

Adoption: 18 October 2013
Publication: 16 December 2013

Public
Greco RC-III (2013) 15E
Second Interim Report

Third Evaluation Round

Second *Interim* Compliance Report on Germany

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

* * *

"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 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 [Theme I](#) / [Theme II](#)).
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.
4. In the [First Interim Compliance Report](#), which was adopted by GRECO at its 57th Plenary Meeting (Strasbourg, 15-19 October 2012), GRECO concluded that the level of compliance with the recommendations remained "globally unsatisfactory", considering that no tangible results had been achieved by Germany as regards the implementation of the recommendations found to be not or partly implemented in 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 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. Furthermore, GRECO requested the Head of the German delegation 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. This report was submitted on 23 July 2013, and served as a basis for the Second Interim Compliance Report.
5. The current [Second Interim Compliance Report](#) assesses the further implementation of the pending recommendations since the adoption of the First Interim Compliance Report, and contains an overall appraisal of the level of Germany's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

6. 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 in the Compliance Report and in the First Interim Compliance Report.

Recommendations i and iii to x.

7. 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);
- 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) (recommendation 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).

8. Regarding recommendation i, the authorities of Germany reiterate that even though ratification of the Convention and its Additional Protocol remains in the preparatory stage, it is still in principle an aim of the Federal Government once the necessary amendments have been made to the provisions of the German Criminal Code on the fight against corruption (recommendations iii to x).

9. In relation to recommendations iii and iv, the authorities state that in addition to the three draft bills already referred to in the First Interim Compliance Report – which had been subject to a hearing of experts conducted by the Committee on Legal Affairs of the national Parliament (*Bundestag*) – another draft bill to broaden the incrimination of active and passive bribery of members of public assemblies under section 108e of the Criminal Code was adopted by the

Bundesrat (the representative body of the *Länder*) on 3 May 2013 and submitted to the *Bundestag*.

10. However, none of the above-mentioned draft bills were adopted, and the legislative proceedings with regard to those bills will not be continued by the 18th *Bundestag* elected on 22 September 2013 (*principle of discontinuation*). It remains to be seen whether new legislative initiatives aimed at broadening the incrimination of bribery of members of domestic and foreign public assemblies under section 108e of the Criminal Code will be introduced in the newly elected *Bundestag*.
11. GRECO notes that the situation remains largely the same as it was at the time of the adoption of the Compliance Report and once again 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.
12. GRECO concludes that recommendations i and iii to x remain not implemented.

Theme II: Transparency of Party Funding

13. 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 in the Compliance Report and in the First Interim Compliance Report.

Recommendations ii to v, vii, viii and x.

14. *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).*
15. The authorities report that by letter of 6 March 2013, the Federal Minister of the Interior requested the President of the *Bundestag* to inform him of the Parliament's position towards the outstanding recommendations and to what extent further measures for their implementation had been taken or were planned. By letter of 25 April 2013, the chair of the Committee on Internal Affairs of the *Bundestag* reported that the Committee had consulted on the First Interim Compliance Report at its meeting of 24 April 2013. The coalition parliamentary groups had emphasised that they were standing by their already-communicated position that they saw no need for further action. That said, the consultations had made it clear that political disagreement persists between the coalition and opposition parliamentary groups concerning specific issues addressed by the Evaluation Report.
16. GRECO notes that no progress has been achieved since the adoption of the First Interim Compliance Report. The relevant parliamentary committee has again debated the pending recommendations but it saw no need for further action. At the same time, GRECO notices with interest that several parliamentary groups do not agree with that conclusion. GRECO urges the authorities to pursue the discussions initiated and to take appropriate action in line with the recommendations.
17. GRECO concludes that recommendations ii, iii, iv, v, viii and x remain partly implemented and recommendation vii not implemented.

III. CONCLUSIONS

18. **In view of the above, GRECO concludes that no 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 still has not been implemented.
19. GRECO regrets that, while some of the issues addressed by the outstanding recommendations have been the subject of further parliamentary debate, concrete measures have still not been initiated. Thus Germany remains one of the few GRECO members which have not ratified the Criminal Law Convention on Corruption and its Additional Protocol, and no concrete steps have been taken to prepare necessary legal amendments to be made to the Criminal Code, in line with GRECO's recommendations. GRECO 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 limitations on the criminalisation of bribery of foreign and international officials and of private sector bribery – represent significant lacunae in the law. With respect to transparency of political funding, GRECO still has strong misgivings about the very limited attention paid 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 increasing the resources available to the president of the *Bundestag* for supervising party funding.

20. 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.
21. Pursuant to Rule 32, paragraph 2 subparagraph (i) 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, iii, iv, v, vii, viii and x regarding Theme II) by 31 July 2014.
22. 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 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. 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.