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Third Evaluation Round

Addendum to the Second Compliance Report on Estonia

"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 Addendum to the Second Compliance Report assesses further measures taken by the authorities of Estonia, since the adoption of the First and Second Compliance Reports, in response to the recommendations issued by GRECO in its Third Round Evaluation Report on Estonia. It is recalled that the Third Evaluation Round covers 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 37th Plenary Meeting (31 March - 4 April 2008) and made public on 15 April 2008, following authorisation by Estonia (Greco Eval III Rep (2007) 5E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report ([Greco RC-III \(2010\) 1E](#)) was adopted at GRECO's 46th Plenary Meeting (22-26 March 2010) and made public on 23 September 2010, following authorisation by Estonia. The Second Compliance Report ([Greco RC-III \(2012\) 1E](#)) was adopted at GRECO's 55th Plenary Meeting (14-16 May 2012) and made public on 29 May 2012, following authorisation by the Estonian authorities.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO's Second Compliance Report invited the Head of the Estonian delegation to submit additional information regarding the implementation of the 8 recommendations that had been partly or not implemented. The information was provided on 13 March 2013 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Hungary and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Jane LEY, Deputy Director, US Office of Governmental Ethics, USA, and Ms Viktória SOÓS, Legal Advisor, Department of Criminal Law Legislation, Ministry of Public Administration and Justice, Hungary. For the Addendum to the Second Compliance Report, Ms Jane LEY was replaced by Mr Robert LEVENTHAL, Director, Anticorruption and Governance Initiatives, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State. The Rapporteurs were assisted by GRECO's Secretariat in drawing up the Addendum.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that in its Evaluation Report GRECO addressed 8 recommendations to Estonia in respect of Theme I. The Second Compliance Report concluded that recommendation v had been implemented satisfactorily, recommendations i and vii had been partly implemented and recommendations ii-iv, vi and viii not implemented. The remaining recommendations are dealt with below.

6. It is also recalled that the Second Compliance Report noted that draft legislation aimed at amending the Penal Code (PC), of relevance to recommendations i to iv, vii and viii, and which had been taken into account in the First Compliance Report, had finally not been adopted as it had been withdrawn due to the parliamentary elections of 6 March 2011. The authorities of Estonia now report that under the new Government, legislation prepared by the Ministry of Justice to amend the PC – covering the issues addressed by GRECO’s recommendations – was adopted by Parliament on 21 June 2013 (393 SE). This law entered into force on 15 July 2013.

Recommendation i.

7. *GRECO recommended to ensure that active and passive bribery of members of domestic public assemblies, members of foreign public assemblies and members of international parliamentary assemblies are criminalised in accordance with Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173).*
8. GRECO recalls that the Second Compliance Report noted the adoption of new legislation criminalising bribery of foreign and international members of public assemblies. However, draft legal amendments concerning the definition of a public official, aimed at criminalising active and passive bribery of members of domestic assemblies, had been withdrawn from legislative proceedings due to the parliamentary elections of 6 March 2011. Therefore, the recommendation had only been partly implemented.
9. The authorities now report that the PC amended by the law of 21 June 2013 (cf. paragraph 6 above) includes a revised definition of a public official under section 288 (1) PC which reads: “For the purposes of this Code, an official is a natural person who holds an official position for the performance of public duties regardless of whether he or she performs the duties imposed on him or her permanently or temporarily, for a charge or without charge, while in service or engaged in a liberal profession or under a contract, by election or appointment.”
10. GRECO takes note of this information and considers that the amended definition of a public official is broad enough to capture members of domestic public assemblies, since it refers to all persons who hold an official position, and specifically in this context those who are elected to such positions.
11. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

12. *GRECO recommended to amend current legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
13. It is recalled that GRECO had concluded in the First Compliance Report that the recommendation had been partly implemented as draft amendments to section 288 (2) PC providing for a wider definition of the circle of persons covered by private sector bribery were pending before Parliament. However, given that the draft legal amendments had in the meantime been withdrawn from legislative proceedings, GRECO concluded in the Second Compliance Report that the recommendation had not been implemented.

14. The authorities now report that amended section 288 (2) PC reads as follows: “In the criminal offences specified in sections 293–298 of this Code, ‘an official’ is also an arbitrator or a natural person whose official position lies in the capacity to manage a legal person governed by private law or to operate in the interests of a legal person governed by private law or another natural person.” The authorities explain that the term “to operate in the interests of” is meant to cover any person who acts or speaks on behalf of the company (or natural person), irrespective of whether s/he is paid by the latter or not.
15. GRECO notes that the law of 21 June 2013 introduced a wider definition of the circle of persons subject to private sector bribery provisions, including any natural person “whose official position lies in the capacity ... to operate in the interests of a legal person governed by private law or another natural person.” As the new definition no longer requires that the person “performs administrative, supervisory or managerial functions or functions relating to the organisation of movements of assets”, which was the main concern underlying the recommendation, GRECO considers that the amendments are an appropriate response to the recommendation.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

17. *GRECO recommended to criminalise active and passive bribery of domestic and foreign arbitrators in accordance with articles 2, 3 and 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.*
18. GRECO recalls that the First Compliance Report concluded that the recommendation had been partly implemented as draft amendments to section 288 (2) PC, extending the definition of an official to explicitly cover arbitrators, had been pending before Parliament. However, as the draft legal amendments were then withdrawn from legislative proceedings, the Second Compliance Report concluded that the recommendation had not been implemented.
19. The authorities now indicate that the definition of a public official in amended section 288 (2) PC explicitly covers arbitrators (see the text of the provision under recommendation ii above) – both domestic and foreign arbitrators according to the authorities, since the provision has been expressly designed “without any restraints regarding the arbitrators’ country or origin”. Now that the amendments to section 288 (2) PC have been adopted, the authorities plan to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption.
20. GRECO welcomes the legal amendments which include arbitrators in the definition of a public official and invites the authorities to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible, as planned.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended to ensure that a gratuity-based offence following an earlier bribe-based offence (and vice versa) can give rise to an aggravated sentence.*
23. GRECO recalls that the recommendation had been considered partly implemented in the First Compliance Report as draft amendments foreseeing aggravated sentences for instances where a

gratuity-based offence follows an earlier bribe-based offence, and vice versa, were pending before Parliament. However, given that the draft legal amendments had since been withdrawn, GRECO concluded in the Second Compliance Report that the recommendation had not been implemented.

24. The authorities now report that the law of 21 June 2013 brings amendments to all gratuity-based offences and bribe-based offences whereby the second paragraphs of sections 293 to 298 PC – which provide for aggravated sanctions, *inter alia*, in case of reiteration – are extended to situations where a gratuity-based offence follows an earlier bribe-based offence and *vice versa*.
25. GRECO takes note of the information provided and concludes that recommendation iv has been implemented satisfactorily.

Recommendation vi.

26. *GRECO recommended (i) to criminalise active trading in influence as a principal offence; (ii) to include the request of an advantage in the offence of passive trading in influence; and (iii) to clarify what should be considered “illegal use of influence” in order to ensure that all instances of an asserted or confirmed improper influence are covered.*
27. GRECO recalls that in the Second Compliance Report, it found that the recommendation had not been implemented. At that time, progress was dependent on the 2011 Ministry of Justice work plan and on the on-going analysis of the rules on lobbying and would be subject to examination in the course of the preparation of draft legislation amending the PC.
28. The authorities now report on the preparation by the Penal Law Revision Committee of draft amendments addressing active trading in influence and amending the provisions on passive trading in influence. The committee was assigned the task of preparing a major revision of the penal law and has presented a draft law which is expected to be submitted to Government by late autumn 2013, after public and inter-ministerial consultation. According to the draft, the amended section 298.1 PC reads as follows: “A person who requests, consents to a promise of or accepts property or other benefits for him/herself or for third persons in return for use of influence over an official, whether factual or alleged by him/her, for the purpose of giving the provider of the benefits an unequal or unjustified advantage from the viewpoint of public interest, or who promises or grants benefits for that purpose, shall be punished by a pecuniary punishment or by up to 3 years’ imprisonment.”
29. GRECO notes that draft legislation aimed at amending the provisions on trading in influence has been prepared and is expected to be submitted to Parliament shortly. It would appear that the draft amendments respond positively to all three parts of the recommendation, given that they introduce the offence of active trading in influence, include the request of an advantage in the offence of passive trading in influence and no longer require that the factual or alleged influence by the influence peddler be “illegal” (instead, the draft provision requires that the influence be exerted “for the purpose of giving the provider of the benefits an unequal or unjustified advantage from the viewpoint of public interest”). GRECO encourages the authorities to pursue their efforts and to have the draft legislation adopted as soon as possible.
30. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

31. *GRECO recommended to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad.*
32. GRECO recalls that Chapter 1, section 7 PC, which deals with the rules on criminal jurisdiction, had been amended in order to enlarge the scope of Estonian jurisdiction in respect of bribery offences (including gratuities) and trading in influence. However, section 7 (2) PC only partially abolished the dual criminality requirement concerning corruption offences – it appeared, for example, that private sector bribery abroad was not included in the definition – and the recommendation was therefore considered only partly implemented.
33. The authorities now report that the law of 21 June 2013 has amended clause 2 of section 7 (2) PC so that the penal law of Estonia also applies to “giving, accepting or arranging¹ gratuities or bribes or influence peddling committed outside the territory of Estonia, if an Estonian citizen, an Estonian official or a legal person registered in Estonia or an alien who has been detained in Estonia, and is not extradited, has committed this act or participated therein.”
34. GRECO notes that amendments to the jurisdictional rules of the PC have been presented, which extend the applicability of Estonian penal law to all corruption offences – also including private sector bribery – committed abroad, without the requirement of dual criminality.
35. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

36. *GRECO recommended to establish jurisdiction over offences of bribery and trading in influence committed abroad by/or involving Estonian public officials and members of domestic public assemblies who are not Estonian citizens.*
37. GRECO recalls that the recommendation had not been implemented, as it could not see how the revised wording of section 7 (2) PC addressed situations where corruption offences are committed abroad by/or involving domestic public officials and members of domestic public assemblies even if they are not citizens of the State where they hold a public position.
38. The authorities now indicate that under amended section 7 (2), clause 2 PC, Estonian penal law is also applicable to corruption offences committed abroad by Estonian public officials who are not Estonian citizens (see the text of the provision under recommendation vii above). The authorities add that this is also true for members of domestic public assemblies who are not Estonian citizens, as the new definition of a public official contained in amended section 288 (1) PC also covers members of public assemblies (see under recommendation i above).
39. GRECO takes note of this information, according to which section 7 (2) PC as amended covers Estonian public officials and members of public assemblies who are not Estonian citizens.
40. GRECO concludes that recommendation viii has been implemented satisfactorily.

¹ The authorities explain that clause 2 of section 7 (2) PC does not only cover the giving, accepting or arranging of an advantage but also the promising/offering, requesting as well as the consenting to a promise/offer. The terms quoted above refer to the official titles of the corruption provisions of sections 293 to 298 PC which include all the different types of corrupt behaviour.

Theme II: Transparency of Party Funding

41. It is recalled that in its Evaluation Report GRECO addressed 9 recommendations to Estonia in respect of Theme II. The Second Compliance Report concluded that recommendations i – iii and v – ix had been implemented satisfactorily. Recommendation iv, which had been partly implemented, is dealt with below.

Recommendation iv.

42. *GRECO recommended that political parties, independent candidates and election coalitions be required to publish at regular intervals, defined by law, the donations (cash and non-cash) received, including, if appropriate, during the electoral campaign period.*
43. GRECO recalls that note had been taken in the Second Compliance Report of the adoption of clear rules on regular disclosure of donations to political parties and election coalitions. In particular, following the 2010 legal amendments, political parties are now obliged to disclose donations (as well as membership fees) – including donations in kind and donations received by affiliated organisations – on the tenth day of the first month of the calendar quarter, via the public register maintained by the parties on their websites (§ 12³ (7) PPA). Moreover, election coalitions are required to submit quarterly reports on donations received to the Supervision Committee (§ 5¹ (2) PPA). However, GRECO had regretted that no similar rules applied to independent candidates for election, who only had to include information on donations received in their election campaign reports after elections. GRECO had noted that the authorities considered that placing an additional disclosure requirement on independent candidates prior to elections would be disproportionate, but it stressed that such additional disclosures were clearly required by the recommendation, for the sake of optimum transparency. The recommendation was therefore considered only partly implemented.
44. The authorities now report that it is planned to submit draft legislation addressing the issue of disclosure of donations to independent candidates for election to Government by January 2014 at the latest. That plan is linked to the so-called Rahvakogu process, i.e. “the People’s Assembly Rahvakogu”² initiated by the President of Estonia which is an online platform for crowd-sourcing ideas and proposals to amend Estonia’s electoral laws, political party law, and other issues related to the future of democracy in Estonia. The Assembly focuses specifically on five questions, including the financing of political parties. In February 2013, analysts grouped the proposals and carried out impact assessments. The President of Estonia presented the preferred scenarios to Parliament on 25 May 2013. The authorities add that, following amendments to the Political Parties Act (PPA) of 19 March 2013 which entered into force on 1 April 2013, independent candidates for election may only use current accounts, whose existence has been communicated to the Supervision Committee, to receive election campaign revenues and to fund election campaign expenses incurred.³ The Supervision Committee has the right to request documents from such candidates.⁴
45. GRECO welcomes the plan to address disclosure requirements on independent candidates for election with regard to donations in the framework of the current reform process concerning, *inter alia*, political financing. However, in the absence of any substantial progress – except for the fact that independent candidates for election may now only use current accounts for their election

² See <http://www.rahvakogu.ee>.

³ See § 12⁵, paragraph 2 PPA.

⁴ See § 12¹¹, paragraph 6 in connection with paragraph 1 PPA.

campaign revenue whose existence they have communicated to the Supervision Committee – GRECO cannot conclude that the recommendation has been implemented satisfactorily.

46. GRECO concludes that recommendation iv remains partly implemented.

III. CONCLUSIONS

47. **With the adoption of this Addendum to the Second Compliance Report on Estonia, GRECO concludes that Estonia has now implemented satisfactorily or dealt with in a satisfactory manner in total fourteen of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I, Incriminations, recommendations i, ii, iv, v, vii and viii have been implemented satisfactorily and recommendations iii and vi have been partly implemented. Regarding Theme II, Transparency of Party Funding, recommendations i – iii and v – ix have been implemented satisfactorily and recommendation iv has been partly implemented.
48. Concerning incriminations, GRECO recalls that the First Compliance Report concluded that Estonia had dealt with some fundamental lacunae in its criminal legislation through the adoption of new legislation; an important achievement was the criminalisation of bribery of members of foreign and international public assemblies. Furthermore, draft legislation addressing most of the remaining recommendations had been submitted to Parliament. While no further progress could be noted in the Second Compliance Report – on the contrary, draft legislation aimed at amending the Penal Code had been withdrawn from legislative proceedings due to the parliamentary elections of 6 March 2011 – GRECO is pleased that new legislation has now been presented. The legal amendments now in force fit the objectives of almost all of GRECO's recommendations, particularly as they include such important issues as the criminalisation of bribery of members of domestic public assemblies, arbitrators and persons working for private sector entities, as well as providing for jurisdiction over corruption offences committed abroad. GRECO notes that further measures are under preparation, namely the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and a review of the provisions of the Penal Code on trading influence, and it invites the authorities to persist in their efforts and to carry through the reform process as soon as possible.
49. In so far as the transparency of political funding is concerned, GRECO recalls that the Second Compliance Report had concluded that Estonia had shown remarkable progress since the adoption of the Evaluation Report. The substantial reform process, already welcomed in the First Compliance Report, had been completed by Estonia through the enactment of significant amendments to the Political Parties Act, which responded positively to the requirements of almost all the recommendations issued in the Evaluation Report. GRECO acknowledged that a solid legal framework for both regular party financing and election campaign financing had thus been established and that improvements to the transparency regulations, the establishment of a new monitoring mechanism and the further development of the regime of sanctions had been accomplished. The only recommendation which has not yet been implemented satisfactorily concerns the disclosure of donations to independent candidates for election. GRECO notes that an initiative has been taken to address this issue and is hopeful that legal amendments will be adopted, as planned, by early 2014 at the latest. Finally, given the far-reaching changes introduced by the 2010 reform, GRECO again encourages the authorities to ensure that the new regulations and mechanisms are fully operational and effective in practice and to keep their functioning under review in order to further perfect the system in the future.

50. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Estonia.
51. GRECO invites the authorities of Estonia to translate the Addendum into the national language and to make the translation public.