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Third Evaluation Round

Compliance Report on the Czech Republic

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 59th Plenary Meeting
(Strasbourg, 18-22 March 2013)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of the Czech Republic to implement the 13 recommendations issued in the Third Round Evaluation Report on the Czech Republic (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 50th Plenary Meeting (18 March-1 April 2011) and made public on 29 April 2011, following authorisation by the Czech Republic (Greco Eval III Rep (2010) 10E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of the Czech Republic submitted a Situation Report on measures taken to implement the recommendations. This report was received on 31 October 2012 and served as a basis for the Compliance Report.
4. GRECO selected Italy and Hungary to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Anna PAGOTTO, Appellate Judge, Ministry of Justice, on behalf of Italy, and Mr Akos KARA, Head of Department, Ministry of Public Administration and Justice, on behalf of Hungary. 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.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 4 recommendations to the Czech Republic in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to clarify that bribery of all categories of employees in the public sector is covered, regardless of whether they are able to fundamentally influence a final decision in connection with procuring affairs in the public interest or not.*
8. The authorities of the Czech Republic report that the jurisprudence is adequate to ensure that all officials and employees of the public sector are covered by the bribery provisions of the Criminal Code (hereafter CC). They refer to the "Methodological guidance for prosecutors in cases of criminal offences related to corruption" (hereafter "the Guide"); issued in September 2010 by the

Supreme Public Prosecutor's Office, to further clarify their stance. According to the Guide, the phrase "procurement of affairs in the public interest" shall be interpreted widely to include all activities related to the implementation of tasks important for society and cannot be limited to tasks under the competence of a public official. The term unambiguously covers: 1) activity of a person procuring affairs who is endowed with decision-making authority; 2) activity of a person procuring affairs who is not endowed with decision-making authority, but his/her activities determine the procurement of affairs of public interest; 3) activity of a person cooperating in procuring affairs of public interest (this activity is not decision-making, but rather of control) (page 23, guide).

9. Additionally, the authorities stress that the Guide describes three conditions that must be met for one to be considered a public official within the terms of the CC: 1) s/he must be a person mentioned in a) to i) of section 127/1 of the CC; 2) s/he must perform tasks of the state or society; and 3) in so doing s/he must use the powers vested in him/her to perform these tasks. In the absence of any one of these three elements, that person does not have criminal responsibility nor the protection of a public official.
10. Moreover, in order to explain what should be understood from phrases such as "tasks of the state or the society" and "the vested authority to execute those tasks" the authorities quote from the above-mentioned Guide as follows; "Tasks of the state or the society are execution of such activities that have major importance for society, its nature corresponds with activities of a group of persons, who execute them and which are specified with respect to the position of each such person by law. The execution of tasks of the state or a society is understood as a responsible preparation for decision-making, actual decision-making and execution of adopted decisions (if given by separate powers of the authority). Execution of tasks of the state or the society cannot be regarded as execution of ancillary, manual or minor technical administrative and security jobs (technicians, typists, spokesmen, gatekeepers, members of security services, support staff, etc.)."
11. While taking note of the information provided above, GRECO does not consider it changes the conclusions it reached in the Evaluation Report. While the authorities conclude that all officials and employees of the public sector are covered by the bribery provisions as required by the Criminal Law Convention of Corruption, GRECO considers the provisions on bribery in the Czech CC to limit the range of people covered notwithstanding a broader concept of tasks performed in "connection with procuring affairs in the public interest". GRECO accepts that the jurisprudence clarifies that this concept includes tasks that impact society (or a wide group of citizens) and is not solely limited to those tasks executed by public officials. Nevertheless, as the definition of a public official is limited to a specific list of people employed by the government, it is still not clear that ordinary employees in the public service – e.g. secretaries, spokespersons, archivists etc. – will be covered. For instance, employees working in the public sector whose actions or tasks do not have an impact on society, or a wide group of citizens, will fall outside the scope of the bribery provisions in that they cannot be considered the subject of the passive bribery (section 331 of Czech CC) or the target of active bribery (section 332 of Czech CC). For these reasons, GRECO considers that the underlying concern of the recommendation has yet to be addressed.
12. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

13. *GRECO recommended to consider amending Section 332 of the Criminal Code to ensure that it unambiguously covers instances of active bribery committed through intermediaries.*

14. The authorities of the Czech Republic report that both the experts from the Ministry of Justice and officials of the Supreme Prosecutor's office have formally considered the recommendation and decided not to initiate any amendment process as they reached the conclusion that the text of Section 332 of the Criminal Code covers active bribery offences committed via intermediaries.
15. The authorities further refer to paragraph 45 of the methodological Guide which reads that "Providing a bribe is direct transfer of illegal advantage in the form of money or other material value, as well as indirect provision of material or other benefits or provision of reciprocal services. A bribe can be passed to the person that procures affairs in the public interest (or in connection with the business of the offender or another), or to an intermediary."
16. GRECO takes note of the information provided. In the Evaluation Report, GRECO noted that the Commentary to the Criminal Code appeared to confirm that active bribery offences committed via intermediaries was covered, but concluded that the absence of the intermediary element in the provision on active bribery could be problematic given that this had been explicitly included in the provision on passive bribery (Paragraph 75, Evaluation Report). GRECO accepts that the Guide does further clarify that active bribery committed via intermediaries is covered by the CC and welcomes the formal consideration of the authorities as to whether there is a need for a legal amendment to clarify that bribe-givers using intermediaries are punishable under the provisions of the CC, as required by the recommendation.
17. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

18. *GRECO recommended to amend Section 333 of the Criminal Code on trading in influence, ensuring that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the acceptance of an offer or promise of an undue advantage and instances of supposed influence.*
19. The authorities of the Czech Republic report that the Ministry of Justice prepared a proposal¹ to amend section 333 of the CC (trading in influence) which was submitted to the government by the end of February 2013 with a view to its being effective as of July 2013.
20. The authorities further report that, in general, they do not believe that there is need for any changes to the CC with respect to the application of the trading in influence provisions to those who pretend to have improper influence over the decision making of any person. They stress that in such a case, the active party acts in factual error and therefore s/he is punishable only with respect to provisions on attempting to trading in influence. On the other hand, they state that the passive party in these instances is considered to have committed fraud or attempted fraud.
21. GRECO commends the Czech authorities for the preparation of the draft proposal that foresees the insertion of the phrase "accepts a promise" into section 333 of the Criminal Code. Once adopted, the revised provision concerning trading in influence will address the deficiency

¹ The proposed amendment reads as " **Section 333 Trading in influence** (1) Whoever requests, **accepts a promise** or accepts a bribe for exerting his/her influence or by means of someone else on the execution of the authority of a public official or for having done so, shall be sentenced to imprisonment for up to three years.(2) Whoever shall provide, offer, or promise a bribe to another person for the reason given in paragraph (1), shall be sentenced to imprisonment for up to two years.

identified in the Evaluation Report. GRECO considers with the adoption of this proposal the requirements of the Article 12 of the Criminal Law Convention on Corruption (ETS 173) will be met.

22. GRECO therefore concludes that recommendation iii has been partly implemented.

Recommendation iv.

23. *GRECO recommended to clarify in an unequivocal manner the way in which bribery of foreign arbitrators and foreign jurors is criminalised in the Czech Republic and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*
24. The authorities of the Czech Republic report that all relevant authorities have discussed the recommendation and generally agree that the situation where a foreign juror or a foreign arbitrators shall be deemed a public official is clearly addressed in the provisions of the CC and, as such, are sufficient to cover the bribery of foreign arbitrators and foreign jurors who are not normally considered to be public officials. They further state that they are not able to provide any jurisprudence supporting their arguments as there have been no judicial proceedings involving a foreign juror or a foreign arbitrator.
25. The authorities refer to the explanations provided in the Guide to further clarify the position of foreign jurors and arbitrators. More particularly, they report that for the purposes of the prosecution of bribery offences, Czech Law provides that foreign jurors and arbitrators are deemed to be public officials if they have some sort of working relationship with (i.e. hold a function, are employed by or work for) a judicial body of a foreign state or with an international judicial body. As for foreign arbitrators who are not members of permanent arbitration courts, the authorities indicate that they will be criminalised under general bribery provisions either in connection with “his/her or someone else’s business activities” or “procuring affairs in the public interest”.
26. The authorities further report that ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) has not been considered yet.
27. GRECO takes note of the information provided. GRECO recalls that the bribery of foreign jurors and arbitrators already constitutes a criminal offence under the Czech CC although the Czech Republic has not ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). The focus of the first part of the recommendation is to clarify if and how the bribery of foreign arbitrators and foreign jurors is specifically covered by the CC. GRECO is pleased that the authorities have now formally discussed the matter and agreed on the provisions that are applicable to foreign jurors and arbitrators - those who do have a working relationship with a judicial body of a foreign state or with an international judicial body and those that do not. That said, the second part of the recommendation concerning the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) has yet to be realised.
28. GRECO concludes that recommendation iv has been partly implemented.

Theme II: Transparency of Party Funding

29. It is recalled that GRECO in its evaluation report addressed 9 recommendations to the Czech Republic in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendations i-ix.

GRECO recommended:

- *to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements.*

- *to establish precise rules for the valuation and reporting of in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value.*

- *to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control.*

- *to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public.*

- *to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns.*

- *to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves.*

- *to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements.*

- *to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns.*

- *to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list.*

30. In the situation report, the authorities reported that the Ministry of Interior submitted on the 1 June 2012 a draft law to the Government on the supervision of the management of political parties/movements which included proposed amendments to the law on association in political parties. It was also reported that at a cabinet meeting held on 19 September 2012, the government decided to suspend the negotiations on the draft for one month. An update provided on the 9 February 2013, reported that the government rejected the draft bill as far as the establishment of a new central administrative office is concerned on 9 January 2013. The authorities state that the first part of the bill dealing with the establishment of a new independent central administrative body for supervising the management of political parties and political movements and as well as its structure and scope of activities, is currently being reconsidered with a view to redrafting it in its entirety. However, they further report that the government has decided against establishing a new central administrative body and instead to preserve the institutional status quo. This means that the external control over party funding will continue to be exercised by the Supervisory Committee of the Chamber of Deputies, which is currently comprised of 14 members appointed by the political groups represented in parliament. The authorities also mention that the corresponding amendments proposed to the law on association in political parties which referred to or were connected to the “new office” (e.g. with respect to sanctions) will also be redrafted with the aim of enhancing public control through measures to ensure transparency in the financial affairs of political parties.
31. GRECO takes note of the reported intention of the authorities to implement the recommendations issued in this area. However, GRECO regrets the fact that the government has rejected a draft bill which had the potential to meet the requirements of almost all recommendations. GRECO further regrets the government’s objection to the establishment of a new independent supervisory authority as set out in recommendation viii pursuant to Article 14 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and election campaigns. GRECO is particularly concerned about the decision of the government to preserve the current ineffective and non-independent institutional arrangement for supervising the funding of political parties and movements whose flaws have been detailed in the Evaluation Report (paragraph 67), GRECO considers the draft bill, now rejected, to have proposed introducing a more comprehensive and flexible sanctioning scheme and including more detailed financial reporting. This would have contributed increasing the transparency of political and election funding in the Czech Republic so long as its supervision was entrusted to an effective and independent mechanism and not to an institution solely composed of political party representatives. Under these circumstances in which a draft bill submitted to the government and also seen by GRECO has been rejected thus prompting the initiation of an entirely new drafting process, GRECO can only conclude that recommendations i-ix have not been implemented.

III. CONCLUSIONS

32. **In view of the above, GRECO concludes that the Czech Republic has implemented satisfactorily only one of the thirteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation ii has been dealt with in a satisfactory manner, recommendations iii and iv have been partly implemented and recommendation i has not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations i-ix have not been implemented.
33. With respect to incriminations, the steps taken to align the articles of the Czech Criminal Code (CC) regarding trading in influence with those of the Criminal Law Convention on Corruption (ETS 173) and the formal deliberations carried out to clarify that the CC covers the instances of active bribery committed through intermediaries are important signs of the willingness and seriousness of the Czech authorities to meet the recommendations under this theme. That said, GRECO regrets that clarification is still needed to ensure that bribery of all categories of employees, including those carrying out ancillary function, in the public sector are covered by the CC. Lastly, GRECO urges the authorities to conclude the ratification process of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), as soon as possible.
34. In so far as the transparency of political funding is concerned, GRECO considers the efforts of the authorities as important towards fulfilment of the requirements of recommendations under this theme. That said, GRECO particularly regrets the reluctance of the government to establish an independent central administrative mechanism for the monitoring of the funding of political parties/movements and election campaigns which is crucial for ensuring the effective and objective implementation of rules on political funding. Moreover, GRECO has serious concerns about the pace of reform in this area particularly as promising projects in this respect have been abandoned and a process of drafting legal amendments has only been reinitiated by the government in January 2013. In the light of the foregoing, GRECO urges the Czech authorities to speed up the legislation process as much as possible and to take into account, during this process, the requirements of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns.
35. In view of the above and despite the progress noted in respect of Theme I, GRECO concludes that the total lack of compliance with any of the recommendations under Theme II makes the overall response to the recommendations “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Czech delegation to provide a report on the progress in implementing the recommendations i, iii and iv (Theme I-Incriminations) and recommendations i-ix (Theme II-Transparency of Party Funding) – at the latest – by 30 September 2013, pursuant to paragraph 2(i) of that Rule.
36. Finally, GRECO invites the authorities of the Czech Republic to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.