to Theme II – Transparency of Party Funding, recommendation i has now been dealt with in a satisfactory manner and recommendations iii and iv have been implemented satisfactorily, while recommendations ii, vi, vii, viii, ix, x, xi and xiii had already been implemented satisfactorily and recommendations v and xii remain partly implemented.
68. Concerning incriminations, GRECO had expressed the view in previous compliance reports that with the entry into force of the new Criminal Code on 1 February 2014, together with additional amendments approved at an earlier stage, the incriminations of bribery and trading in influence of Romania comply to a larger extent with the Criminal Law Convention on Corruption (ETS 173). However, GRECO calls on the Romanian authorities to take steps to achieve compliance with the remaining recommendations and, in particular, to ensure that all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competence, are covered by active and passive bribery in the public sector and trading in influence; to ensure that the incrimination of bribery in the private sector covers as bribe-taker the full range of persons who work for private sector entities whether legal persons or not; and to amend the provision on automatic exemption from punishment granted to perpetrators of active bribery and trading in influence in cases of effective regret.
69. In connection with Romania's obligations as a contracting party to the Criminal Law Convention on Corruption, GRECO has followed closely recent developments in Romania related to the amendments (subsequently withdrawn) to its criminal legislation, inasmuch as there were links to its conventional obligations. Leaving aside the detail of the emergency ordinance adopted by the Government on 31 January 2017 as it has now been withdrawn, GRECO nevertheless wishes to reiterate its concerns on having recourse to such emergency procedures as an alternative to proper parliamentary process in order to amend legislation, as also expressed in its 4<sup>th</sup> Evaluation Round Report on Romania.<sup>4</sup> GRECO considers that such far-reaching initiatives should be thoroughly examined and scrutinised by Parliament. GRECO alerts the authorities to the need to be mindful of the country's commitments regarding incriminations against corruption and of the relevant GRECO recommendations in any future legislative initiatives.
70. As to transparency of political funding, GRECO welcomes the final adoption in May 2015 of legislation amending Law No. 334/2006 on the financing of the activities of political parties and of election campaigns. It also welcomes the adoption of the new Methodological Norms on Law No. 334/2006, approved by Governmental Decision No. 10/2046, which have clarified a number of practical aspects (e.g. simplified annual statements to be submitted by political parties to the Permanent Electoral Authority (PEA); registration of all donations in money and in kind; donations to candidates for campaigns having to be made through the bank system above a certain threshold and additional sanctions). Romania has therefore taken appropriate measures to make adequate financial information available to the PEA as the body responsible for the supervision of political financing. GRECO is also pleased to see that the PEA is now entitled to also control the

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<sup>4</sup> Greco Eval IV Rep (2015) 4 (paragraphs 18-21)

spending of parties and candidates and that it was provided with material, human and legal means to perform its tasks more effectively. The PEA was also given a clear central responsibility to supervise political financing as a whole and reports suspicions of any criminal offence in connection with its mandate to the prosecutorial authorities. The (administrative) statute of limitation in relation to infringements has now been extended from six months to three years, which gives the PEA much better capacities to follow-up on possible infringements. These represent significant steps to strengthen transparency of political funding. That said, GRECO continues to find that the threshold above which donations should be done through the banking system should be lowered and asks the authorities to consider reviewing it. While the new Methodological Norms have added another layer of fines, GRECO still considers that the level of sanctions provided for by Law No. 334/2006 remain disproportionately low.

71. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Romania.
72. Finally, GRECO invites the authorities of Romania to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.