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Second Interim Report

Third Evaluation Round

Second Interim **Compliance Report** **on Denmark**

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 61st Plenary Meeting
(Strasbourg, 14-18 October 2013)

I. INTRODUCTION

1. The Third Round Evaluation Report on Denmark was adopted at GRECO's 43rd Plenary Meeting (2 July 2009) and made public on 25 February 2010, following authorisation by Denmark (Greco Eval III Rep (2008) 9E [Theme I](#) / [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the authorities submitted a Situation Report on measures taken to implement the fourteen recommendations contained therein. GRECO selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure.
3. In the Compliance Report, which was adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011), it was concluded that out of the five recommendations under Theme I - Incriminations three (iii-v) had been implemented satisfactorily or dealt with in a satisfactory manner, recommendation ii 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. Despite discernible progress achieved under Theme I, GRECO concluded that the non-implementation of the recommendations under Theme II made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report and asked the Head of Delegation of Denmark to provide a situation report on the implementation of pending recommendations (i.e. recommendations i and ii under Theme I and recommendations i-ix, under Theme II) by 30 November 2011, pursuant to paragraph 2(i) of that Rule.
4. In the Interim Compliance Report, which was adopted by GRECO at its 55th Plenary Meeting (Strasbourg, 14-16 May 2012), the level of compliance was assessed again as “globally unsatisfactory” since the rating of pending recommendations had not been upgraded compared to the Compliance Report. Therefore GRECO, in accordance with Rule 32, paragraph 2 subparagraph (ii), instructed its President to transmit a letter to the Head of Delegation of Denmark, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving decisive progress as soon as possible. Furthermore, GRECO requested the Head of the Danish delegation to provide a report, regarding the action taken to implement the pending recommendations (i.e. recommendations i and ii regarding Theme I and recommendations i-ix regarding Theme II) by 28 February 2013. This report was submitted on 1 March 2013, and served as a basis for this Second Interim Compliance Report.
5. The Second Interim Compliance Report was drawn up by Ms Helena LIŠUCHOVÁ, Acting Head, International Co-operation Department (Czech Republic) and Mr Don O'FLOINN, Policy Advisor, Ministry of Security and Justice, Law Enforcement Department (Netherlands), with assistance from the GRECO Secretariat. It evaluates further steps made by the authorities to comply with the pending recommendations and underscores the overall progress since the adoption of the Interim Compliance Report.

II. ANALYSIS

Theme I: Incriminations

Recommendation i.

6. *GRECO recommended to put beyond doubt that all forms of “undue advantages” are covered by the relevant bribery offences concerning foreign public officials and officials of international organisations/assemblies/courts.*
7. It is recalled that GRECO had assessed this recommendation as not implemented in the Interim Compliance Report due to the lack of action. The authorities had explained that the Danish approach – not to sanction criminally cases involving certain types of small facilitation payments abroad – did not run counter to the situation in other member States which had not received a similar recommendation from GRECO.
8. The authorities of Denmark maintain the same position as above.
9. GRECO wishes to recall that, according to the currently effective Danish legislation, any form of undue advantage is covered by the provisions on bribery of domestic public officials (Article 122 of the Criminal Code). However, as stems from preparatory work to the law and as was emphasised in paragraph 67 of the Evaluation Report, even though the elements are the same for bribery of foreign public officials as in respect of bribery of Danish public officials, the law in a strict sense does not exclude small facilitation payments as in such situations the custom of a foreign country needs to be taken into account. This discrepancy between domestic and foreign bribery provisions, in the opinion of GRECO, has no justification in the Criminal Law Convention and is to be eliminated. It is concluded that the recommendation has not been implemented. GRECO reiterates the invitation to the authorities to reconsider their position and to modify domestic legislation in line with international standards.
10. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

11. *GRECO recommended (i) to increase the maximum criminal sanctions in respect of active and passive bribery in the private sector (section 299.2 of the Criminal Code) as well as active and passive bribery of arbitrators (section 304a); (ii) to consider increasing the maximum criminal sanction in respect of active bribery offences in the public sector (domestic, foreign and international) covered by section 122 of the Criminal Code.*
12. GRECO recalls that, since the second part of the recommendation had been given due consideration by the authorities, the recommendation was considered as partly implemented in the Interim Compliance Report. It was furthermore noted that the drafting of legislative amendments under the first part of the recommendation had been postponed until the second half of 2012.
13. The authorities of Denmark now report that, in February 2013, the Government introduced a bill before Parliament proposing legislative amendments intended to strengthen the prevention, investigation and prosecution of economic crimes. They increased the maximum penalties foreseen for violation of Section 122 of the Criminal Code (active bribery in the public sector) to

imprisonment for up to six years (compared to three years in the then effective CC) and for violation of Sections 299(2) and 304a of the Criminal Code (active and passive bribery in the private sector) and of arbitrators - to imprisonment for up to four years (compared to one and a half years in the then effective CC). The legislative amendments entered into force on 1 July 2013.

14. GRECO welcomes amendments to the Criminal Code which have tightened the sanctions foreseen for the commission of bribery offences in the private sector, as well as for active and passive bribery of arbitrators. Moreover, it is appreciated that with regard to the second part of the recommendation, the authorities have gone beyond mere consideration and actually increased the maximum penalty for active bribery offences in the public sector. This responds positively to the concern underlying this recommendation to introduce effective, proportionate and dissuasive sanctions. Nevertheless, a difference in the level of sanctions established for public and private sector bribery may still create the presumption that private sector corruption is a less serious offence compared to public sector corruption, as stated in paragraph 69 of the Evaluation Report. Therefore, while hailing the recent amendments to the Criminal Code as better reflecting the spirit of the Convention, GRECO encourages the authorities to give this matter further consideration.
15. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Theme II: Transparency of Party Funding

16. It is recalled that GRECO in the Evaluation Report addressed nine recommendations to Denmark in respect of Theme II and that all of them were considered not implemented in the Interim Compliance Report.
17. GRECO recommended:
 - *to introduce a ban on donations from donors whose identity is not known to the political party/election candidate (recommendation i);*
 - *that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the Accounts of Political Parties Act, be complemented with an obligation upon political parties to report the total value of donations provided by each donor, in addition to the identity of the donors (recommendation ii);*
 - *to provide further guidance on the reporting and valuation of in-kind contributions to political parties (recommendation iii);*
 - *to consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public (recommendation iv);*
 - *to consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible, regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties (recommendation v);*

- to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed (recommendation vi);

- to ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties (recommendation vii);

- to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (recommendation viii); and

- that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive (recommendation ix).

18. It is recalled that the authorities of Denmark did not take specific action in relation to each individual recommendation. It was indicated that the Government was planning to initiate the preparation of recommendations aimed at increasing the transparency in the funding of political parties. GRECO welcomed this first positive signal but was, nevertheless, bound to conclude, in the Interim Compliance Report, that the nine recommendations remained not implemented.
19. The authorities of Denmark now report that, in the beginning of 2013, a review of the national rules on party funding was initiated by the Speaker of Parliament. The work is still at an incipient stage therefore, no information on the potential scope of the reform in regard to the questions raised in the Evaluation Report is available.
20. GRECO takes note of the information provided and welcomes the initiation by Parliament of a revision of the national rules governing the financing of political parties. It trusts that careful consideration will be given to the content of each recommendation and action will be taken to promptly comply with them. It is furthermore expected that the planned reform will not only enhance the transparency in the funding of political parties but also of election campaigns, as is required by the recommendations. In the meantime, in the continued absence of any noticeable progress in this area, GRECO can only reiterate its earlier conclusions that the pending recommendations have not been implemented.

III. CONCLUSIONS

21. **In view of the above, GRECO concludes that only marginal progress has been achieved by Denmark as regards the implementation of the eleven recommendations found not to be implemented in the Interim Compliance Report (out of the fourteen included in the Third Round Evaluation Report).** With respect to Theme I – Incriminations, recommendation ii has been dealt with in a satisfactory manner and recommendation i has not been implemented. All nine recommendations under Theme II – Transparency of Party Funding, remain not implemented.
22. GRECO welcomes the increase in sanctions available in respect of bribery offences. It is pleased that the level of criminal penalties for private sector bribery as well as active and passive bribery

of arbitrators has been more than doubled (to imprisonment of up to four years). The same principle has also been followed in respect of bribery in the public sector (i.e. maximum criminal penalty now attains imprisonment of up to six years). This has the clear potential of making the overall sanctioning regime more effective, proportionate and dissuasive.

23. Turning to the transparency of political funding, GRECO notes with interest the decision to initiate a process leading to the revision of present rules governing political parties. Bearing in mind that more than three years have elapsed since the adoption of the Evaluation Report, GRECO urges the authorities to make every effort to develop a legislative package which will conform to its recommendations, and to have it adopted by Parliament as soon as possible.
24. 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) as no discernible results have been achieved.
25. Pursuant to Rule 32, paragraph 2 subparagraph (i) of the Rules of Procedure, GRECO requests the Head of the Danish delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendation i under Theme I and recommendations i-ix under Theme II) by 31 July 2014.
26. In accordance with Rule 32, paragraph 2 subparagraph (ii) c), GRECO invites the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs of Denmark, 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.
27. GRECO invites the authorities of Denmark to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.