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Interim report

Third Evaluation Round

***Interim* Compliance Report on Germany**

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 57th Plenary Meeting
(Strasbourg, 15-19 October 2012)

I. INTRODUCTION

1. The Third Round Evaluation Report on Germany was adopted at GRECO's 45th Plenary Meeting (4 December 2009) and made public on 4 December 2009, following the authorisation by Germany (Greco Eval III Rep (2009) 3E)¹.
2. As required by GRECO's Rules of Procedure, Germany submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Austria and the Russian Federation to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Aslan YUSUFOV on behalf of the Russian Federation and Mr Christian MANQUET on behalf of Austria. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the Compliance Report, which was adopted by GRECO at its 53rd Plenary Meeting (Strasbourg, 5-9 December 2011), it was concluded that Germany had implemented satisfactorily or dealt with in a satisfactory manner only four of the twenty recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the very low level of compliance with the recommendations as "globally unsatisfactory" within 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 the German delegation to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i and iii-x regarding Theme I, and recommendations ii-v, vii, viii and x regarding Theme II) by 30 June 2012 at the latest, pursuant to paragraph 2 (i) of that rule.
4. The current Interim Compliance Report assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs an overall appraisal of the level of Germany's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 10 recommendations to Germany in respect of Theme I. One of these – recommendation ii – was assessed as implemented satisfactorily in the Compliance Report; the remaining recommendations were considered as not implemented.

Recommendations i and iii to x.

6. *GRECO recommended:*
 - *to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) as well as the ratification of its Additional Protocol (ETS 191) (recommendation i);*
 - *to substantially broaden the incrimination of active and passive bribery of assembly members under section 108e of the Criminal Code, to bring it in line with Article 4 of the Criminal Law Convention on Corruption (ETS 173) (recommendation iii);*

¹ Cf. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp.

- to incriminate more broadly, active and passive bribery of members of foreign public assemblies (recommendation iv);
 - to incriminate active as well as passive bribery of foreign public officials more broadly, in line with Article 5 of the Criminal Law Convention on Corruption (ETS 173) (recommendation v);
 - to incriminate more broadly active as well as passive bribery of officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts, in line with Articles 9 to 11 of the Criminal Law Convention on Corruption (ETS 173) (recommendation vi);
 - to ensure that active and passive bribery of foreign jurors is criminalised in Germany in accordance with the provisions of Article 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 173) (recommendation vii);
 - to amend the provisions on bribery in the private sector of section 299 CC in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) (viii);
 - to criminalise trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) (recommendation ix); and
 - i) to clearly establish jurisdiction for the various corruption offences in line with Article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173) and its additional Protocol (ETS 191); ii) to include, to the extent possible, all relevant rules concerning jurisdiction in the Criminal Code in order to facilitate their understanding by practitioners and the public at large (recommendation x).
7. Regarding recommendation i, the authorities of Germany report that the ratification of the Convention and its Additional Protocol is currently still in the preparatory stage. The Federal Government is in principle, still aiming for such ratification and is planning for it to take place after the necessary amendments have been made to the provisions of the German Criminal Code on the fight against corruption (recommendations iii to x).
8. In relation to recommendations iii and iv, the authorities state that three draft bills aiming at broadening the incrimination of active and passive bribery of members of domestic and foreign public assemblies under section 108e of the Criminal Code, have been introduced in the national Parliament (*Bundestag*) and that the Committee on Legal Affairs of the *Bundestag* has conducted a hearing of experts on these bills on 17 October 2012.
9. GRECO notes that the situation remains largely the same as it was at the time of the adoption of the Compliance Report. The only new development recorded in the meantime, relates to the introduction of and the hearing on draft bills aiming at broadening the incrimination of bribery of assembly members under section 108e of the Criminal Code in the national Parliament (matters addressed by recommendations iii and iv), which were introduced by opposition parliamentary groups and individual members of Parliament and two of which had been submitted to Parliament already before the adoption of the Compliance Report. GRECO urges the authorities to step up their efforts to amend national legislation in line with recommendations iii to x, and to proceed swiftly with the ratification of the Criminal Law Convention on Corruption and its Additional Protocol.

10. GRECO concludes that recommendations i and iii to x remain not implemented.

Theme II: Transparency of Party Funding

11. It is recalled that GRECO in its Evaluation Report addressed 10 recommendations to Germany in respect of Theme II. In the Compliance Report, recommendations i and vi were assessed as implemented satisfactorily and recommendation ix as having been dealt with in a satisfactory manner. Recommendations ii, iii, iv, v, viii and x were considered as partly implemented and recommendation vii as not implemented.

Recommendations ii to v, vii, viii and x.

12. *GRECO recommended:*

- *i) to introduce a system for the publication of election campaign accounts at the federal level, which would make the information available shortly after election campaigns; ii) to invite the Länder to adopt similar measures that would be applicable to associations of voters participating in elections to Länder parliaments and at local level (recommendation ii);*
- *to lower the 50,000 Euro threshold for the immediate reporting and disclosure, under the Political Parties Act, of donations made to political parties; ii) to put a ban on anonymous donations and iii) to consider reducing significantly the threshold for the disclosure of donations and donors (recommendation iii);*
- *to prohibit donations to parliamentarians and candidates who are members of political parties or, alternatively, to subject them to requirements for record keeping and disclosure similar to those applicable to political parties (recommendation iv);*
- *i) to develop a more global approach of party financing in Germany by presenting in an official document the various forms of state support effectively granted or available; ii) to initiate consultations about the additional measures needed to better ensure the strict separation, under the law, of the financing of political parties on the one hand, and foundations and parliamentary groups on the other hand (recommendation v);*
- *to strengthen the independence of the external audit of the parties' financial statements, for instance by introducing a reasonable degree of rotation or by appointing a second auditor from a different company (recommendation vii);*
- *to ensure that the body to which the supervision of party financing is attributed, enjoys a sufficient degree of independence and is equipped with proper means of control, adequate staffing and appropriate expertise (recommendation viii); and*
- *i) to clarify the possible infringements to the Code of Conduct appended to the Rules of Procedure of the Bundestag, as regards the regime of donations to parliamentarians; ii) to ensure that these infringements are subject to effective, proportionate and dissuasive sanctions (recommendation x).*

13. The authorities report that by letter of 30 April 2012, the Federal Minister of the Interior requested the President of the *Bundestag* to inform him about the Parliament's position towards the outstanding recommendations. The President of the *Bundestag* forwarded that request to the

chairpersons of the parliamentary groups, and asked the chairpersons of the Committee on Internal Affairs and the Committee on Legal Affairs to initiate a discussion on the matter. The authorities indicate that this process has now been concluded.

14. According to the information provided by the chair of the Committee on Internal Affairs, the Committee discussed the Compliance Report at its 78th meeting on 27 June 2012. The coalition of parliamentary groups stated that they saw no need for further action, as they could not discern any new state of affairs as compared to the situation in 2011 (prior to the adoption of the Compliance Report when the Evaluation Report and the recommendations contained in it had been subject to discussions within the Committee). The chair of the Committee adds however, that there is still political disagreement between the coalition and opposition parliamentary groups concerning certain issues addressed by the Evaluation Report. Finally, it would appear that in the view of the Committee, the Evaluation Report has not taken due account of the legal situation in Germany in certain areas. For example, as concerns the recommendation to publish election campaign reports (recommendation ii), the Committee recalls that campaign expenses are listed in the parties' annual accounts; and in relation to the recommendation to lower the 50,000 Euro threshold for the immediate reporting and disclosure of donations made to parties (recommendation iii), the Committee recalls the additional 10,000 Euro threshold for disclosure of donations in the parties' annual accounts.
15. The authorities furthermore report that the Council of Elders Commission on the Legal Status of Members of the *Bundestag*, also debated the state of affairs concerning outstanding recommendations in its meeting held on 14 June 2012. The Commission saw no need for further action and decided not to make a more extensive statement than its opinion issued on 12 May 2011, as referred to in the Compliance Report.
16. GRECO notes that no progress has been achieved since the adoption of the Compliance Report. The relevant parliamentary committees have in the meantime debated the pending recommendations but they see no need for further action. At the same time, GRECO notices with interest that several parliamentary groups maintain their diverging opinions in this respect. GRECO urges the authorities to pursue the discussions initiated and to take appropriate action in line with the recommendations.
17. Moreover, GRECO wishes to respond to the allegation of not having taken due account of the legal situation in Germany. GRECO cannot see any such disregard of German law in the Evaluation Report. In particular, the latter takes note of the fact that election campaign expenses are listed in the parties' annual accounts, and that information on donations exceeding 10,000 Euro (including the identity of the donors) are to be disclosed in the same accounts. Nevertheless, as was explained in the Evaluation Report, GRECO deemed it necessary to recommend further appropriate measures to increase transparency of campaign financing and of donations to political parties.
18. GRECO concludes that recommendations ii, iii, iv, v, viii and x remain partly implemented and recommendation vii not implemented.

III. CONCLUSIONS

19. **In view of the above, GRECO concludes that no tangible progress has been achieved by Germany as regards the implementation of the recommendations found to be not or partly implemented in the Third Round Compliance Report.** With respect to Theme I – Incriminations, recommendations i and iii-x still have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii, iv, v, viii and x remain partly implemented and recommendation vii has not been implemented.
20. GRECO regrets this result, despite the fact that some of the issues addressed by the recommendations have been subject to parliamentary debate. However, no concrete measures have been initiated so far. While GRECO reiterates its statement made in the Compliance Report, that it recognises the overall high standards set by Germany in its fight against corruption, it very much regrets that Germany remains one of the few GRECO members which have not ratified the Criminal Law Convention on Corruption and its Additional Protocol, and that no significant steps have been taken since the adoption of the Compliance Report, to prepare necessary legal amendments to be made to the Criminal Code, in line with GRECO's recommendations. GRECO furthermore wishes to reiterate that the shortcomings identified in German bribery law – such as the limited criminalisation of bribery of parliamentarians and other members of domestic assemblies, coupled with the absence of trading in influence offences, and furthermore, certain limits in the criminalisation of bribery of foreign and international officials and of private sector bribery – represent significant lacunae in the law. Insofar as the transparency of political funding is concerned, GRECO maintains its strong misgivings about the very limited attention given to several recommendations on issues of prime importance – such as introducing a system for the timely publication of election campaign accounts, enhancing the transparency of direct donations to parliamentarians and election candidates who are members of political parties, and further strengthening of the resources available to the president of the *Bundestag* for supervising party funding.
21. 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.
22. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructs its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of Delegation of Germany, 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.
23. Pursuant to paragraph 8.2 of Rule 31 (revised) of the Rules of Procedure, GRECO requests the Head of Delegation of Germany to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i and iii-x regarding Theme I, and recommendations ii-v, vii, viii and x regarding Theme II) by 31 July 2013.
24. Finally, GRECO invites the authorities of Germany 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.