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Second Interim Report

Third Evaluation Round

Second Interim Compliance Report on the Czech Republic

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

I. INTRODUCTION

1. The Third Round Evaluation Report on the Czech Republic was adopted at GRECO's 50th Plenary Meeting (28 March – 1 April 2011) and made public on 29 April 2011, following authorisation by the Czech authorities (Greco Eval III Rep (2010) 10E, [Theme I](#) and [Theme II](#)).
2. As required by the GRECO's Rules of Procedure, the authorities submitted a Situation Report on measures taken to implement the thirteen recommendations contained in the Evaluation Report. GRECO selected Italy and Hungary to appoint Rapporteurs for the compliance procedure.
3. The [Compliance Report](#) was adopted at GRECO's 59th Plenary Meeting (22 March 2013) and made public on 4 April 2013, following authorisation by the Czech authorities. It concluded that of the four recommendations under Theme I – Incriminations, recommendation ii had been dealt with in a satisfactory manner, recommendations iii and iv had been partly implemented and recommendation i had not been implemented. In respect of Theme II – Transparency of Party Funding, none of the nine recommendations had been implemented. This made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO had therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
4. The [Interim Compliance Report](#) was adopted at GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 4 April 2014, following authorisation by the Czech authorities. It concluded that with respect to Theme I – Incriminations, recommendations i, iii and iv had been partly implemented and with respect to Theme II – Transparency of Party Funding, recommendations i-ix remained not implemented. Since the level of compliance was assessed again as “globally unsatisfactory”, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to transmit a letter to the Head of Delegation of the Czech Republic, drawing her attention to the non-compliance with the relevant recommendations and the need to take determined steps with a view to achieving decisive progress as soon as possible. GRECO also requested the Head of Delegation of the Czech Republic to provide a report, regarding the action taken to implement the pending recommendations by 30 September 2014.
5. As required by GRECO's Rules of Procedure, the authorities of the Czech Republic submitted their Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the *Interim Compliance Report*. That report was received on 28 September 2014 and served as a basis for this Second *Interim Compliance Report*.
6. This Second Interim Compliance Report was drawn up by Ms Valeria MONTARULI, Magistrate from the Legislative office of the Ministry of Justice, on behalf of Italy and Ms Nora BAUS, Anti-corruption Officer, Department for European Cooperation, Ministry of the Interior, on behalf of Hungary, with assistance from the GRECO Secretariat. It evaluates further steps made by the authorities to comply with the pending recommendations and underscores the progress achieved since the adoption of the Interim Compliance Report.

II. ANALYSIS

Theme I: Incriminations

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 *Interim Compliance Report* concluded that this recommendation had been partly implemented. Four court cases had been invoked by the authorities as proof that the national legislation, contrary to the 2004 resolution of the Supreme Court and the 2010 methodological guidelines of the Supreme Public Prosecutor's Office, allowed for the criminal prosecution of public sector employees for bribery "in connection with procuring affairs in the public interest" even if their functions did not normally mean that they were in a position to "fundamentally influence the final decision", i.e. irrespective of whether they had the status of public official or not. GRECO did not agree with that assessment as it considered that only one of the four cases was relevant and constituted a step in the right direction.
9. The authorities of the Czech Republic now report that the interpretation of public sector bribery offences has not changed.
10. GRECO regrets that no new court case or supplementary measures by the authorities serve 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. GRECO renews its call upon the authorities to provide for a non-contradictory interpretation of the existing legal provisions to achieve full compliance with this recommendation.
11. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

12. *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.*
13. It is recalled that this recommendation had been assessed as partly implemented in the *Interim Compliance Report*. GRECO had deemed that the proposed amendments to Section 333 of the Criminal Code were in line with the recommendation. Unfortunately, the authorities' efforts to have them adopted by the parliament had been frustrated by the dissolution of the Chamber of Deputies in August 2013.
14. The authorities of the Czech Republic now report that the proposal to amend Section 333 of the Criminal Code (Trading in influence) underwent the inter-ministerial commentary procedure (15 August to 12 September), and was approved by the government on 12 November. Having been promptly submitted to the parliament, the first reading of the draft is scheduled during the 23rd

Plenary Session of the Chamber of Deputies, which will commence on 2 December. The amendment reads :

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.

15. GRECO notes that, fully in line with the recommendation, the proposed amendments now explicitly refer to the acceptance of a promise of an undue advantage.

16. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

17. *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.*

18. It is recalled that, in its previous compliance reports, GRECO had found this recommendation to be partly implemented due to the lack of progress towards the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191). The *Interim Compliance Report* stated the authorities' intention to present a proposal for the signature and ratification to the government in early 2014.

19. The authorities of the Czech Republic now report that the proposal for signature and ratification of the Additional Protocol will be presented to the government at the beginning of 2015 and that the ratification process in the parliament will ensue.

20. GRECO notes the lack of concrete developments since the *Interim Compliance Report* and urges the authorities to accelerate the ratification process.

21. GRECO concludes that recommendation iv remains partly implemented.

Theme II: Transparency of Party Funding

22. *GRECO recommended:*

- *to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements (recommendation i);*
- *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 (recommendation ii);*

- *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 (recommendation iii);*
- *to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public (recommendation iv);*
- *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 (recommendation v);*
- *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 (recommendation vi);*
- *to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements (recommendation vii);*
- *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 (recommendation viii);*
- *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 (recommendation ix).*

23. It is recalled that, GRECO's *Interim Compliance Report* had taken note of draft amendments to the Assembly in Political Parties and Movements Act No. 424/1991 Coll. (the text of which was not available at the time). The adoption of those amendments was deferred due to the dissolution of the parliament in August 2013 and their discussion was to be resumed after the new Chamber of Deputies had convened following the October 2013 elections. GRECO had moreover expressed concerns over the Government's reticence to establish an independent supervisory body to monitor political financing in the Czech Republic. It had therefore reiterated its earlier position on the importance of reforming the currently ineffective and non-independent supervision system.

24. The authorities of the Czech Republic now report that, following the 2013 parliamentary elections, the previous legislative process was cancelled and a new draft law amending the Assembly in Political Parties and Movements Act is being prepared taking inspiration from a draft that had been dismissed by the previous government. Initially, the new draft was to be submitted to the government by the end of September 2014. Although the internal commentary procedure was finalised in July 2014, the draft is currently being examined by a group of experts from the

government coalition parties. This postpones the final deadline for sending the draft to the government to March 2015. On completion of the internal commentary procedure, the draft included provisions establishing a new independent supervisory body and was designed to implement seven of the nine recommendations concerning transparent party funding. The remaining two recommendations on the financing of election campaigns will be addressed by a separate draft (the so-called "Election Code") due to be prepared in the second half of 2015 and on which work has already started.

25. GRECO is concerned by the lack of effective improvement and the repeated postponing of the adoption of the proposed legislation. It welcomes the inception of a new legislative process aimed at modifying the Assembly in Political Parties and Movements Act and ensuring transparent party funding. The preparation of an additional draft (the so-called "Election Code") which is supposed to address the concerns surrounding the financing of election campaigns is also a welcome development. GRECO however notes that it had been informed at the time of the *Interim Compliance Report* that an "Election Code" was being prepared and its preparation is now due in 2015. Overall, given the relatively early stage of the drafting procedure and the fact that neither of the drafts are available for GRECO's scrutiny, it is premature to establish even partial compliance. It is therefore concluded that all nine recommendations remain not implemented.
26. GRECO concludes therefore that recommendations i-ix remain not implemented.

III. CONCLUSIONS

27. **GRECO concludes that the little substantial progress achieved so far is not sufficient to alter the level of implementation of partly or not implemented recommendations recorded in the Third Round *Interim Compliance Report*.** Of the thirteen recommendations issued in the Evaluation Report, only one has been dealt with in a satisfactory manner, three have been partly implemented and nine remain not implemented.
28. With respect to Theme I – Incriminations, recommendations i, iii and iv remain partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i-ix remain not implemented.
29. Regarding incriminations, the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption are to be speeded up, as is the proposal to amend Section 333 of the Criminal Code on trading in influence, and it still needs to be clearly established that all public sector employees, in particular those exercising ancillary jobs, fall unambiguously within the scope of the bribery and trading in influence provisions of the Criminal Code.
30. As for transparency of political funding, GRECO welcomes the resumption of work on the draft amending the Assembly in Political Party and Movements Act and the prospective development of the so-called "Election Code". These drafts are supposed to address the concerns underlying the recommendations pursuing, respectively, the transparency of party and of election campaign financing. Above all, GRECO is pleased with the authorities' intention to give a green light to the establishment of an independent body to supervise the political financing in the Czech Republic. GRECO expresses its full support for the on-going reforms and calls upon the authorities to swiftly carry them through.

31. In view of the above, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
32. In accordance with Rule 32, paragraph 2 subparagraph (ii) b), GRECO invites the President of the Statutory Committee to send a letter to the Permanent Representative of the Czech Republic to the Council of Europe, drawing his attention to the non-compliance with the relevant recommendations, and the need to take determined action with a view to achieving tangible progress as soon as possible.
33. Pursuant to Rule 32, paragraph 2, subparagraph (i) of the Rules of Procedure, GRECO requests the Head of Delegation of the Czech Republic to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii and iv regarding Theme I, and recommendations i-ix regarding Theme II) by 30 September 2015.
34. Finally, GRECO invites the authorities of the Czech Republic to authorise as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.