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## **Third Evaluation Round**

### **Compliance Report on Armenia**

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

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 58<sup>th</sup> Plenary Meeting  
(Strasbourg, 3-7 December 2012)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Armenia to implement the 19 recommendations issued in the Third Round Evaluation Report on Armenia (see paragraph 2), covering two distinct themes, namely:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption);
  - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally -Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted by GRECO at its 49th Plenary Meeting (Strasbourg, 29 November – 3 December 2010) and made public on 11 April 2011, following the authorisation by Armenia (Greco Eval III Rep (2010) 4E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Armenia submitted a Situation Report on measures taken to implement the recommendations. This report was received on 31 May 2012 and served as a basis for the Compliance Report.
4. GRECO selected Romania and Greece to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Anca STROE on behalf of Romania and Ms Panagiota VATIKALOU on behalf of Greece. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. It is recalled that GRECO in its Evaluation Report addressed 8 recommendations to Armenia in respect of Theme I. Compliance with these recommendations is dealt with below.

#### **Recommendation i.**

7. *GRECO recommended to explicitly criminalise the request for and acceptance of an offer or promise of a bribe in Articles 200, 311 and 311<sup>1</sup> of the Criminal Code, in line with Articles 3 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
8. The authorities of Armenia report that the National Assembly adopted on 9 February 2012 a law which amended the Criminal Code (hereafter CC) – it entered into force in March 2012 – in

particular Articles 200, 311 and 311<sup>1</sup> on passive bribery so as to bring it into conformity with Articles 3 and 8 of the Criminal Law Convention on Corruption. The scope of the definition of this offence was expanded, so as to include the “request for or acceptance of a promise or an offer to receive cash, property, property rights, securities, or any other advantage”.

9. GRECO welcomes the legislative measures undertaken by the Armenian authorities pursuant to this recommendation, and the explicit incrimination of the elements of request and acceptance of an offer or promise of an undue advantage.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

#### **Recommendations ii and iii.**

11. *GRECO recommended to take measures (such as training, circulars etc.) (i) to make it clear that offering and promising an undue advantage (as well as the request for and acceptance of an offer or promise of an undue advantage) are prosecutable as autonomous offences and (ii) to encourage the use of objective factual circumstances to substantiate bribery offences (recommendation ii) and*

*GRECO recommended to take measures to make it clear that bribery of all categories of employees in the public sector is criminalised, including those without official decision-making authority (recommendation iii).*

12. With respect to both recommendations, the authorities report that the Head of the educational complex of the police of the Republic of Armenia signed a decree which approved a list of actions and measures which were implemented in the first half of 2012. These included e.g. training courses covering topics such as “offering, promising, requesting and accepting offers or promises of undue advantages as autonomous offences” and “bribing public sector servants as a corruption offence”. In the latter course, it was made clear that the bribery of clerks, secretaries, archivists and other public servants who are not considered as officials is also incriminated under corruption offences. A round table discussion on these topics was also held which was attended by representatives of the General Prosecution Office, the Ministry of Justice and the police. Moreover, two guides were developed by the Police Educational Complex on the same topics, and 100 copies of each were distributed to representatives of the General Prosecutor’s Office, the Ministry of Justice and the Police. The guides were used as training materials in the Criminal Law Course of the Police. Additionally the curriculum of the Law Institute of the Ministry of Justice provides a course on Criminal Law of the Republic of Armenia, which was attended by civil servants, among others representatives of the Ministry of Justice dealing with the execution of judicial decisions and with the penitentiary system, which also covers these issues. It is further reported, that in the second half of 2011, training was provided for judges in the Judicial School which included courses on the ‘Prevention of Corruption’ which were attended by judges of the first instance, appellate, and cassation courts. Lastly, the Prosecution School developed a number of practical and research guides including one on ‘Criminal and Criminological Analysis of the Main types of Official Crimes’ and ‘Fighting Money Laundering’ as well as a study entitled ‘Policy Response to Corruption’, which is also available online<sup>1</sup>.
13. GRECO takes note of the comprehensive programme which appeared to provide initial and in-service training to police officers, prosecutors and judges on issues related to corruption and in particular on the autonomous character of bribery offences, on the use of factual elements to

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<sup>1</sup>[www.genproc.am](http://www.genproc.am)

substantiate them and on bribery of employees in the public sector, whatever their status or position.

14. GRECO concludes that recommendation ii and iii have been implemented satisfactorily.

**Recommendation iv.**

15. *GRECO recommended to amend Article 200 of the Criminal Code to ensure that the full range of persons who direct or work for, in any capacity, private sector entities, as provided for by Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are covered.*
16. The authorities state that pursuant to the revisions that were made to the Criminal Code, Article 200 was reworded so that persons who perform directing or other management functions "or hold any other position, in commercial organisations permanently, temporarily, or on a special powers basis, shall be subject to criminal liability for committing the crime in question".
17. GRECO takes notes of this amendment to Article 200 CC and of the deletion of the phrase "regulatory or other management functions", which unjustifiably narrowed its scope of application. GRECO also welcomes the addition of the phrase "or hold any other position" in the revised text of Article 200, which has brought this provision in line with Articles 7 and 8 of the Convention.
18. GRECO concludes that recommendation iv has been implemented satisfactorily.

**Recommendation v.**

19. *GRECO recommended to consider criminalising trading in influence, ensuring that all requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met and thus withdrawing or not renewing the reservation relating to this article of the Convention.*
20. The Armenian authorities indicate that a new Article 312.2 on active trading in influence<sup>2</sup> was added to the Criminal Code by the above-mentioned amendment and that the reservation to

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<sup>2</sup>Article 312.2. **Giving Unlawful Remuneration for Making Use of Real or Alleged Influence**

1. Giving unlawful remuneration to a person for making use of real or alleged influence, i.e. promising or offering or providing the person with money, property, property right, securities or any other advantage — personally or through an intermediary — for him/her or another person for the purpose of carrying out or not carrying out any action by any official or public servant not considered as an official, within the scope of powers thereof, in favour of him/her or persons introduced thereby for the purpose of patronage or connivance in relation to service for making use of his/her real or alleged influence:

shall be punished by a fine in the amount of two-hundred-fold to four-hundred fold of the minimum salary, or by imprisonment for a term of maximum three years.

2. Giving unlawful remuneration on a large-scale:

shall be punished by a fine in the amount of four-hundred-fold to six-hundred-fold of the minimum salary or by imprisonment for a term of maximum four years.

3. Giving unlawful remuneration, committed —

(1) on a particularly large-scale;

(2) by an organised group —

shall be punished by imprisonment for a term of two to five years.

Article 12 of the Criminal Law Convention was consequently withdrawn on 8 October 2012. The authorities recall that the passive side of the offence is already covered by Articles 311, 311<sup>1</sup> and 311<sup>2</sup> CC. The latter article was also amended so as to include the “request for or acceptance of a promise or an offer to receive cash, property, property rights, securities, or any other advantage”.

21. GRECO notes with satisfaction that the recommendation has not only been considered, but that action was taken to criminalise trading in influence and to withdraw the corresponding reservation to Article 12 of the Convention. Turning to the substance of the provisions on trading in influence, GRECO agrees that the active side of the offence of trading in influence is criminalised by Article 312.2 CC in accordance with all the elements of Article 12. This is not the case, however, of the passive side of the offence, for which all the shortcomings highlighted in the Evaluation Report (paragraphs 86 and 87) with respect to Articles 311, 311<sup>1</sup> and 311<sup>2</sup> CC have not been removed. The offence of Article 311<sup>2</sup> is namely restricted to acts committed “for mercenary purposes” and it does not include a reference to third party beneficiaries. These gaps are partly filled by Articles 311 and 311<sup>1</sup> on passive bribery, which also cover trading in influence. These articles, however, only apply in cases in which the influence peddler is an official or a public servant. Moreover, Articles 311, 311<sup>1</sup> and 311<sup>2</sup> all require that the influence is actually exerted (even if it is irrelevant whether the exertion of influence has the intended result or not). GRECO therefore invites the Armenian authorities to further amend the relevant articles of the Code, so as to comply fully with Article 12 of the Convention, the reservation to which was withdrawn.
22. GRECO concludes that recommendation v has been implemented satisfactorily.

#### **Recommendation vi.**

23. *GRECO recommended to raise the sanctions for ‘basic’ active bribery of public servants (Article 312<sup>1</sup>, paragraph 1 of the Criminal Code), ‘basic’ active commercial bribery (Article 200, paragraph 1 of the Criminal Code) and bribery in sports (Article 201, paragraph 1 and 3 of the Criminal Code), ensuring consequently that the statutory limitation period for these offences is increased.*
24. The authorities make reference to the above-mentioned amendments to the Criminal Code, which have raised the sanctions foreseen in Articles 312<sup>1</sup>, paragraph 1, 200 and 201 paragraphs 1 and 3. As a result, basic active bribery of a public servant who is not an official is now punished with a penalty in the amount of 200 to 400 minimal salaries or imprisonment for a maximum term of three years and with a deprivation of the right to engage in certain activities for a maximum period of three years. Basic active commercial bribery is punished with a penalty in the amount of 200-400 minimal salaries or deprivation of the right to hold certain positions or to engage in certain activities for a maximum term of three years or imprisonment for a period of three years. The sanction for bribery in sports has also been raised – the penalty now being 300-500 minimal salaries or deprivation of the right to hold certain position or to engage in certain activities for a maximum term of three years or detention for a term of two to three months or imprisonment for a period of three years. As a consequence of these increased sanctions, the statutory limitation period for these offences has also been extended from two to five years.
25. GRECO welcomes these legislative amendments and the subsequent increase of the statutory limitation period for the offences referred to in the recommendation.

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4. The person giving the unlawful remuneration shall be released from criminal liability in case the unlawful remuneration has been extorted or in case the person has voluntarily informed the law enforcement authorities of giving unlawful remuneration not later than after three days.

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

**Recommendation vii.**

27. *GRECO recommended i) to analyse Articles 312 (paragraph 4), 312<sup>1</sup> (paragraph 4) and 200 (paragraph 5) of the Criminal Code and accordingly revise the automatic – and mandatorily total – exemption from punishment granted in cases of effective regret and, in any case, ii) to clarify the conditions under which the defence of effective regret can be invoked.*
28. The authorities report that in pursuance to this recommendation, the relevant provisions of the Criminal Code have been amended, and their consistency improved. In particular a provision was introduced in Article 200 CC<sup>3</sup>, which foresees that any person giving a commercial bribe is exempted from criminal liability if the bribe was extorted. With regard to all the relevant offences, new provisions were introduced which provide a time period of no more than three days, for exemption from criminal liability, during which the person giving the bribe must voluntarily inform the law enforcement bodies.
29. The authorities add that, even when a person is exempted from criminal liability, the bribery case will be examined by a court, which will assess the legal grounds for this exemption. Indirect judicial review is also available, on the basis of Article 360.1 of the Criminal Procedure Code, which allows the court to issue a supplementary decision when relevant grounds indicate that a perpetrator was unlawfully exempted from criminal liability. In such a case, the criminal prosecution against that person will resume.
30. As regards the first part of the recommendation, GRECO notes that the defence of ‘effective regret’ as contained in the new wording of Articles 200, 312 and 312<sup>1</sup>, is still mandatory and applied automatically, as indicated by the expression “shall be released from criminal liability”. GRECO understands that the conditions in which the provision on effective regret was applied can be reviewed by the court. If they are fulfilled, however, the bribe-giver is automatically exempted from criminal liability, independently of the factual circumstances of the case. It recalls in this respect its concerns expressed in the Evaluation Report (paragraph 90) and calls upon the Armenian authorities to reconsider the wording of the relevant offences. With respect to the second part of the recommendation, GRECO welcomes that the wording of the respective provisions has at least been aligned and that a short time-limit for invoking the defence of effective regret has been introduced, which does provide some safeguards against abuse.
31. GRECO concludes that recommendation vii has been partly implemented.

**Recommendation viii.**

32. *GRECO recommended to abolish the dual criminality requirement in respect of bribery and trading in influence offences committed abroad by Armenian nationals.*
33. The Armenian authorities state that the scope of the exceptions to the dual criminality rule which is provided for in Article 15 (2) CC has been expanded by the already mentioned amendment of the Criminal Code, so as to cover bribery and trading influence offences committed by Armenian nationals abroad.

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<sup>3</sup> Article 200, para.2 CC, as amended: The person giving a commercial bribe shall be released from criminal liability in case the bribe has been extorted or in case the given person has voluntarily informed the law enforcement authorities of giving a bribe not later than after three days.

34. GRECO notes the legislative amendments taken in pursuance to this recommendation, and welcomes that the dual criminality requirement has been abolished with respect to the bribery and trading in influence offences, by including reference to those provisions under the exceptions to the dual criminality rule in paragraph 2 of Article 15 CC.
35. GRECO concludes that recommendation viii has been implemented satisfactorily.

## **Theme II: Transparency of Party Funding**

36. It is recalled that GRECO in its Evaluation Report addressed 11 recommendations to Armenia in respect of Theme II. Compliance with these recommendations is dealt with below.

### **Recommendation i.**

37. *GRECO recommended to take measures to prevent the rules on ceilings on private donations and expenses during election campaigns from being circumvented by effecting these contributions and expenses outside the campaign period.*
38. The Armenian authorities report that a new Electoral Code was adopted on 26 May 2011 and entered into force on 26 June 2011. Article 25 of the Code establishes that political parties and candidates have to open pre-election funds, where all resources for the campaign have to be deposited and from which all campaign expenses have to be made. Article 25 provides a list of entities that are permitted to make contributions to the pre-election funds and sets ceilings for these contributions. Any contributions in excess of these ceilings or that are made by natural or legal persons not included on the list should be transferred, by the banks in which the pre-election funds are opened, to the state budget. Goods and services acquired prior to the opening of the pre-election fund also have to be incorporated in the declaration of expenses made from the fund, regardless of the date at which they were acquired.
39. The authorities also indicate that amendments to the law on political parties were adopted on 9 February 2012 and entered into force on 17 March 2012. Article 25 of the law was amended, so as to introduce in a similar manner rules, including caps, on private donations to political parties<sup>4</sup>. A decision of 5 October 2012 of the Central Electoral Commission, further elaborates on the procedure and format for reporting, and foresees among others, that reports on donations have to specify the name and address of the donors. Data regarding membership fees must also include the total number of party members who paid their fees, so as to ensure that membership fees are not used to make covert donations to the political parties. Finally, a law amending the Administrative Offences Code entered into force on the same date as the amendments to the law on political parties. A new Article 189.16 was introduced in the Code, which foresees responsibility of political parties and party officials for failure to transfer illicit or excess donations to the state budget.
40. GRECO takes note of the legislative measures which the Armenian authorities have undertaken. It welcomes in particular the introduction, in the law on political parties, of caps on private donations and of a rule according to which donations exceeding a certain amount have to be

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<sup>4</sup> Political parties may receive private donations up to 1 million times the minimum salary per year (AMD 1 billion or about EUR 2 million), including 10,000 times the minimum salary by each natural person or commercial legal person (AMD 10 million or about EUR 20,000) and 1,000 the minimum salary by each non-commercial legal person (AMD 1 million or about EUR 2,000).

made by bank transfer, which adds safeguards to prevent circumvention of the rules on election campaign funding. Other safeguards include the fact that goods and services acquired prior to the opening of the pre-election fund, also have to be reported as campaign expenses, and the indication of the number of party members who have paid membership fees, in order to avoid circumvention of the rules on donations through the labelling of covert donations as membership fees. Subject to an efficient monitoring in order to uncover possible irregularities, GRECO is satisfied that the guarantees introduced in the relevant texts, represent adequate safeguards against circumvention of the rules on election campaign financing.

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

**Recommendation ii.**

42. *GRECO recommended to ensure that donations in kind to political parties and election candidates (other than voluntary work from non-professionals), as well as goods and services offered at a discounted price, are accounted for at their commercial value and included in the declarations on election campaign finances.*

43. The authorities submit that the new Electoral Code has clarified the issue, in that only means from the election fund are to be used for the purpose of conducting the election campaign via activities that are exhaustively listed in the relevant article<sup>5</sup>. Furthermore, if the goods and services are delivered at a price below their market value, or were acquired prior to the opening of the pre-election fund, then they shall be incorporated in the pre-election fund expenses at market value.

44. The authorities add that the Central Electoral Commission, in a decision of 16 February 2012 “on official clarification aimed at the elimination of ambiguous interpretation of Article 26 of the Electoral Code”, stated that goods and services which were obtained free of charge are also subject to declaration and oversight of the Central Electoral Commission, as defined by the Electoral Code.

45. GRECO notes that the Armenian authorities have taken measures to ensure that specific goods and services that are offered at a discounted price are accounted at their commercial value in the pre-election fund expenses. GRECO also notes the clarification provided by the decision of the Central Electoral Commission. Both measures address the concerns of the recommendation. That said, it would be clearer if an express reference to “donations in kind” was made in the text of the Electoral Code itself. An “open” list of allowed goods and services would also be better than an exhaustive one. GRECO encourages the Armenian authorities to address these ambiguities in the currently on-going process of amendment of the Electoral Code.

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

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<sup>5</sup> Article 26.2, Electoral Code: “For the purposes of funding the conduct of election campaigns via mass media, renting halls, premises, preparing (posting) campaign posters, acquiring print campaign and other materials, preparing all types of campaign materials (including print materials) to be provided to electors, candidates, political parties running in the elections under the proportional electoral system and alliances of political parties shall use only the means of the election fund. For this purpose, the maximum amount of expenses made from the election fund is prescribed by this Code.

In case the goods and services prescribed in this Part are served with a price lower than the market value or are achieved prior to the formation of the election fund, they shall be included in the expenditures of the election fund at their market value.”



### **Recommendation iii.**

47. *GRECO recommended to find ways to increase the transparency of contributions by third parties in the financing of political parties and election campaigns.*
48. The Armenian authorities stress that the newly adopted Electoral Code has increased the transparency of contributions by third parties by listing exhaustively which persons or entities have the right to make contributions to the pre-elections funds and by prescribing that a campaign may only be financed by the pre-election fund. It further provides that the banks in which temporary special accounts have been created, must once every three working days, present to the Control and Review Service of the Central Electoral Commission a report on the financial inflows and outflows on pre-elections funds of candidates, political parties and coalitions of parties. The Control and Review Service in turn, reviews the data, prepares a summary report and posts it on the website of the Central Electoral Commission. Declarations on contributions to the pre-election fund of candidates and parties and party alliances registered in the proportional election contest and on the use of such pre-election funds have to be posted on the website of the Central Electoral Commission as well.
49. As regards the financing of political parties outside the context of election campaigns, amendments to the law on political parties regulate donations, by listing exhaustively the persons or entities that may provide contributions, setting limits on the amount of such contributions, per person/entity and per year and by prohibiting anonymous donations (Article 25). Political parties have to submit and publish yearly by 25 March a financial statement on all their income, property and expenses during the previous year. This statement is to be published in the press and be available on the official website of public notifications of the Republic of Armenia.
50. GRECO welcomes the relevant provisions of the new Electoral Code and the law on political parties, which provide for contributions to political parties and election candidates to be channelled through the relevant accounts and to be reported accordingly. Measures are therefore in place to increase the transparency of contributions by third parties and provide a level playing field between parties, subject to an effective monitoring of the implementation of these provisions.
51. GRECO concludes that recommendation iii has been implemented satisfactorily.

### **Recommendation iv.**

52. *GRECO recommended to adjust the current spending limits for election campaigns, in order to encourage political parties and candidates to give a true account of the expenses incurred in connection with election campaigns.*
53. The authorities report that relevant articles of the Electoral Code were amended, with a view to increasing the ceilings on amounts spent by candidates and parties participating in the election for pre-election campaign purposes. For presidential candidates and for parties participating in the proportional election contest, the limits of 70 and 60 million drams respectively, have been raised to 100 million drams (approximately 190,000 EUR). For candidates in the majority contest of National Assembly elections, the limit of 5 million drams was raised to 10 million drams (approximately 19,000 EUR). For local government elections, the limits have been raised, subject to the number of voters in the community where the election is held. For the Yerevan City Council, the ceiling of 60 million drams was raised to 75 million drams (approximately 143,000 EUR).

54. GRECO takes note of the spending limits which have been raised by the Armenian authorities, and which mitigate the too low expenditure limits that were noted in the Evaluation Report.
55. GRECO concludes that recommendation iv has been implemented satisfactorily.

**Recommendation v.**

56. *GRECO recommended to establish a standardised format (accompanied by appropriate guidelines, if necessary) for reporting election campaign expenditure.*
57. The authorities of Armenia indicate that in pursuance to this recommendation, the Electoral Commission adopted on 16 February 2012 a decree on ‘Approving the Procedure and Declaration Form for Contributions Made to and Expenditures Made from Pre-Election Funds’, under which candidates as well as parties and party alliances that participate in the proportional contest of the National Assembly election must submit declarations on contributions made to their pre-election funds and on the use thereof to the Control and Review Service of the Central Electoral Commission. These declarations have to be submitted on the 10<sup>th</sup> and 20<sup>th</sup> day after the commencement of the pre-election campaign as well as no later than 3 days before the deadline set by the Election Code. Guidelines on the procedure, terms, and deadlines of filling out and submitting declarations are appended to the decree. An electronic version of the decree is available on the website of the Central Electoral Commission ([www.elections.am](http://www.elections.am)).
58. GRECO welcomes the decree adopted by the Electoral Commission, which establishes a common reporting format, and lists the categories of expenses that need to be reported. Subject to the manner in which this format will be used by the political parties and candidates, it ought to make it possible to make meaningful comparisons of the data submitted. GRECO also takes note of the guidelines appended to the decree, which appear to provide some guidance to political parties and election candidates on the scope of the reporting requirements. It nevertheless wonders if these guidelines are detailed enough to provide sufficient information to them. The Central Electoral Commission may therefore wish to keep this issue under review in order to supplement the guidelines, if necessary.
59. GRECO concludes that recommendation v has been implemented satisfactorily.

**Recommendation vi.**

60. *GRECO recommended to ensure that the financial declarations of candidates to the National Assembly for election by majority vote, candidates to the position of head of community and candidates to Yerevan city council are published in a way that provides for easy access by the public.*
61. The authorities state that the Electoral Code provides, that within a three day period, candidates (and political parties, the alliance of political parties) shall submit declarations on the contributions made to their election funds to the Oversight and Audit Service of the Central Electoral Commission, and expenditures made from their pre-election campaign funds, and that these declarations are then posted on the website of the Central Electoral Commission. Considering that Article 27 contains this provision and is included in the “General Provisions” part of the Code, it consequently applies to all elections. The definition of candidates covers therefore candidates for the position of President of the Republic, candidates to the National Assembly for election by

majority vote, candidates to the position of head of community and candidates to Yerevan city council.

62. GRECO takes note of the information provided, which seems to indicate that access by the public to financial declarations has been made easier.

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

#### **Recommendation vii.**

64. *GRECO recommended to ensure independent and consistent auditing in respect of political parties receiving public funding and, as appropriate, of other parties.*

65. The Armenian authorities report that a new Article 28.1 was added to the law on political parties, which provides that parties that have assets in excess of 10,000 minimal salaries prescribed by law (about EUR 20,000), as well as parties that have received support from the state shall be obliged to publish their financial reports after they have been audited, together with the audit report. The conditions to be fulfilled by the audits are prescribed by the Law of 26 December 2002 on Auditing. This law prescribes *inter alia* that auditing standards are to be defined by the government of the Republic of Armenia, on the basis of international auditing standards and that the auditing entity has to choose its *modus operandi* independently. It also contains provisions regarding the certification of auditors and ensuring their independence from the political parties.

66. GRECO takes note of the information reported, which seems to indicate that parties that have received public funding, as well as parties having assets above 20,000 EUR, are subject to compulsory auditing of their accounts. It also takes note of the guarantees provided by the Law on Auditing. However, the authorities may wish to complement this general text by regulations directed specifically at the audit of political parties.

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

#### **Recommendation viii.**

68. *GRECO recommended to ensure that an independent and integrated mechanism is in place for the monitoring of the funding of political parties and electoral campaigns, and that it is given the mandate, the authority and the financial and staff resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.*

69. The authorities state that a permanent Oversight and Audit Service was established by a decree of 11 August 2011 by the Central Electoral Commission, pursuant to the amended provisions of the Electoral Code and the law on political parties. The service, which does not form part of the Central Electoral Commission, is composed of a Head and two civil servants, and can hire up to five contract employees for a one month period in case of necessity during elections. In addition, during election campaigns, each parliamentary group within the National Assembly appoints one qualified auditor, who assists the service on a voluntary basis until the fifth day after publication of the election results. The members of the Central Electoral Commission, as well as the Head of the Oversight and Audit Service, cannot be members of a political party. The other civil servants employed by the Service are submitted to the principle of political restraint, which means that they cannot use their position in the interest of political parties.

70. The task of the Oversight and Audit Service is, within two days after receiving financial declarations by the parties and candidates, to draw up a statement on the checked declarations and submit it to the Central Electoral Commission for discussion. After consideration of the statement by the Commission, it is posted on the Commission's website. The Service also receives statements from the banks on revenues and expenditures on the pre-election funds of political parties and candidates. This data is compared with the declarations submitted by the parties and the candidates themselves. It is also compiled into a brief statement, which is posted on the Central Electoral Commission's website.
71. The authorities further report that the Code of Administrative Offences was supplemented with a new Article 223.2 to ensure the investigation of alleged infringements of regulatory provisions on party financing and to apply sanctions if necessary<sup>6</sup>. The Central Electoral Commission is given the authority to investigate cases related to administrative infringements and may impose sanctions in cases of failing to publish and to present a report on the funds received and spent by a party during the reported year. In case of failing to present to the authorised state body the requested documents, the competent body is entailed to impose a fine on officials of the political party in the amount of eighty-fold to one hundred-fold of the prescribed minimum salary<sup>7</sup>.
72. GRECO takes note of the information provided, which indicates that several measures have been taken by the Armenian authorities to address this recommendation. The fact that the Oversight and Audit Service is now a permanent body with a mandate to review both the funding of political parties and election campaigns in an integrated manner is a clear improvement. Other positive measures include the new non-partisan composition of the Central Electoral Commission, a reinforcement of the independence of the members of the Oversight and Audit Service from political parties, as well as the fact that the staff resources of the service have visibly been increased and that administrative sanctions may now be imposed by the Central Electoral Commission.
73. GRECO takes the view, however, that the measures taken do not address in full all the deficiencies that were highlighted in the Evaluation Report (paragraph 71) as regards monitoring. In particular, GRECO has doubts about the fact that part of the work is carried out by auditors who are appointed by the political parties and there appear to be no provisions guaranteeing that an auditor will not review the accounts submitted by the party which appointed him/her. Moreover, the time limit in which the Oversight and Audit Service carries out its review seems to indicate that this review may not be as thorough as it should be: two days would hardly enable the Service to go beyond a merely cursory examination of the documents submitted by the parties, even if some of this work may be carried out in advance by checking the statements on pre-election funds submitted by the banks. It appears to GRECO, that the supervision system has been devised to ensure a speedy provision of information on political financing by the Central Electoral Commission, which is a worthwhile objective. A thorough monitoring of accounts and declarations, aiming at uncovering possible irregularities by exercising investigative powers, however, requires more time. Both objectives of a speedy and thorough supervision of political financing need therefore to be balanced in an adequate manner. GRECO calls upon the Armenian authorities to pursue their efforts in order to fully address the concerns of the recommendation, as an effective monitoring of political financing is crucial to the overall transparency and efficiency of the system.

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<sup>6</sup> In case of failure to present or publish the requested documents, the Commission may impose a fine on officials of a political party, in the amount of 80 to 100 minimal salaries (about EUR 160 to 200).

<sup>7</sup>Articles 189.13, 189.14 and 189.15

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

**Recommendation ix.**

75. *GRECO recommended to ensure the publication of and easy access by the public to the results of the supervision of the funding of political parties and election campaigns.*

76. The Armenian authorities indicate that the statement of the Oversight and Audit Service, once it has been considered by the Central Electoral Commission, is posted on the Commission's internet website (Article 28, paragraph 6 of the Electoral Code).

77. GRECO welcomes the information provided, which indicates that the objective of the recommendation has been fulfilled.

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

**Recommendation x.**

79. *GRECO recommended to clearly define infringements of political financing rules and to introduce effective, proportionate and dissuasive sanctions for these infringements, in particular by extending the range of penalties available and by enlarging the scope of the sanctioning provisions to cover all persons/entities upon which the Law on Political Parties and the Electoral Code impose obligations.*

80. The authorities report that the Code of Administrative Offences was amended so as to clarify the violations of the financing rules and the sanctions applied in cases of violations. Articles 189.13 to 189.16 now prescribe administrative liability, and incremental fines, for a party official's failure to present or to publish the report on funds received and spent during the reported year, for the failure to present the documents specified by law at the request of a monitoring body, for accepting monetary contributions in excess of 100 minimal salaries in cash, and for the failure to transfer donations in excess of the ceiling set by law or unauthorised donations to the state budget within the period set by law. Sanctions are also foreseen for donors who make such unauthorised donations.

81. GRECO takes note of the legislative amendments, which address the concerns of the recommendation. It welcomes the introduction of more proportionate and incremental fines in the Code of Administrative Offences, for clearly defined infringements, that apply to party officials and donors. It would appear however that these sanctions are not applicable to the parties themselves. However, GRECO accepts that other criminal sanctions do apply to parties, as mentioned in the Evaluation Report (paragraph 73). It takes therefore the view, that the Armenian authorities have clearly defined infringements of political financing rules and introduced additional sanctions to cover those infringements, as requested by the recommendation. GRECO encourages the authorities however, in the context of the current reform process of the Code of Administrative Offences, to add sanctions applicable specifically to political parties themselves, to ensure that political parties may also be held liable for the infringements which were recently introduced to the Code.

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

### **Recommendation xi.**

83. *GRECO recommended to increase the limitation period for administrative violations of the Law on Political Parties and the Electoral Code.*
84. The authorities explain that the relevant article of the Armenian Code of Administrative Offences was amended so that the administrative penalties for offences pertaining to political financing may be imposed “within two months of uncovering the offence but not later than one year after the committal of the offence, except for the cases provided for by part 4 of this article”. In the event that an infraction is detected later than one year after it was committed, Article 37(4) of the Code provides that “if it is not possible to reveal an administrative offence without carrying out relevant controls, the administrative fine may be imposed not later than within two months after revealing the administrative offence through controls”.
85. GRECO takes note of the information provided and of the increase in the limitation period for administrative violations of the Law on political parties and the Election Code. It points out however that it has consistently found that one year is not sufficient to take into account the complexity of all political financing offences, especially if supervision is to be improved as required by recommendation viii. Moreover, GRECO notes the additional possibility offered by Article 37(4) of the Code of Administrative Offences, but considers that this Article does not offer sufficient flexibility to take into account all possible situations. If an irregularity is detected more than one year after it was committed, not by the Central Electoral Commission itself, but by the media or another political party for instance, it is doubtful whether the Commission would or could carry out the relevant controls in order to be able to pronounce a fine.
86. GRECO concludes that recommendation xi has been partly implemented.

### **III. CONCLUSIONS**

87. **In view of the above, GRECO concludes that Armenia has implemented satisfactorily sixteen of the nineteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i-vi and recommendation viii have been implemented satisfactorily and recommendation vii has been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i-vii, ix and x have been implemented satisfactorily and recommendations viii and xi have been partly implemented.
88. As regards incriminations, GRECO commends Armenia for thorough efforts which have been carried out in order to comply, already at this stage, with nearly all recommendations. The Criminal Code was amended significantly in order to address most of the ambiguities highlighted in the Evaluation Report. GRECO also welcomes the new incrimination of trading in influence and the subsequent withdrawal of Armenia’s reservation on Article 12 of the Criminal Law Convention, as well as the comprehensive training programme that was implemented to clarify the manner in which some of the bribery offences were to be understood. GRECO calls upon the Armenian authorities to further amend the provisions on trading in influence and on the special defence of effective regret, in order to fully comply with its recommendations.
89. In so far as the transparency of political funding is concerned, Armenia has also undertaken significant reforms to address most of the concerns raised by the recommendations. A new Election Code was adopted, along with amendments to the law on political parties as well as to the Code of Administrative Offences. Transparency and reporting have been improved, both as

regards political parties and election campaign financing. Measures have been taken regarding donations to avoid circumvention of the rules on campaign financing, spending limits have been adjusted to encourage political parties and candidates to give a more accurate account of their expenses and common formats have been introduced for reporting. Supervision was also reinforced to some extent, with the introduction of a compulsory audit for the bigger parties and the establishment of a permanent Oversight and Audit Service, next to the Central Electoral Commission and a reinforcement of their independence from political parties. Further action is however required to make supervision more effective. The arsenal of sanctions was also complemented, and the statute of limitation for administrative violations of political financing offences was extended, although, there again, further measures are needed in order to comply fully with the recommendation.

90. In the light of what has been stated in paragraphs 87 to 89, GRECO commends Armenia for the substantial reforms carried out with regard to both themes under evaluation and which show that, already at this stage, Armenia complies with more than four-fifths of the recommendations issued in the Third Round Evaluation Report. It encourages Armenia to pursue these reforms in order to implement the pending recommendations within the next 18 months. GRECO invites the Head of the delegation of Armenia to submit additional information regarding the implementation of recommendation vi (Theme I – Incriminations) and recommendations viii and xi (Theme II – Transparency of Party Funding) by 30 June 2014 at the latest.
91. Finally, GRECO invites the authorities of Armenia to translate the report into the national language and to make this translation public.