Adoption: 16 October 2015
Publication: 14 December 2015

Public
Greco RC-III (2015) 12E

Third Evaluation Round

Second Compliance Report on Andorra

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

* * *

"Transparency of political party funding"

Adopted by GRECO
at its 69th Plenary Meeting
(Strasbourg, 12-16 October 2015)

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I. INTRODUCTION

1. The second Compliance Report evaluates the new measures taken by the Andorran authorities since the adoption of the Compliance Report in the light of the recommendations made by GRECO in its Third Round Evaluation Report on Andorra. It will be recalled that the Third Evaluation Round covers two distinct themes, namely:

   - **Theme I – Incriminations**: Articles 1a and 1b, 2-12, 15-17 and 19.1 of the Criminal Law Convention on Corruption; Articles 1-6 of the Additional Protocol thereto (ETS 191) and Guiding Principle 2 (criminalisation of corruption).

   - **Theme II – Transparency of political 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 51st Plenary Meeting (27 May 2011) and made public on 15 June 2011, following authorisation by Andorra (Greco Eval III Rep (2010) 11E, Theme I and Theme II). The compliance report (Greco RC-III (2013) 12E) was subsequently adopted by GRECO at its 61st Plenary Meeting (14-18 October 2013) and made public on 22 November 2013 following authorisation by Andorra.

3. As required by GRECO's Rules of Procedure, the Andorran authorities submitted their second Situation Report with additional information on the measures taken to implement the recommendations, only three out of the twenty of which had, according to the Compliance Report, been implemented or dealt with satisfactorily, the remainder having been only partly implemented or not implemented. The Situation Report was submitted on 27 May 2015, serving as the basis for the second Compliance Report.

4. GRECO selected Austria and Switzerland to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Mr Christian MANQUET (head of unit in the Directorate of Criminal Legislation, Federal Ministry of Justice), on behalf of Austria, and Mr Ernst GNAEGI (Federal Office of Justice), on behalf of Switzerland. They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. In its evaluation report, GRECO addressed 10 recommendations to Andorra in respect of Theme I. When adopting the First Compliance Report, it had concluded that recommendations i, ii and iv had been satisfactorily implemented. Recommendations iii, v, vi, vii, viii and ix had been partly implemented and recommendation x had not been implemented; compliance with these outstanding recommendations is therefore dealt with below.

6. Generally, GRECO reiterates that on 15 November 2012, two amending acts had entered into force: a) Act No. 18/2012, Articles 15 to 23 of which amended various corruption-related provisions in the Criminal Code; and b) Act No. 19/2012, amending various provisions of the Code of Criminal Procedure, in response to GRECO's recommendations. In the case of certain recommendations, however, the Principality of Andorra had preferred to maintain the existing

situation. The authorities now report that since then, there have been further amendments to the Principality's Criminal Code: a) Act No. 19/2014 of 18 September, on political parties and the funding of elections increased the prison sentences set forth in Articles 380, 381, 383.1 and 385; b) Act No. 40/2014, of 11 December amending Act No. 9/2005 of 21 February on the Criminal Code, transformed the exculpatory excuse (ground for exemption from liability) referred to in Article 380 into an extenuating circumstance in terms of criminal liability; it also revised the penalties laid down in certain articles relating to bribery. The wording of Articles 380 to 387 is now as follows:

Article 380. Bribery

1. Authorities or public officials who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, undue advantages or accept an offer or a promise in order to act or take a decision relating to their official position, or refrain from doing so, shall be punished by ***a prison sentence ranging from three months to three years*** ~~*up to two years' imprisonment*~~ *and* ~~*suspension*~~ ***disqualification*** *from* ***occupying*** *a public post of up to* ~~*three*~~ ***six*** *years.*
2. Individuals who offer, deliver or promise undue advantages to an authority or official, for their personal gain or that of a third party, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by ***up to two years' imprisonment*** ~~*detention ("arrêt")*~~*.*
3. An ***extenuating circumstance*** ~~*exculpatory excuse*~~ ***in terms of criminal liability, which may prove to be of special significance****, is where individuals report the act of bribery to the authorities before being aware that an inquiry has started.*

Article 381. Aggravated bribery

1. Authorities or public officials who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, undue advantages or accept an offer or a promise in exchange for an unjust action or omission, delaying an act or decision, or an act or decision of a political nature, shall be punished by up to four years' imprisonment, ~~*a fine of up to three times the value of the advantage*~~ *and disqualification from occupying a public post of up to six years.*
2. Individuals who offer, deliver or promise undue advantages with a potential financial value to an authority or official, for their personal gain or that of a third party, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by ***a prison sentence ranging from three months to three years*** ~~*up to two years' imprisonment*~~*,* ~~*a fine of up to three times the value of the advantage*~~ *and disqualification from entering into contracts with the public authorities of up to* ***a maximum of six years*** ~~*four years*~~*.*

Article 382. Other active subjects of bribery

The offence in Articles 380 and 381 concerning authorities or public officials shall also apply to situations in which the actions or decisions described are taken against or by a foreign or international public official, or a member of an international or supranational parliamentary assembly, or a member of a public assembly exercising legislative or administrative powers in any other state.
This shall also apply to jurors, arbitrators, experts, interpreters or any other persons exercising public authority, whether nationals or foreigners, with the penalty of disqualification from occupying a public post replaced by disqualification from exercising the profession or post concerned.

Article 383. Judicial bribery

1. Judges who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, undue advantages or accept an offer or a promise in order to take ***or refrain from taking*** *an action or decision relating to their official position shall be punishable by* ***one to four years'*** ~~*three months' to three years'*~~ *imprisonment and disqualification from occupying a public post for of up to six years.*
2. Individuals who offer, deliver or promise undue advantages to a judge, for his or her personal gain or that of a third party, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by ***three months' to three years'*** ~~*up to two years'*~~ *imprisonment and disqualification from entering into contracts with the public authorities of up to* ***six*** ~~*four*~~ *years.*

Article 384. Aggravated judicial bribery

1. In the circumstances described in paragraph 1 of the preceding article, if the action or decision in exchange for the advantage consists in handing down an unjust decision, or unjustly delaying a decision, the penalty shall be two to ***six*** ~~*five*~~ *years' imprisonment and disqualification from occupying a public post of up to six years.*
2. Individuals who offer, deliver or promise undue advantages to a judge, for his or her personal gain or that of a third party, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by ***one to four years'*** ~~*three months' to three years'*~~ *imprisonment.*

Article 385 - Mitigated judicial bribery

When the attempted bribery on behalf of the accused in criminal proceedings is carried out by the latter's spouse or de facto equivalent, or by a natural or adoptive parent, child, brother or sister, the penalty shall be ***up to one year's imprisonment*** ~~*detention ("arrêt")*~~ *in the circumstances described in Article 383 and a prison sentence of up to two years in the circumstances described in Article 384.*

Article 385bis - Other active subjects of bribery

The provisions in the three preceding articles relating to judges shall also apply where the conduct described is directed towards or carried out by a public official or member of staff of international courts.

Article 386. Trading in influence

1. Persons who exercise influence on an authority or official in connection with any situation on the basis of their personal relationship with that or another official or authority to obtain a decision that could entail, directly or indirectly an undue advantage for them or for third parties shall be liable to a prison sentence of up to two years. The court may also order disqualification from entering into contracts with the public authorities of up to three years.
2. The authority or official concerned shall be liable to the same penalties and suspension from a public post of up to three years.
3. When the perpetrator is an authority or official and the influence and the influence derives from the powers inherent in the post or any personal or hierarchical relationship, he or she shall be liable to three months' to three years' imprisonment, and ***disqualification*** ~~*suspension*~~ *from occupying a public post of up to* ***six*** ~~*five*~~ *years.*

Article 386 bis. Other subjects of trading in influence

For the purposes of the preceding article, an official or authority shall mean:
1. A foreign or international public official, or a member of an international or supranational parliamentary assembly, or a member of a public assembly exercising legislative or administrative powers in any other state.
2. Jurors, arbitrators, experts, interpreters or any other persons exercising public authority, whether nationals or foreigners.
3. Officials or staff of international courts.

Article 386ter Secondary consequences

With regard to the offences referred to in this chapter, the court must may impose the following measures:
a) Seizure of the proceeds, within the meaning of Article 70.
b) The other measures, relating to natural or legal persons, referred to in Article 71.

Recommendation iii.

7. *GRECO recommended (i) to criminalise omissions, whether they are "unjust" or not; and (ii) to clarify the notions of "unjust" actions or omissions and actions or decisions "of a political nature" in Articles 381 and 384 of the Criminal Code.*

8. GRECO reiterates that this recommendation was deemed to have been partly implemented. With regard to the first part of the recommendation, Article 380, paragraph 1 of the Criminal Code (CC) had been amended in 2012 (cf. paragraph 6) by adding the words "or refrain from doing so" but this amendment was absent from Article 383, paragraph 1 CC. As regards the second part of the recommendation, certain measures had been taken (clarifications in the explanatory memorandum to Amending Act No. 18/2012, information meetings in the prosecution service) but GRECO had deemed these to be insufficient.

9. The Andorran authorities now report that following the amendments introduced in September and December 2014 referred to in paragraph 6, the technical correction has been added to Article 383, paragraph 1 regarding judicial bribery. For the remainder, it is planned to look at whether it would be expedient to replace the adjective "unjust" by "incompatible with the office" and to delete the concept of "acts of a political nature".

10. GRECO notes with satisfaction that the necessary amendments have been introduced in Article 383 CC and that as a result, the first part of the recommendation has now been fully taken into account. With regard to the second part of the recommendation, as yet no specific measure to make the recommended clarifications has been notified.

11. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

12. *GRECO recommended that an offence be established of the bribery of foreign arbitrators and jurors and Andorra ratifies the additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*

13. GRECO reiterates that this recommendation was deemed to have been partly implemented. Article 382, paragraph 2 CC had been amended in 2012 in order to include the words "whether nationals or foreigners" (cf. paragraph 6 above for the current wording of this article) and in this way to extend the incrimination of active and passive bribery to foreign arbitrators and jurors. Protocol ETS 191 had been signed on 20 November 2012 during the Andorran Chairmanship of the Council of Europe, but ratification, scheduled for an unspecified date in the future, had not yet taken place.

14. The Andorran authorities report that ratification of Protocol ETS 191 was approved by the Andorran parliament on 16 October 2014 (Official Gazette of the Principality of Andorra (BOPA) 65/26 of 12 November 2014).[1] The instruments of ratification were deposited in February 2015 and the Protocol came into force in respect of Andorra on 1 June 2015.

15. GRECO notes with satisfaction that the Additional Protocol to the Criminal Law Convention on Corruption has now been ratified, which was the last outstanding part of this recommendation.

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

Recommendation vi.

17. *GRECO recommended that consideration be given to (i) making bribery in the private sector an offence, in accordance with articles 7 and 8 of the Criminal Law Convention on Corruption (ETS*

[1] https://www.bopa.ad/bopa/026065/Pagines/It26065003.aspx

173) and, thus, (ii) withdrawing or not renewing the reservation to these articles of the Convention.

18. GRECO reiterates that this recommendation was deemed to have been partly implemented. Andorra had maintained the general reservation to Articles 7 and 8 of the Convention and had not introduced any amendments. But the authorities had clearly discussed the matter and reached decisions and had carried out a review of only some of the implications and benefits of extending incrimination to the private sector. GRECO encouraged the authorities to continue giving consideration to the recommendation in relation to all the expectations of Articles 7 and 8.

19. The Andorran authorities report that there have been no new developments and that the country's position has not changed since the Compliance Report.

20. GRECO takes note of the lack of any new developments. It refers to its previous comments in the Compliance Report. It therefore calls on Andorra once again to look more closely at the possible benefits to be derived from making bribery in the private sector a criminal offence, more in keeping with all the recommendations contained in Articles 7 and 8 of the Criminal Law Convention on Corruption.

21. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

22. *GRECO recommended that consideration be given to (i) bringing the offence of trading in influence into line with the various elements of Article 12 of the Criminal Law Convention on Corruption (ETS 173), by including, in particular, the notions of remuneration and intermediaries and by extending the offence to cases in which influence has not been clearly demonstrated and/or exercised and ones involving foreign public officials, members of foreign public assemblies, international public officials, members of international parliamentary assemblies and judges and officials of international courts; and, thus, (ii) withdrawing or not renewing the reservation to this article of the Convention.*

23. GRECO reiterates that this recommendation was deemed to have been partly implemented. In point of fact, while retaining its reservation to Article 12, Andorra had introduced a new Article 386bis in the Criminal Code extending the incrimination of trading in influence (Article 386 CC) to the various categories of persons representing the targets of influence set out in Article 12 of the Criminal Law Convention. As not all the relevant aspects had been discussed/examined in the examination of expediency advocated in the recommendation (in particular the concept of remuneration for influence, and a reference to trading in influence directly or via an intermediary), GRECO had been unable to regard this recommendation as having been fully implemented.

24. The Andorran authorities report that there have been no new developments and that the country's position has not changed since the Compliance Report.

25. Once again, GRECO encourages the Principality to pursue its efforts to fully implement this recommendation in order to ensure more extensive incrimination of trading in influence. It expresses regret that at present there have been no new developments. It also underlines that the aim of the reservation made by Andorra is to exclude from incrimination in domestic law what the country defines as an "attempt", i.e. in cases where influence is not exerted in practice. A strict reading of this reservation implies that it does not cover other aspects currently absent from

Article 386 CC, in particular the concept of remuneration and that of intermediary, and that the Principality should therefore bring its domestic law into line in this respect.

26. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

27. *GRECO recommended that the penalties provided for in articles 380, 385 and 386.1 of the Criminal Code be increased.*

28. GRECO reiterates that this recommendation was deemed to have been partly implemented. Following the amendments in 2012 referred to in paragraph 6, the level of penalties for "simple" bribery of an authority or a public official (Article 380 CC), judicial bribery (Article 383, 384 and 385 CC) and trading in influence (Article 386 CC) had been increased and the seizure of assets had been made mandatory. In the first Compliance Report, GRECO had expressed regret that the level of penalties as amended remained overall too low, particularly as for some offences, the penalty was still merely detention (*arrêt*).

29. In 2014, Andorra further increased the level of penalties, as can be seen in the revised wording of the relevant articles in the CC, reproduced in paragraph 6. As a result, the maximum prison sentence for passive bribery of an authority or public official (Article 380 CC) was increased from two to three years (with a minimum penalty of 3 months' imprisonment and disqualification from occupying a post increased to six years instead of three; the maximum penalty for active bribery under the same article was increased to two years' imprisonment (instead of detention (*arrêt)*) and to three years in the event of an aggravating circumstance, under Article 381 (here too with a minimum penalty of three months and disqualification from entering into contracts with the authorities increased to six years instead of four). For judicial bribery (Article 383), the prison sentence is now from one to four years (instead of three months to three years) in the case of passive bribery, and for three months to three years (instead of a maximum of two years) in the case of active bribery; for aggravated judicial bribery (Article 384 CC), the new penalties are respectively two to six years' imprisonment (instead of two to five years) and one to four years' imprisonment (instead of three months to three years). In the case of bribery in connection with criminal proceedings (Article 385), the penalty of detention (*arrêt)* in simple cases has been replaced with a prison sentence of up to one year. Trading in influence (Article 386) incurs the same penalties as previously, namely up to two years' imprisonment (however, one of the disqualifications from exercising a public post has been increased from five to six years).

30. GRECO takes note of the above. Even in combination with aggravating circumstances (in particular, in the event of an unjust act by the person who has been bribed), the penalties remain overall low compared with other GRECO member countries. For example, the offences of bribing an authority or public official (Article 380 CC) remain liable to a prison sentence of two years in the case of active bribery and three years in the case of passive bribery; where there are aggravating circumstances, the maximum prison sentences are three years and four years respectively (except in the case of judicial bribery). In the case of bribery in connection with criminal proceedings (Article 385 CC) the level of penalties is one year's and two years' imprisonment, depending on the situation. The same comment can be made with regard to offences of active or passive trading in influence (Article 386 CC): the perpetrator is liable to a maximum prison sentence of two years in all cases. The Andorran authorities might wish to give this matter some further thought. GRECO believes that it nonetheless indisputable that following the two series of amendments in 2012 and 2014, there have been clear improvements since the

Evaluation, in particular given that the various offences of bribery and trading of influence are now punishable by a prison sentence in all cases.

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

Recommendation ix.

32. *GRECO recommended that steps be taken to (i) ensure that Andorra has jurisdiction to deal with cases of bribery or trading in influence committed abroad by one of its public officials or involving one of its public officials or any other persons referred to in Article 17.1.c of the Criminal Law Convention on Corruption and (ii) repeal the dual criminality requirement concerning bribery and trading in influence offences committed abroad.*

33. GRECO reiterates that this recommendation was deemed to have been partly implemented. With regard to the first part of the recommendation, only some of the improvements called for have been taken into account by means of an amendment to the two paragraphs of Article 32 CC, which defines the concept of "authorities and public officials", specifying that the definition applies for criminal law purposes independently of the nationality of the person concerned. In the absence of additional explanations, the consequences of this change for the rules of jurisdiction remained to be clarified, in particular, whether the Principality was now able to prosecute acts of bribery and trafficking in influence in the various cases referred to in Article 17 of the Criminal Law Convention on Corruption. GRECO had therefore concluded that this first part of the recommendation had been satisfactorily implemented. With regard to the second part of the recommendation, GRECO had concluded that it had not been implemented, as Andorra had argued that the dual criminality principle was of fundamental importance for Andorran law. Nonetheless, the country has not made any reservation in this respect.

34. With regard to the first part of the recommendation, the Andorran authorities once again refer to the changes introduced by Act No. 18/2012 which amended the two paragraphs of Article 32 of the Criminal Code (see above). A new change was, however, introduced with the amendment to Article 8, paragraph 6a) CC by Act No. 18/2013 of 10 October (BOPA 51/25 of 30 October 2013): this now assigns jurisdiction to the Andorran courts to deal with any criminal offence attempted or committed outside the Principality where it has been given jurisdiction by virtue of an international treaty. With regard to the second part of the recommendation, the authorities reiterate their previous arguments in justification of the lack of any new developments.

35. GRECO takes note of the new information above. As regards the first part of the recommendation, the amendments introduced in 2012 reported by Andorra were already assessed in the previous report: the definition of "authorities and public officials" in Article 32 CC stipulates that it shall apply for criminal-law purposes independently of the nationality of the person concerned. It also takes note of the new amendments to Article 8 CC (a rewording of paragraph 6a) introduced in October 2013, reported by Andorra. In order to gain a clearer understanding of the situation, GRECO considers it preferable to reproduce in full the Article as it is now in force[2]:

[2] A consolidated version of the Criminal Code was published on 6 May 2015: http://www.policia.ad/documentacio/codi_penal.pdf

Article 8 - Geographical application of the criminal law

1. Andorran criminal law shall apply to offences attempted or committed in the territory of the Principality and related or indivisible offences committed outside Andorran territory.

Andorran criminal law shall apply to offences attempted or committed aboard Andorran ships and aircraft, fixed platforms and in Andorran airspace. It shall also apply when aircraft land on Andorran soil.

2. Andorran criminal law shall apply to any offences attempted or committed outside of Andorran territory by persons of Andorran nationality

3. Andorran criminal law shall apply to any offences attempted or committed outside of Andorran territory if the victim is of Andorran nationality.

4. In the circumstances covered by paragraphs 2 and 3 above, the criminal offence will be prosecuted only if the following conditions are met:

a) The offence is more than a petty offence in the country where it was committed and is not time-barred;

b) The offender has not been acquitted, pardoned or convicted of the offence or, in the last-named case, has not completed the whole of the sentence. In the latter case, the sentence served cannot exceed the maximum specified in the Criminal Code for the same offence, and the time served abroad must be deducted.

c) The prosecution service has lodged a complaint.

5. Andorran criminal law shall apply to any offence attempted or committed outside of Andorran territory against the Constitution, the security of the Principality and its institutions or authorities, and to the offences of the forgery or counterfeiting of Andorran documents, currency or official seals.

6.a) Andorran criminal law shall apply to any offences attempted or committed outside of Andorran territory if an international agreement grants jurisdiction to the Andorran courts.

b) For the purposes of the agreements and offences referred to under sub-paragraph d) below, Andorran criminal law shall also apply to offences attempted or committed outside the territory of Andorra by a foreign national lawfully resident in the Principality or where the victim is a foreign national lawfully resident in the Principality.

c) In the cases provided for in the agreements in connection with the offences referred to in the following sub-paragraph, the requirements of paragraph 4 a) and c) shall not apply where the perpetrator of the offence is an Andorran national, a lawfully resident foreign national or a non-resident who is on Andorran territory and where this person cannot be extradited on account of his or her nationality.

d) the agreements and offences referred to in the previous sub-paragraphs are the following:

- The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, done in Lanzarote on 25 October 2007 relating to sexual offences against children.

- Council of Europe Convention on preventing and combating violence against women and domestic violence, done in Istanbul on 11 May 2011, relating to physical and sexual violence against women and family relationships.

7. The heads of foreign states shall enjoy immunity during their presence on Andorran territory for offences committed during the exercise of their functions, other than war crimes, crimes against humanity and other offences provided for in international treaties in force in Andorra.

Accredited foreign diplomatic representatives shall enjoy the immunities provided for in international treaties in force in Andorra.

8. Andorran criminal law shall apply to offences attempted or committed outside of Andorran territory for which the maximum sentence, under Andorran law, is more than six years' imprisonment and which can be classified as genocide, torture, terrorism, drug trafficking, arms trafficking, counterfeiting, money and securities laundering, piracy, aircraft hijacking, slavery, trafficking in children, sexual offences against minors and the other offences provided for in international treaties in force in Andorra, so long as the offender has not been acquitted, pardoned or convicted of the offence or, in the last-named case, has not completed the whole of the sentence. If the offender has served part of the sentence, this must be taken into consideration and the sentence reduced proportionately.

36. GRECO notes that the new provisions of Article 8 paragraph 6 a) quoted by the Andorran authorities reproduce the exact wording of paragraph 6 as it was in force at the time of the on-site visit. As stated in the Evaluation Report, "[this paragraph] *refers to the rules governing jurisdiction provided for in treaties to which Andorra is a party, which is the case with Convention ETS 173 (…). However, the Andorran authorities consider that this article would not permit the direct application of the Convention's rules of jurisdiction, since its Article 17 leaves it to the contracting parties to give effect to the rules it lays down."* It is therefore clear that in the absence of more appropriate wording in domestic law, significant doubts remain as to the ability of the Andorran judicial authorities to rely directly on the rules of jurisdiction in the Criminal law Convention. Furthermore, GRECO notes that unfortunately the new wording of this paragraph 6 of Article 8 – which now comprises several sub-paragraphs – is such that there is no longer any question of its possible use in bribery matters since sub-paragraph d) limits the scope of paragraph 6 to the areas covered by two other Council of Europe conventions regarding the sexual exploitation of children, and violence against women and domestic violence. Finally, the specific arrangements of article 8 paragraph 8 could constitute the relevant legal basis but corruption offences are not listed and the excessively low sanctions they entail in Andorra prevent the applicability of this provision to cases involving corruption-related offences. Andorra has therefore not taken any relevant measure in respect of this part of the recommendation. These recent changes of October 2013 moreover are in contradiction with the aim of the previous amendments of 2012. Consequently, GRECO cannot continue to consider that the latter are an improvement – even partial.

37. Lastly, with regard to the second part of the recommendation, the Principality reports no new developments. The situation therefore remains unchanged in respect of the question of dual criminality which continues to prevail in Andorra for offences of bribery and trading in influence committed outside the country.

38. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

39. *GRECO recommended (i) to clarify the conditions for invoking the special defence of effective regret and accordingly revise the mandatory exemption from liability or punishment and (ii) in the event of the application of this special defence, that the conditions for its applicability be studied as regards its possible uses and the risks of abuse.*

40. GRECO reiterates that this recommendation was deemed not to have been implemented. In 2012, the Code of Criminal Procedure (CCP) had admittedly been amended by the addition of a second paragraph in Article 42[3] but GRECO had taken the view that the amendment went in the opposite direction to that intended in this recommendation.

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[3] Article 42 CCP

"*1. Upon completion of the preliminary procedural steps, the judge shall take one of the following decisions:*

a) Drop the charge, dismiss the complaint or order the proceedings to be discontinued.

b) Order a stay of proceedings in accordance with the provisions of Articles 126 et seq. of this Code.

c) Initiate trial proceedings if the facts disclose an offence, or refer the case to a single-judge court if the offence is considered minor.

2. If the investigating judge considers that a ground for exemption from liability is applicable to the accused, s/he may, after hearing submissions from the prosecution, deliver a reasoned decision or judgment finding a lack of criminal liability and ordering the proceedings to be discontinued, without prejudice to any civil liability arising from the facts, which shall be decided by civil courts. An appeal may be lodged against this decision in accordance with the provisions of Article 194."

41. The Andorran authorities underline the fact that, as indicated in paragraph 6, the amendments introduced in 2014 modified paragraph 3 of Article 380 by replacing the exculpatory excuse (ground for exemption from liability) with an extenuating circumstance. This rules out any abuse relating to the former exculpatory excuse and the possibility of a discontinuation of proceedings by the investigating judge (in application of Article 42 CCP) since the application of extenuating circumstances can be assessed and granted only by the court when it delivers its judgment.

42. GRECO takes note of the above amendments and of the fact that the exculpatory excuse laid down in Article 42 CCP can no longer be relied upon in connection with active bribery under Article 380 of the Criminal Code. The fact that Andorra has decided to replace the exculpatory excuse by an extenuating circumstance specific to active bribery is another way of responding to the underlying concerns in this recommendation.

43. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

Theme II: Transparency of Party Funding

44. In its Evaluation Report, GRECO addressed 10 recommendations to Andorra in respect of Theme II. When adopting the First Compliance Report, it had concluded that recommendations i, ii, iii, v, ix and x had been partly implemented and that recommendations iv, vi, vii and viii had not been implemented. Compliance with these outstanding recommendations is therefore dealt with below.

45. The Andorran authorities report that the Bill on political party funding, drafted and examined by the Andorran parliament at the time the First Compliance Report was adopted, was unanimously passed on 18 September 2014, entitled *Act No. 19/2014 on political parties and election financing.* The Act was published in the Official Gazette of the Principality of Andorra (BOPA) No. 60 of 15 October 2014[4] and entered into force the following day, i.e. 16 October 2014. Subsequently, the government adopted and published on 4 March 2015 the regulations on the political parties register and on 10 June 2015 appointed the officials responsible for management of that register. The Court of Auditors, for its part, adopted and published in the BOPA on 1 April 2015, the criteria and guidelines for political parties' accounting. The approach adopted seeks to ensure the transparency of political parties, drawing on and implementing the recommendations addressed to the country. It is the fruit of concerted effort between the legislative, the executive and the Court of Auditors in its capacity as the body responsible for monitoring party financing.[5] The authorities confirm that the first reporting exercise relating to donations and political parties' annual finances will be in March/April 2016 for the year 2015 and that the new system applied already to the general elections of March 2015.

Recommendation i.

46. *GRECO recommended (i) regulations be introduced to ensure transparency in the financing of political parties, on an equal basis, consistent with the regulations on campaign financing and in accordance with Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns; (ii) the relations between, on the one hand, the financing of parliamentary groups and, on the other, that of political parties and election campaigns be regulated.*

[4] https://www.bopa.ad/bopa/026060/Pagines/lq26060001.aspx
[5] The address of the website of the Court of Auditors is: http://www.tribunaldecomptes.ad/

47. GRECO reiterates that this recommendation was deemed to have been partly implemented insofar as, first, the new Act regulating political financing was in the draft stage and, second, it did not satisfactorily regulate the various underlying issues in this recommendation. This was particularly so with regard to the link between the future Act and the Election Financing Act (in other words, the link between the financing of political parties and the financing of elections). There was also the question of how it applied to the different political parties; it was pointed out that the two main political parties were at the time of the visit registered simply as associations (with the risk that the new legislation would apply only to parties registered as such). In addition, Andorra appeared not to be planning any measures in respect of the second part of the recommendation. GRECO reiterates its comment made in the Evaluation Report (paragraph 80: *"the political parties receive support from the business sector, particularly at election time. They are sometimes loaned premises for their headquarters or other activities. This support may come from other parties or from commercial enterprises. In practice it is also provided by the parliamentary groups, which have their own specific and fairly generous publicly funded budgets (…). These groups are supervised exclusively by the parliament itself – though the court of auditors monitors parliament's use of public funds – and even though in principle they must account to parliament for their use of public resources some of them do not do so and are not apparently called to task for this."*

48. The Andorran authorities report in respect of the first part of the recommendation that the *Political Parties and Election Financing Act, No. 19/2014* (hereafter PPEFA), which was eventually passed and entered into force on 16 October 2014, is intended to apply to all political groupings. To this end, new transitional provisions were introduced in the PPEFA obliging the various political groupings to be entered on the official register of political parties (regulated by the new provisions of March 2015 referred to in paragraph 45) within one year. This would enable them to acquire legal personality and official political party status. It is clearly stated that any political grouping which failed to register or whose application to register is rejected shall remain nonetheless subject to the provisions set forth in chapters two to five of the PPEFA, and therefore to all the requirements regarding the rules on the financing, transparency and oversight of political parties. The PPEFA now includes a new chapter 5 which lays down the same principles and rules for the financing of election campaigns as those applicable to the financing of political parties. At the same time the PPEFA repealed the *Election Financing Act* of 15 December 2000. The rules on the sources of funding, transparency and oversight are therefore broadly identical. With regard to the second part of the recommendation, the Andorran authorities refer to this same harmonisation of the rules on political financing and on election financing.

49. GRECO welcomes the passing of the PPEFA (Act No. 19/2014). This Act fills significant gaps, especially the fact that the rules in force prior to its enactment related exclusively to election financing and did not cover political party funding. The system of political funding now in place is a mixed one (public and private) comprising a ban on donations from legal persons and foreigners, and ceilings on the amount of election expenditure. The legislation is based heavily on *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*. GRECO also welcomes the commitment of the legislature to ensure as uniform a treatment as possible in respect of political groupings and the financing of political life (political parties and election campaigns/candidates), as advocated in the first part of the recommendation. It remains to be seen how this system – which combines a) a ban on candidates benefiting from support from legal persons (including therefore political parties, according to a strict interpretation of the text) and b) the role of their grouping, where applicable, given that the latter can incur election expenses which it can finance through borrowings – will work in practice. The Principality needs to remain attentive to the risk for transparency potentially

posed by candidates' expenses being directly borne by political parties. At present, Andorra has made the improvements called for in this first part of the recommendation. With regard to the second part of the recommendation, Andorra has apparently still not resolved the issue or taken any measures. GRECO notes that the ban on donations from "legal persons and entities having no legal personality, associations or other entities" laid down in Article 26, paragraph 4 PPEFA could imply that support from parliamentary groups to parties or candidates is now prohibited – which would be logical since the funds allocated by the state to political groups are normally intended to finance parliamentary work and not anything else. This, however, is merely a presumption and it is for the Andorran authorities to clarify the situation. At present, therefore, GRECO cannot but conclude that this part of the recommendation has still not been taken into account.

50. GRECO therefore concludes that recommendation i remains partly implemented.

Recommendation ii.

51. *GRECO recommended that machinery be established to evaluate the overall system of political financing, with a view, over time, to determining with political parties the extent and nature of their obligations and what changes and clarifications are required to the relevant legislation and regulations.*

52. GRECO reiterates that this recommendation was deemed to have been partly implemented. In addition to the fact that Andorra's comments were excessively general, GRECO had observed that under Article 34, paragraph 11 of the Bill, the Court of Auditors, acting on its own initiative or at parliament's request, would be able to produce "reports, memoranda and studies on political party funding." This proposal deserved to be supported and extended to political funding as a whole (including election financing). The Andorran authorities had indicated that in line with the thinking at that time, such an extension was planned.

53. The Andorran authorities submit general comments on the supervisory and sanctioning role of the Court of Auditors, but also state that the Court of Auditors Act of 13 April 2000 (a copy of which they provide) has been amended to further clarify the responsibilities of the Court in its statute, in particular with regard to its supervision activities.

54. Referring to the adopted text of the PPEFA, which entered into force on 16 October 2014, and to the Court of Auditors Act as amended by the PPEFA, GRECO notes that the Court of Auditors, both in its annual activity report and on an ad hoc basis with its reports and studies, including at its own initiative, will be required in future to make recommendations and proposals to ensure the rules are properly complied with. This applies to the funding of political parties as the provisions set forth in paragraphs 10 and 11 of Article 36 PPEFA are similar to those in the initial Bill. The Court has the same role of critical/technical assessment, and power of proposal in connection with political funding as a whole. This derives from Article 3, paragraph 5 of the Court of Auditors Act in combination with the various amended provisions which now guarantee *"oversight of the economic and financial activity of the public administration, political parties, entities connected or dependent on the latter, electoral coalitions and candidates for election"* (wording taken, for example, from the amended Article 1, paragraph 1). GRECO welcomes these new arrangements and hopes that the Court of Auditors will make use of them in practice wherever necessary.

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

Recommendation iii.

56. *GRECO recommended (i) the necessary steps be taken to ensure that appropriate accounting rules and forms clearly apply, outside of election periods, to the financing of all political formations and (ii) rules be established on the retention of accounting documents and supporting material by these formations and election candidates.*

57. GRECO reiterates that this recommendation was deemed to have been partly implemented. The initial Bill certainly laid down accounting obligations (in addition to a record of income and expenditure) but further clarifications were required and implementing measures – including a pro-forma produced by the supervisory body – would be necessary. The initial Bill (Article 32, paragraph 6) placed an obligation on political parties to retain accounting documentation and supporting material for a five-year period, but there was no similar obligation with regard to the funding of election campaigns by candidates.

58. The Andorran authorities report that even though the accounting model applicable to political parties is not specified in the PPEFA, the obligation to ensure such accounting (Articles 33 and 34), the model to be used is the model to be used by companies. The same provisions list a number of items specific to political parties (members' subscriptions, private donations, bequests, electoral grants) which in any case must be taken into account and there is an obligation to appoint a general administrator responsible for receipts and expenditure and for accounting. Article 34, paragraph 7, lays down the principle that candidates for election must also keep accounts in accordance with the standard formats. Furthermore, as indicated above in paragraph 45, criteria and guidelines for political parties' accounting were adopted and published on 1 April 2015 (Court of Auditors agreement of 23 March 2015).[6] GRECO notes that the preliminary paragraphs refer to accounting forms relating to entrepreneurs and private accounting and that the Court of Auditors' 26-page document also includes model accounts and balance sheets, supplemented with explanations and forms to be used for candidates' campaign accounts. The PPEFA has also retained from the preliminary legislative draft, the obligation to keep documentation and supporting material; this has been increased to 10 years (five years in the Bill) – Article 34, paragraph 6, and is also reflected in the agreement of 23 March 2015.

59. GRECO notes with satisfaction the above information, which is consistent with the expectations of the recommendation as regards both the accounting form and financial situation reports (first part of the recommendation) and the rules on the retention of accounting documents and supporting material (second part of the recommendation). Andorra should ensure that all the useful and relevant information is included in the financial statements which GRECO would like to see published; for example, there would not appear to be any explicit reference to appropriate inventories of assets (only income from assets).

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

Recommendation iv.

61. *GRECO recommended the regulations be amended to include in campaign and (in the future) political party accounts (i) contributions in kind, other than voluntary work by non-professionals – whether these be donations or services provided free of charge or at preferential rates - with a uniform system for estimating and recording their commercial value; (ii) candidates' personal contributions and (iii) the loans and similar financial services available in practice in Andorra,*

[6] https://www.bopa.ad/bopa/027026/Pagines/oh27026008.aspx

including when they are granted under advantageous conditions or free of charge and can thus be considered as a form of donation.

62. GRECO reiterates that this recommendation had been deemed not to have been implemented. Article 25, paragraph 7 of the preliminary draft Bill examined in the First Compliance Report provided that *"For the purposes of this Act, [a donation] shall be any contribution of goods or services with economic value made without any consideration in return. This does not include any voluntary work which party members and sympathisers do for the party".* This was consistent with part (i) of the recommendation, but nothing similar appeared to have been provided for in the rules on the funding of election campaigns, which were limited to financial contributions. It also needed to be determined how the commercial value of contributions in kind would be evaluated at the appropriate juncture. With regard to parts (ii) and (iii) of the recommendation, these matters had not yet been addressed/discussed in the course of the work.

63. The information provided by Andorra show that with regard to parts (i) and (ii) of the recommendation, the provision in the former Article 25 of the Bill has been retained and expanded; the concept of donation also applies to contributions from party members and contributions from candidates themselves and must therefore be recorded and published as indicated in recommendation viii below. These rules now apply with regard to both the funding of political parties (Article 26) and the funding of election campaigns (Article 44). Donations in kind are to be evaluated in accordance with companies' accounting rules, i.e. on the basis of their market value (Article 26 paragraph 8 and Article 55 paragraph 7). With regard to part (iii) of the recommendation, in the absence of any information from Andorra, GRECO notes that the question of financial loans is regulated by Article 27 PPEFA, which lays down as principles the monopoly of financial establishments for the granting of loans and the fact that the handing over of interest or capital, and the fact of offering a political party more advantageous terms than the market rate are to be treated as donations. Chapter VII of the PPEFA does not specifically deal with these matters, although it is clear that candidates may also take out loans.

64. GRECO takes note of the new provisions above. The way in which candidates' loans are dealt with could perhaps be further clarified in future but on the whole, the measures now in place are by and large consistent with the expectations of the recommendation. GRECO also appreciates the relevance of many other provisions relating to donations, such as those which seek to limit the risks of sponsoring-related practices leading to circumvention of the rules on donations from legal entities: the PPEFA makes it perfectly clear in this connection that there must be no quid pro quo for such donations and it prohibits third parties bearing the cost of the expenditure of political parties.

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

Recommendation v.

66. *GRECO recommended that current and future regulations on the financing of election campaigns and on political parties take appropriate account of the various forms of support from members and sympathisers.*

67. GRECO reiterates that this recommendation was deemed to have been partly implemented.

68. The Andorran authorities report that the PPEFA, which entered into force on 16 October 2014, lists and regulates the resources received by political parties, which include the contributions in

the form of subscriptions by members and sympathisers along with any special contributions from paid office-holders, donations (from natural or legal persons), non-financial contributions (in kind), bequests and legacies, income from party assets, etc. As previously stated, with the new approach adopted by the Act that has been passed, the provisions relating to the funding of political parties (Chapter 4) and those relating to the funding of election campaigns (Chapter 5) are by and large the same, which provides the necessary clarifications called for in the First Compliance Report. Furthermore, donations are always from a named source and are paid into a bank account, members' contributions to their parties (or the contributions from candidates) are treated as donations from sympathisers and therefore subject to an annual ceiling of €6 000. Special rules apply to party member subscriptions and any portion of their allowance which they hand over to the party, the amount of which is to be specified in the statutes to be deposited in the Register (Article 25 PPEFA which caps the amount handed over at 10% of annual income in the case of persons holding a political mandate). Support from sympathisers in the form of voluntary work is not taken into account, which reflects the considerations expressed in the Evaluation Report.

69. GRECO takes note of the provisions of the PPEFA which finally entered into force regarding the various forms of support from members and sympathisers of political parties and candidates for election. The country has therefore taken satisfactory action with regard to this recommendation.

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

Recommendation vi.

71. *GRECO recommended that the regulations specify (i) the arrangements for taking account of the various forms of financial support and support in kind from parties to their candidates and, where relevant, the need to include corresponding amounts in candidates' accounts and (ii) the requirement that as far as possible all support and expenditure must pass through election agents and thus the relevant campaign accounts.*

72. GRECO reiterates that this recommendation was deemed not to have been implemented given the lack of any significant progress.

73. The Andorran authorities now state that the PPEFA is the result of a merging of the Political Parties Bill, previously examined by GRECO, and the existing legislation on election financing. Chapter IV of the PPEFA regulates the funding of political parties by combining public and private funding. It lays down limits on funding, in particular the €6 000 ceiling on donations. The fact that there is monitoring by the Court of Auditors means that both parties and candidates must comply with the law. The authorities emphasise that the PPEFA makes it impossible to declare only part of the expenditure incurred: Article 48 lists the items which must be considered as election expenses, Article 41 makes it obligatory for parties or coalitions presenting candidates in more than one parish to appoint a general manager; and Article 40 obliges candidates to appoint a campaign manager. These managers are responsible for handling income and expenditure and for maintaining accounts. The authorities report that parties or candidates who do not wish to have their election expenditure reimbursed are not required to present an election finance report but that political parties have, nonetheless, to provide this information in their annual report in accordance with Article 34, paragraphs 4 et seq. Lastly, in the interests of balance, transparency and judiciousness, Article 48 paragraph 2 lays down ceilings for candidacy expenses: €200 000 for the general election and €30 000 for municipal elections, plus €0.30 per registered voter in the constituency in question.

74. GRECO takes note of the above. With regard to the first part of the recommendation, the PPEFA introduces regulations on political funding which also apply to political parties, placing an obligation on the latter to keep accounts of all their election expenditure, as Andorra underlines with regard to the second part. For its part, GRECO notes that Chapter IV on political party funding establishes as an offence the fact of making contributions to the list of candidates in excess of the limits laid down for election expenditure (Article 37, paragraph 1b). In contrast, it follows that the prohibition of donations from legal persons and other entities does not appear to apply in connection with the contributions made by parties to their list of candidates. But at the same time, the forms of accounts to be maintained by political parties and the lists of candidates merely refer to "public subsidies" and "contributions from natural persons",[7] in accordance with the basic principles of the PPEFA. In the light of this inconsistency, GRECO cannot therefore consider that this part of the recommendation has been fully taken into account. With regard to the second part of the recommendation, the obligation laid down by the PPEFA, in relation to the funding of both parties and election campaigns, to appoint managers responsible for dealing with income, expenditure and accounts in general is in line with what was expected. GRECO also notes, even though the authorities do not make specific reference to it, that Articles 42 and 43 PPEFA make it obligatory to open electoral accounts under the personal responsibility of the managers concerned, in which all the funds have to be collected and election expenditure disbursed. Once the elections are over, these accounts may be used (within 50 days following the election) only for paying any expenses incurred that have not yet been settled. At the same time, all financial donations related or not to an election campaign must be paid into a bank account (Article 26 paragraph 7, Article 44 paragraph 6) and there are similar measures concerning regular and special contributions from party members and sympathisers. These various measures are consistent with the expectations of the recommendation and make it easier for the financial managers to deal with matters with consistency and transparency. The rationale behind the penalty mechanism also helps develop a sense of individual responsibility – and therefore the role – of the financial managers in practice. This part of the recommendation has therefore been implemented.

75. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

76. *GRECO recommended that adequate measures be taken to ensure that the campaign accounts of lists presented by coalitions clearly reflect the financial situation of each candidate, or group of candidates, on these lists.*

77. GRECO reiterates that this recommendation was deemed not to have been implemented, as the Andorran authorities had simply stated, without any further explanation, that the future legislation would address the changes called for in this recommendation.

78. The Andorran authorities make some general comments without any direct reference to this recommendation.

79. GRECO notes that the PPEFA, which has been in force since 16 October 2014, incorporates the principle whereby although each list of candidates must in theory appoint its own campaign manager, it is still possible for a party or coalition presenting lists of candidates in several

[7] Model profit and loss account relating to election activities entitled "Election activity profit and loss account", page 10 of the document adopted and published in the BOPA on 1 April 2015.

parishes/constituencies to combine expenditure and have a common "general manager" (who oversees the various managers). This general administrator must therefore be responsible for all election income and expenditure and for the accounts. The manner of dealing with the accounting details of coalition lists is covered in the reference document published by the Court of Auditors on 1 April 2015 which contains the criteria and guidelines for political parties' accounting. For example, paragraph 10 of the explanations lays down the principle that where there is a coalition *"each political grouping shall indicate in its annual accounts, categorised under specific headings according to their electoral nature, the proportion which corresponds to that grouping in line with the participation percentages laid down in the coalition agreements, the assets jointly controlled with the other members of the coalition and the liabilities jointly entered into. Accordingly, the proportion of electoral income received for the financing of the electoral campaign and the expenses generated by the campaign for the coalition for which it is responsible must be indicated."* In combination with the provisions introduced by the PPEFA, in particular the fact that contributions from candidates on their list (or in their coalition) are to be treated as donations and are now public, it would appear that the concerns underlying this recommendation have been taken into account.

80. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

81. *GRECO recommended (i) parties and/or candidates be required to publish individual donations above a certain minimum level, together with the identity of donors; (ii) the future regulations on the financing of political parties provide for the regular and timely publication of political party accounts, accompanied by the identity of major donors.*

82. GRECO reiterates that this recommendation was deemed not to have been implemented, as the October 2013 version of the preliminary draft Bill had made no provision for making public the identity of private donors above a given threshold – the authorities having stated that such a measure would be difficult to introduce in the Andorran context – and for publishing campaign accounts and political party accounts.

83. The Andorran authorities report that the PPEFA, passed on 18 September 2014 now contains a mechanism for making public the identity of private donors making contributions to political parties; under Article 26 paragraph 12, lists of donations giving the name of the donor, amount and date (and specific details in the case of donations in kind) must be published annually in the Official Gazette (BOPA) by the Court of Auditors. This applies regardless of the amount of contribution, as the Andorran authorities indicate that parliament had opted for maximum transparency in this regard.

84. GRECO takes note of the foregoing with regard to the first part of the recommendation. Andorra has opted to publish the information relating to all donations to political parties with no trigger threshold, which goes beyond the anticipated results. A technical error in the reference made in Article 26 paragraph 12 PPEFA to the paragraphs in question would need to be corrected in order to avoid any unnecessary problems for supervision in practice.[8] GRECO also notes that although the authorities make no mention of it, the same system of publication in the Official Gazette (BOPA) of private contributions also applies in the context of the funding of election campaigns, in

[8] The reference is to paragraphs 6 and 7, whereas in point of fact, paragraph 6 relates to the prohibition of anonymous donations. The reference should therefore be to paragraphs 7 and 8 as a comparison with Article 44 paragraph 12 would also seem to indicate.

accordance with Article 44 paragraph 12 PPEFA. This refers to paragraphs 6 and 7 of the same article regarding the details of the information to be published relating to donations (identity and address of the donor, amount and supplementary details if the contribution is in kind). GRECO welcomes these significant improvements. However, given the uncertainty over the publication of the campaign accounts (see below) and given that this part of the recommendation was the obvious consequence of that, GRECO cannot consider that this part of the recommendation has been fully implemented.

85. With regard to the second part of the recommendation, as already stated, Article 26 paragraph 12 PPEFA makes it mandatory to publish the identity of all donors contributing to political parties, including outside election years or periods; this is the only visible improvement introduced by the PPEFA. Andorra has not provided any information with regard to the remaining expectations of the recommendation. GRECO notes that the PPEFA does not explicitly address the question of the publication of political parties' annual accounts, nor the publication of the candidates' campaign accounts, whereas these were published under the system laid down in the previous legislation: *"The system for ensuring the transparency of political financing in Andorra requires publication of the financial reports of candidate lists in the months following the announcement of the results (however, important delays occur sometimes (…)). They are published on the occasion of the publication of the court of auditors' own report because candidate lists and parties are not required themselves to publish their financial report (and they have no established policy of publishing campaign accounts, or annual accounts)"* (paragraph 87 of the Evaluation Report).

86. Now, under the PPEFA, while the legislature has made explicit provision solely for the publication of donations and given that this information under normal circumstances is appended to the financial reports of the parties or (lists of) candidates submitted to the Court of Auditors, this would mean on the face of it that these reports would remain confidential vis-à-vis the public. GRECO notes at the same time that Article 34, paragraph 4 of the PPEFA requires the political parties "regular" reports, once they have been submitted each year to the Court by 1 April for the previous financial year, to be deposited in the Register of Political Parties within one month (i.e. by 1 May). The Decree of 4 March 2015 which regulates that Register lays down the principle that it be made public (Article 28 paragraph 1) and provides that the government may set up a website for publication purposes, but without any further clarification as to the information accessible to the public nor the information to be published (list of parties, statutes, or also the annual financial reports?). It also remains possible, given that the Court of Auditors will submit an annual report on its functioning, including its supervision of the financing of political parties (Article 36, paragraph 10), that this will implicitly result also in the publication of the political parties' financial statements and campaign accounts in line with the rationale that prevailed up to the entry into force of the PPEFA (for election financing). But these are mere presumptions and it is for Andorra to clarify that the situation is in line with what is expected. Lastly, GRECO reiterates that Andorra is required to ensure the "timely" publication of the various financial information of parties and candidates. For the time being, it is clear that the deadlines for the publication of donations in the BOPA by the Court of Auditors are worded in such a way that is inadequate if it is to satisfy this expectation: "annual" publication in the case of political parties (Article 26 paragraph 12) and "in the year following the holding of elections" in the case of campaign accounts (Article 44, paragraph 12).

87. In conclusion, while it is undeniable that the publication of donations is a significant step forward, nonetheless, only the publication of adequate, more comprehensive information on the income and expenditure of the political parties is sufficient to ensure a satisfactory level of transparency.

Andorra needs therefore to take additional measures and, for now, GRECO cannot consider that this part of the recommendation has been fully implemented.

88. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

89. *GRECO recommended that a mechanism be established to supervise the financing of election campaigns, and – following future amendments – political parties, and that this machinery be as independent as possible of the political parties and have the necessary authority and resources to ensure proper substantial supervision.*

90. GRECO reiterates that this recommendation was deemed to have been partly implemented. In its previous conclusions, GRECO had reiterated that the Evaluation Report had found a problem of overlapping between the Election Commission's supervision and that of the Court of Auditors, with both exercising essentially formal, fairly restricted and ineffective supervision, as well as noting the dependence of the Court of Auditors on parliament (which formally approved its supervisory work). In this context, GRECO had noted that the preliminary draft Political Parties Bill apparently sought to ensure a certain degree of effectiveness in verification of the accounts which political parties would be required to submit to the Court of Auditors by 1 April each year. Indeed, it provided for verification by the Court of Auditors of all accounts (including revenue from private sources) to detect any formal financial or accounting irregularities. The Court of Auditors would be able to request all relevant explanations from the party concerned and recommend measures that it should take, and initiate disciplinary proceedings leading possibly to sanctions (see recommendation x below), including where a party obstructed its work or refused to co-operate with it. Amendments were also planned to step up supervision of candidates' and parties' campaign accounts, and to amend the electoral legislation in such a way that parliament was no longer required in future to approve the draft report by the Court of Auditors on its audit of campaign accounts. As regards the reports on parties' annual accounts, the Bill was worded in such a way that, in this case too, the Court of Auditors would perform its audit without its findings having to be approved by parliament (and hence by the political parties themselves). This also covered the exercise of disciplinary authority, which would therefore rest solely with the Court of Auditors. These various proposals were consistent with this recommendation and deserved to be finalised. Lastly, GRECO had pointed out that the link between the Electoral Commission's supervision (limited and ineffective in practice) and that of the Court of Auditors under the Election Financing Act needed to be re-examined.

91. The Andorran authorities report that as the PPEFA had in the end reproduced the legislation on political party funding examined by GRECO two years ago, and had now incorporated the legislation on election financing, the Act sought to establish effective control in the two areas. This merging means that the supervision carried out by the Electoral Commission (at election time) and the supervision carried out by the Court of Auditors (annual accounting) ultimately creates a dual supervision in election years. For the rest, the authorities cite the explanatory part of the Court of Auditors' document on the criteria and guidelines for political parties' accounting, published in the BOPA on 1 April 2015.

92. GRECO takes note of the foregoing. As regards supervision, and in the light of the text of the PPEFA provided by the Andorran authorities, it would appear that the various improvements planned two years ago with the Political Party Funding Bill have been implemented and that the powers of the Court of Auditors have been strengthened as proposed. The wording of the PPEFA

(Article 36 paragraphs 2, 3 and 4) does not limit supervision to a formal exercise of recalculation and it is not limited to just part of the financial information, such as income or expenditure. The Court of Auditors may also require third parties to submit documentary evidence. Nor is the Court of Auditors required any longer to have its supervision reports approved by parliament, which limits the risk of interference in this supervisory work, and the authorities confirm this in their latest comments: in accordance with article 50 paragraph 5, the Court must submit its report to the government and the parliament and it does not need to be approved by them. GRECO also notes that as a result of the amendments introduced by the PPEFA to the Court of Auditors Act of 13 April 2000, the Court of Auditors' supervision may also relate to entities connected to political parties (Article 1 revised). Other innovations include the fact that the six-year term of office of its three members is no longer renewable, and the members are renewed one by one (and no longer all together); this is also geared to ensuring greater independence and efficiency. GRECO welcomes the fact that the PPEFA has given the Court of Auditors general responsibility for supervision of the funding of political parties and election campaigns. However, in the field of election financing, the PPEFA does not clearly require all parties and candidates to submit a report on the financing of their campaign. Indeed, Article 50 would appear to limit this obligation to the parties entitled to public assistance (or which had requested an advance payment of that assistance). But now that all parties must in any case make an annual report and be subject to supervision, this counterbalances the possible consequences of that shortcoming. In their latest comments, the authorities indicate that all candidatures which participated in the parliamentary election of March 2015 have submitted financial statements. Andorra might nonetheless wish to consider the possibility of extending explicitly the obligation to submit campaign accounts irrespective of the question of public funding. Andorra might also bear in mind the fact that the recent amendments to the Court of Auditors Act are occasionally redundant, with a risk of inconsistency: for example, the new Article 3, paragraph 4 appears to limit supervision to political groupings that are in receipt of public subsidies, whereas various other new provisions relate to all parties, and indeed to entities connected to them. Rectifications could avoid the risk of any unnecessary challenges. But it is clear that overall, the measures have been taken to give effect to this recommendation. GRECO hopes that the Court of Auditors will make use of its new resources and will be appropriately supported by the Electoral Commission to ensure effective supervision of political funding in the future.

93. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

94. *GRECO recommended that the legislation be supplemented by effective, proportionate and dissuasive sanctions for various breaches, including ones committed by donors, of the regulations on campaign financing and those to come on political party financing.*

95. GRECO reiterates that this recommendation was deemed to have been partly implemented; Andorra was planning various amendments which were consistent with what was expected. For example, the provisions of the Bill previously examined punished breaches of the rules relating to private donations and the keeping and submission of accounts, and any other breach of the rules on political funding. This resulted from a combination of provisions on specific breaches and more general provisions. Penalties ranged from a fine of twice to three times the amount of the donation to fines of between €1 000 and €100 000 euros. They were applicable to any natural or legal person concerned: depending on the circumstances of the case, liability could be established in respect of the party or one or more of its members. The penalty was decided following disciplinary proceedings conducted by the Court of Auditors, with the possibility of an

appeal to the High Court of Andorra subject to a limitation period of two years. The Court of Auditors could also refer to the prosecution service any matter where there was evidence of criminal behaviour. These arrangements were to be extended to cover compliance with the rules of funding contained in the legislation on election financing.

96. The Andorran authorities report that with the passing of the PPEFA, the previously announced plans have been put into effect in the provisions of the PPEFA itself (Articles 37 and 38) and that new criminal penalties have been introduced into the Criminal Code in connection with bribery offences (cf. the part on incrimination at the beginning of this report) and political funding. The new Article 387 CC stipulates that persons who receive or make donations to or provide funding for a party or candidates in serious violation of the provisions of the PPEFA can be punished by a prison sentence of three months to three years plus a fine of up to three times the amount in question. The same penalty applies to the general manager of a party who retains undeclared goods, funds or other assets. These offences also apply where the above items have remained available to the beneficiaries in question without having formally been transferred to them. Lastly, seizure within the meaning of Article 70 CC will also apply.

97. GRECO takes note of the foregoing and of the substance of the text of the PPEFA made available, which confirm for the most part that the provisions previously announced are now in force. Andorra has an appropriate range of legal provisions to punish breaches of the legislation on political funding. The mechanism and the level of penalties are in line with the expectations of the recommendation. GRECO notes that the incorporation of the regulations on election financing into the PPEFA has also given rise to a penalty mechanism which reproduces exactly the system applicable to political party funding (Article 50 paragraph 4) subject to a technical correction to be made.[9] It further notes that the limitation period for action by the Court of Auditors is five years (instead of three in the previous draft), offering time to take action which is most welcome in order to identify deliberate and concealed violations. Lastly, the new Article 387 of the Criminal Code makes it possible to punish donors involved in serious breaches, as called for in the recommendation. It also ensures that the justice system – where necessary – has the jurisdiction to investigate with the necessary resources when the Court of Auditors (or the Electoral Commission) forwards to it a case that is complex or requires police work. Andorra has broadly satisfied the expectations of this recommendation.

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

III. CONCLUSIONS

99. **In the light of the foregoing, GRECO concludes that Andorra has implemented satisfactorily, or dealt with in a satisfactory manner, thirteen of the twenty recommendations contained in the Third Round Evaluation Report.** This is an additional ten since the First Compliance Report. Six others of the remaining recommendations have, moreover, been partly implemented and only one recommendation has not yet been implemented.

100. With regard to Theme I – Incriminations, recommendations v, viii and x can be added to recommendations i, ii and iv which have been implemented or dealt with satisfactorily. Recommendations iii, vi and vii remain partly implemented and recommendation ix has not been implemented. With regard to Theme II – Transparency of political party funding,

[9] An incorrect cross-reference is made to Article 37 paragraph f

recommendations ii, iii, iv, v, vii, ix and x have now been satisfactorily implemented and recommendations i, vi and viii have been partly implemented.

101. With regard to incriminations, Andorra has made a number of additional improvements. For example, the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) was ratified and entered into force in respect of Andorra on 1 June last. In 2014, the country also increased the penalties for bribery and trading in influence offences: all are now punishable by imprisonment, even though the maximum sentences remain low in comparison with the majority of the other GRECO members. Lastly, the country has fully responded in another way to GRECO's concerns regarding the exculpatory excuse (ground for exemption from liability) in Article 380 of the Criminal Code by removing it altogether and transforming it into a "simple" extenuating circumstance. For the rest, GRECO finds it a matter of regret that Andorra has made no progress regarding offences of bribery in the private sector and trading in influence: the country has, for the time being, decided to maintain its reservations to Articles 7, 8 and 12 of the Criminal Law Convention, but in certain cases, either the anticipated measures have never been debated or certain improvements expected by GRECO are not covered by the reservations. Nor has Andorra amended its rules on extra-territorial jurisdiction as was called for, despite the fact that the country has made no reservation in this connection. Changes were introduced in 2013 but these ultimately led to a regression compared with a previous amendment in 2012. As a result, Andorra today has no credible legal basis enabling it to prosecute and bring before its courts a foreign national allegedly involved in bribery or trading in influence who is believed to have acted – from another country – in connection with an Andorran public official. Lastly, Andorra reports that it is giving thought to clarifying certain concepts (for example the concept of "unjust action" by a public official) but for the time being, no specific measures are being planned. GRECO encourages the Principality of Andorra to pursue its work to incorporate into law the various outstanding recommendations.

102. With regard to the transparency of political party funding, the entry into force on 16 October 2014 of the *Political Parties and Election Financing Act, No. 19/2014* constitutes a major achievement. Andorra today has coherent regulations governing the financing of election campaigns and – what is new – political parties: the sources of funding, transparency and supervision are subject to the same principles both in and outside election periods. GRECO welcomes the adoption of this new legislation which fully implements several of the recommendations. Andorra has also taken a number of additional measures by means of other texts, in particular the adoption of pro-formas and standards for keeping the accounts of political parties and campaign accounts. A Register of Political Parties has been created and measures taken to ensure that all political groupings are subject to the same financial and accounting rules. The Court of Auditors Act of 2000 has been revised so as to incorporate into its statutes its role of supervision of political funding as a whole and to reinforce its operational independence vis-à-vis parliament. GRECO notes with satisfaction that parliament is no longer formally required to adopt the Court's monitoring reports on political funding and that its supervision powers and the penalty mechanism will enable it in future to act more effectively. GRECO hopes that the supervision mechanism, as it stands today, will be used effectively by the Court of Auditors, with the assistance of the Electoral Commission. Andorra needs to pursue its efforts, in particular to identify the non-transparent involvement of parliamentary groups in political funding, to clarify the arrangements for taking into account the support provided by political groupings to candidates and to ensure clear and appropriate access by the public to the annual accounts of political parties and campaign accounts. Above all, it is essential to have a clear system regarding the publication of financial information. Andorra has certainly taken an important step forward by making mandatory the publication of all donations, whatever the amount. However, GRECO underlines once more

that transparency can be ensured only by publishing in a timely manner all the relevant information on the various resources and expenses of parties and candidates. Once again, GRECO encourages the Principality to pursue its efforts to incorporate into law the various outstanding recommendations.

103. In view of the fact that a number of essential recommendations has still not been implemented satisfactorily, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the Andorran delegation to submit additional information, namely regarding the implementation of recommendations iii, vi, vii and ix (Theme I – Incriminations) and recommendations i, vi and viii (Theme II – Transparency of Party Funding), by 31 July 2016.

104. GRECO invites the authorities of Andorra to authorise, at its earliest convenience, the publication of this report, to translate the report into its national language and to make the translation publicly available.