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Third Interim Report

Third Evaluation Round

Third *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 65th Plenary Meeting
(Strasbourg, 6-10 October 2014)

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.
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 [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. In the [Second Interim Compliance Report](#), adopted by GRECO at its 61st Plenary Meeting (Strasbourg, 14-18 October 2013), it was concluded that no progress had been achieved as regards the implementation of the recommendations found to be not or partly implemented in the Compliance Report. The rating of Germany's performance as "globally unsatisfactory" was therefore maintained and, in accordance with Rule 32, paragraph 2 subparagraph (ii) c), the Secretary General of the Council of Europe, invited by GRECO, sent a letter to the Minister of Foreign Affairs of Germany, drawing his attention to the country's non-compliance.¹ Furthermore, GRECO requested the Head of the German Delegation to provide a report regarding action taken to implement the pending recommendations by 31 July 2014. This report was submitted on 30 July 2014 and served as the basis for this Third Interim Compliance Report.
6. This [Third Interim Compliance Report](#) was drawn up by Mr Aslan YUSUFOV on behalf of the Russian Federation and Mr Christian MANQUET on behalf of Austria with assistance from the GRECO Secretariat. It evaluates further steps taken by the authorities to comply with the pending recommendations and underscores the progress achieved since the adoption of the Second Interim Compliance Report.

¹ Such a letter had been signed by the Secretary General on 27 November 2013.

II. ANALYSIS

Theme I: Incriminations

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

Recommendation i.

8. *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).*
9. The authorities of Germany recall that, as was indicated in the Compliance Report and in the First and Second Interim Compliance Reports, it is the aim of the Federal Government to ratify the Criminal Law Convention on Corruption and its Additional Protocol once the necessary amendments have been made to the provisions of the German Criminal Code on the fight against corruption. The authorities now report that in the meantime, several measures have been initiated in order to reach that goal. On 21 February 2014 the *Bundestag* adopted a bill amending, *inter alia*, section 108e of the Criminal Code (CC) with a view to broadening the criminalisation of active and passive bribery of assembly members.² Moreover, a draft bill aimed at implementing GRECO's recommendations relating to the provisions of the Criminal Law Convention on Corruption and its Additional Protocol was presented for public consultation by the Federal Ministry of Justice and Consumer Protection on 9 June 2014.³ The authorities stress that the Ministry has approved the draft bill and has published it on its website,⁴ thus showing that it is one of the Ministry's priorities. It is expected that the Federal Government will adopt the draft bill and subsequently submit it to the legislative bodies. Finally, a draft bill authorising the Federal Government to ratify the Criminal Law Convention on Corruption and its Additional Protocol is currently being prepared by the Federal Ministry of Justice and Consumer Protection. It is foreseen that it will be presented by the end of this year and that Germany will proceed with ratification early next year.
10. GRECO very much welcomes that Germany has initiated measures aimed at ratification of the Criminal Law Convention on Corruption and its Additional Protocol. However, given that draft legislation authorising the Federal Government to ratify these instruments is only under preparation and that its adoption will depend on prior amendments to the criminal legislation, GRECO cannot conclude at this stage that the recommendation has even been partly implemented. GRECO encourages the authorities to persist in their efforts and to proceed swiftly with ratification of the two legal instruments, as required by the recommendation.
11. GRECO concludes that recommendation i has not been implemented.

² See below under recommendation iii.

³ See below under recommendations v to viii and x.

⁴ Draft Anti-Corruption Act (*Entwurf eines Gesetzes zur Bekämpfung der Korruption*), see http://www.bmju.de/SharedDocs/Downloads/DE/pdfs/Gesetze/RefE_KorrBekG.pdf;jsessionid=06163CDC3E6485551FD49D0BFA4BB692.1_cid334?_blob=publicationFile

Recommendation iii.

12. GRECO recommended 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).
13. The authorities report that on 21 February 2014, the *Bundestag* adopted a bill amending, *inter alia*, section 108e of the Criminal Code (CC) with a view to broadening the criminalisation of active and passive bribery of assembly members, see paragraph 9 above. The new legislation entered into force on 1 September 2014. The new provisions of section 108e CC read as follows.

Section 108e CC: Active and passive bribery of mandate holders

(1) Whoever as a member of a public assembly of the Federation or the Länder demands, allows him/herself to be promised or accepts an undue advantage for him/herself or a third party in return for performing or refraining from performing an act upon assignment or instruction in the exercise of his/her mandate shall be liable to imprisonment of up to five years or a fine.

(2) Whoever offers, promises or grants to a member of a public assembly of the Federation or the Länder an undue advantage for the member him/herself or a third party in return for that member performing or refraining from performing an act upon assignment or instruction in the exercise of his/her mandate shall incur the same penalty.

(3) Members of

1. a public assembly of a local authority,
2. a body, elected in direct and general elections, of an administrative unit established for a subarea of a federal Land or a local authority,
3. the Federal Convention,
4. the European Parliament,
5. a parliamentary assembly of an international organisation, or
6. a legislative body of a foreign state

shall be considered equivalent to the members referred to in subsections (1) and (2).

(4) An undue advantage shall not be deemed to exist in particular where the acceptance of the advantage is in accordance with the relevant provisions relating to the legal position of the member. The following shall not be considered an undue advantage:

1. a political mandate or a political function, or
2. a donation permissible under the Law on Political Parties or other relevant legislation.

(5) In addition to the imposition of a term of imprisonment of at least six months, the court may withdraw the capacity to attain public electoral rights and withdraw the right to elect or vote in public matters.

14. The authorities recall that before the reform, the offence of "bribing delegates" (section 108e CC⁵) was limited to the buying and selling of a vote for an election or ballot. Under the new legislation, criminal liability no longer depends on the advantage being given or taken in return for casting a vote, rather section 108e CC as amended covers any "act in the exercise of the member's mandate". In addition to casting votes, this includes any other act in the exercise of the member's functions, e.g. tabling bills or amendments, speeches made in parliament or lobbying fellow

⁵ For the English language version, cf. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0023

members. Activities both in the assembly's plenary and in parliamentary committees and parliamentary groups are covered by the new provisions.

15. The authorities stress that the new provisions are applicable not only to members of the federal parliament (*Bundestag*) but also to members of public assemblies of the *Länder*, members of the Federal Convention (which elects the Federal President), members of a public assembly of a local authority, members – elected in direct and general elections – of a body of an administrative unit established for a subarea of a *Land* or local authority, members of the European Parliament, members of a parliamentary assembly of an international organisation and members of a legislative body of a foreign state.
16. Regarding the element “upon assignment or instruction” in the provisions of section 108e CC, the authorities explain that this element is designed to capture the – at least intended – causal link between the advantage and the act in exercise of the member's mandate. Where such a link exists, the member no longer exercises his/her free mandate in the meaning of article 38 of the Basic Law, but subordinates him/herself to the bribe-giver's interests instead of being guided by his/her own convictions and conscience. According to the law's explanatory memorandum, the notion of “assignment or instruction” is to be interpreted broadly to cover any behaviour where the member subordinates him/herself to the interests of the bribe-giver. There does not need to be a contractual request or a formal instruction. The bribe-taker may not defend him/herself by invoking that his/her act in exercise of his/her mandate would not have been motivated by the advantage, and was in line with his (hidden) inner convictions anyway, or that s/he did not actually intend to act as assigned or instructed. For establishing the offence, it is sufficient that the bribe-taker behaves in a way which, in the eye of an objective observer, indicates his/her readiness to subordinate him/herself to the bribe-giver's interests, i.e. to act as assigned/instructed and not according to his/her conscience.⁶
17. Finally, the authorities draw attention to the fact that the new provisions do not cover advantages with regard to which the acceptance of the advantage is in accordance with the relevant provisions relating to the legal position of the member. In particular, a political mandate, a political function or a donation permissible under the Law on Political Parties or other relevant legislation are not deemed to be undue advantages. The authorities explain that these exclusions are based on the consideration that where advantages are in line with the pertinent rules, the principles of transparency, fairness and impartiality of the decision-making process of domestic public assemblies and their members – which the Criminal Law Convention on Corruption sets out to protect – are not compromised.
18. GRECO very much welcomes that Germany has significantly broadened the criminalisation of members of domestic public assemblies, in line with the requirements of the recommendation. It is noteworthy that the new legislation covers advantages being given or taken for any “act in the exercise of the member's mandate” – whereas before the reform, only the buying and selling of a vote for an election or ballot was criminalised – and that the new provisions are applicable not only to members of the federal parliament (*Bundestag*) but also to members of other public assemblies such as *Länder* and local assemblies. That said, GRECO has some concerns about the fact that the new offence is limited to a member's performance or omission of an act “upon assignment or instruction”, which could represent a restrictive element and make prosecution of the offence difficult. While GRECO notes that according to the law's explanatory memorandum, the notion of “assignment or instruction” is to be interpreted broadly to cover any behaviour where the member subordinates him/herself to the interests of the bribe-giver, it invites the authorities to

⁶ See the explanatory memorandum (page 8), <http://dip21.bundestag.de/dip21/btd/18/004/1800476.pdf> (German only).

keep under review the application in practice of the offence with a view to ascertaining whether this element hampers effective implementation of the law and needs to be removed or modified.

19. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

20. *GRECO recommended to incriminate more broadly, active and passive bribery of members of foreign public assemblies.*
21. The authorities report that the amended section 108e CC on active and passive bribery of mandate holders (see above under recommendation iii) equally applies to members of a legislative body of a foreign state, cf. paragraph 3 item 6 of this section.
22. GRECO notes that following the legal reform active and passive bribery of members of foreign public assemblies are criminalised more broadly, in the same way as bribery of members of domestic public assemblies. GRECO therefore refers to its comments on the new offences established by section 108e CC made above under recommendation iii.
23. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

24. *GRECO recommended 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).*
25. The authorities report that the draft bill approved by the Ministry of Justice and Consumer Protection, which has been published on its website and is one of the Ministry's priorities (see above under recommendation i), provides for broader criminalisation of active and passive bribery of foreign public officials. In particular, bribery offences would no longer be limited to active bribery or bribery in the context of international business transactions. The relevant draft provisions read as follows.

Draft section 335a CC: Foreign and international officials

(1) For the application of section 332 and 334, in each case also in conjunction with section 335,⁷ to an offence relating to a future judicial act or a future official act

1. the following persons shall be deemed equal to a judge:

members of a foreign or international court;

2. the following persons shall be deemed equal to a public official:

a) officials of a foreign state and persons tasked with performing public functions for a foreign state;

b) officials of an international organisation and persons tasked with performing functions for an international organisation;

c) soldiers of a foreign state and soldiers tasked with performing functions for an international organisation;

[...]

⁷ For the English version of those sections, cf. http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0023

26. The authorities specify that the draft foresees that the new section 335a CC would maintain the requirement that there be a link between the bribery act and a breach of duties. According to the bill's explanatory memorandum, Germany therefore intends to make a declaration in accordance with Article 36 of the Criminal Law Convention on Corruption to the effect that it will establish as criminal offences the active and passive bribery of foreign public officials under Article 5 only to the extent that the public official acts or refrains from acting in breach of his/her duties.
27. GRECO notes that draft legislation criminalising bribery of foreign public officials more broadly has been prepared. It addresses several of the main concerns underlying the recommendation. Notably, bribery offences would no longer be limited to active bribery or bribery in the context of international business transactions. However, given the fact that the bill has not yet been formally adopted, GRECO encourages the authorities of Germany to complete the legislative process as soon as possible.
28. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

29. *GRECO recommended 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).*
30. The authorities refer to the amended section 108e CC, already in force, which covers active and passive bribery of members of international parliamentary assemblies (cf. paragraph 3 items 4 and 5 of this section, under recommendation iii) above. They also refer to draft section 335a CC which would also apply to members of international organisations as well as judges and officials of international courts (see above under recommendation v). According to the bill's explanatory memorandum, Germany intends to make a declaration in accordance with Article 36 of the Convention to the effect that it will establish as criminal offences the active and passive bribery of officials of international organisations under Article 9 of the Convention or of judges and officials of international courts under Article 11 of the Convention only to the extent that the public official or judge acts or refrains from acting in breach of his/her duties.
31. GRECO notes that active and passive bribery of members of international parliamentary assemblies have been criminalised more broadly, as has bribery of members of domestic public assemblies. GRECO therefore refers to its comments on the new offences established by section 108e CC made under recommendation iii above. Moreover, draft legislation criminalising active and passive bribery of members of international organisations as well as judges and officials of international courts more broadly has been prepared which goes in the direction recommended.
32. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

33. *GRECO recommended 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).*

34. The authorities state that draft section 335a CC, which would also apply to members of foreign courts, would cover active and passive bribery of foreign jurors. They add that Germany intends to make a declaration in accordance with Article 9 of the Additional Protocol and Article 36 of the Convention to the effect that it will establish as criminal offences the active and passive bribery of foreign jurors only to the extent that the juror acts or refrains from acting in breach of his/her duties.
35. GRECO notes that draft legislation criminalising active and passive bribery of members of foreign courts – including jurors – more comprehensively has been prepared which goes in the direction recommended. However, given the fact that the bill has not yet been formally adopted, GRECO encourages the authorities of Germany to complete the legislative process as soon as possible.
36. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

37. *GRECO recommended 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).*
38. The authorities indicate that the above-mentioned draft bill provides for the amendment of section 299 CC. The draft provisions on “taking and giving bribes in commercial practice” read as follows.

Section 299 CC: Taking and giving bribes in commercial practice

- (1) *Whosoever as an employee or agent of a business demands, allows him/herself to be promised or accepts a benefit for him/herself or another in a business transaction for the purchase of goods or services as consideration for*
 1. *according an unfair preference to another in such competitive purchase in Germany or abroad, or*
 2. *violating his/her duties towards the business, shall be liable to imprisonment not exceeding three years or a fine.*
- (2) *Whosoever offers, promises or grants an employee or agent of a business a benefit for that employee or agent or for another in a business transaction for the purchase of goods or services as consideration for*
 1. *such employee’s or agent’s according him/her or another an unfair preference in such competitive purchase in Germany or abroad, or*
 2. *violating his/her duties towards the business, shall incur the same penalty.*

39. The authorities stress that unlike the legislation currently in force, the new offence would not be limited to cases where the advantage is given or taken in return for obtaining “an unfair preference (...) in the competitive purchase of goods or commercial services”, but would also cover cases where the advantage is given or taken in return for the bribe-taker violating his/her duties towards the business. As is already the case today, the offence would cover all forms of advantage, irrespective of value, and would not be limited to undue advantages.
40. GRECO notes that the draft amendments to the provisions on private sector bribery would address the main concern underlying the recommendation, by extending the scope of those provisions to all situations where an advantage is given or taken in return for the bribe-taker violating his/her duties. However, given the fact that the bill has not yet been formally adopted,

GRECO encourages the authorities of Germany to complete the legislative process as soon as possible.

41. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

42. *GRECO recommended to criminalise trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
43. The authorities state that when preparing the above-mentioned draft bill, the Federal Ministry of Justice and Consumer Protection once again considered establishing an offence of "trading in influence". It reached the conclusion that the existing corruption-related provisions, as amended by the draft bill, cover corrupt behaviour in a comprehensive manner and do not need to be complemented by a stand-alone "trading in influence" offence. Therefore, the memorandum accompanying the consultation process points out that Germany intends to enter a reservation in relation to Article 12 of the Criminal Law Convention on Corruption accordingly, as provided for in Article 37 of the Convention.
44. The Third Round Evaluation Report (paragraph 98) acknowledged the possibility for the German authorities to introduce reservations to the Criminal Law Convention on Corruption at the time of ratification, and the impact that such reservations may have on several recommendations, including recommendation ix. That said, GRECO still encourages the authorities to reconsider their intention to enter a reservation in relation to Article 12 of the Convention. It wishes to reiterate the formal Appeal by the Committee of Ministers to States, made at its 103rd Ministerial Session on the occasion of the adoption of the text of the Criminal Law Convention on Corruption (4 November 1998), to limit as far as possible the reservations that they declare pursuant to the Convention, when expressing their consent to be bound by the Convention. GRECO furthermore recalls that according to the Evaluation Report, the introduction of specific criminal provisions on trading in influence would indeed fill a gap (e.g. with regard to cases involving elected officials). At the current stage of the reform process where draft legislation amending the criminal legislation on corruption and authorising the Federal Government to ratify the Convention – possibly with a reservation in relation to Article 12 – is still under preparation, GRECO cannot conclude that the recommendation has even been partly implemented.

45. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

46. *GRECO recommended 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.*
47. The authorities recall, firstly, that under the already existing sections 3, 4 and 9 CC jurisdiction is established over offences committed in whole or in part in Germany (principle of territoriality). Secondly, they report that the above-mentioned draft bill provides for jurisdiction for the various corruption offences if committed abroad (cf. draft section 5 item 15 CC) and sets out to introduce the relevant rules into the CC, thus ending the existing fragmentation. Consequently, the

jurisdiction rules in articles 2 and 3 of the EU Bribery Act and in article 2 paragraphs 2 and 4 of the Act on Combating International Bribery are to be abolished. The relevant provisions of the draft bill read as follows.

Section 5 CC: Offences committed abroad against domestic legal interests

German criminal law shall apply, regardless of the law applicable in the locality where the act was committed, to the following acts committed abroad:

[...]

15. *Offences committed in public office pursuant to sections 331 to 337,⁸ where*

- a) the offender is German at the time of the act,*
- b) the offender is a European public official and his public authority has its seat in Germany,*
- c) the act is committed in relation to a public official, a person entrusted with special public service functions or a soldier of the Bundeswehr, or*
- d) the act is committed in relation to a European public official or arbitrator who is a German at the time of the act, or a person deemed equal pursuant to section 335a who is a German at the time of the offence;*

48. The authorities explain that pursuant to the draft legislation, German criminal law on bribery offences committed abroad would be applicable where the offender is a German national regardless of the law applicable in the locality where the act was committed (cf. draft section 5 item 15a CC). Moreover, where the offender is a German public official, German criminal law is applicable according to the already existing section 5 item 12 CC⁹. Where the offender is a member of a domestic public assembly, German criminal law is applicable according to the already existing section 5 item 14a CC, which provides for the application of section 108e CC (as amended) in cases where the offender or the member is a German national. Finally, pursuant to draft section 5 items 15c and 15d (in conjunction with section 335a) CC, German criminal law would also be applicable where the offence *involves* a German public official, or an official of an international organisation or a person tasked with performing functions for an international organisation who is a German national at the time of the offence. Likewise, under the already existing section 5 item 14a CC jurisdiction is established over corruption offences involving foreign, domestic and international assembly members if the offender or the member is a German national.
49. Regarding bribery in the private sector, according to the draft bill's explanatory memorandum Germany intends to declare, pursuant to Article 37 paragraph 2 of the Criminal Law Convention on Corruption, that it avails itself of the reservation provided for in Article 17 paragraph 2 of the Convention – i.e. to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 b and c of Article 17 of the Convention.
50. GRECO takes note of the draft legislation which is aimed at ensuring that jurisdiction is established over all corruption offences (first part of the recommendation) and that all the jurisdiction rules are contained in the CC itself (second part of the recommendation). It would

⁸ For the English version of the above-referenced (currently applicable) sections of the CC, see http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#p0023. For the English version of the above-referenced proposal for a new section 335a CC, see above under recommendation v.

⁹ "Offences committed by a German public official or a person entrusted with special public service functions during their official stay or in connection with their official duties".

appear that if the bill was adopted, German criminal law would be applicable to corruption offences 1) committed in Germany,¹⁰ 2) committed by German nationals or German officials and assembly members (with German citizenship),¹¹ or 3) involving one of its officials or assembly members, or members of international parliamentary assemblies who are at the same time German nationals.¹² That said, GRECO cannot see that jurisdiction would also be established in cases committed abroad by members of German public assemblies without German citizenship.¹³ The authorities may wish to further amend the bill to also capture such cases and to have the draft legislation adopted as soon as possible.

51. GRECO concludes that recommendation x has been partly implemented.

Theme II: Transparency of Party Funding

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

Recommendations ii to v, vii, viii and x.

53. *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);*

¹⁰ As required by Article 17 paragraph 1a of the Convention.

¹¹ As required by Article 17 paragraph 1b of the Convention.

¹² As required by Article 17 paragraph 1c of the Convention.

¹³ As required by Article 17 paragraph 1b of the Convention.

- *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).*

54. The authorities report that by letter of 5 May 2014, the Federal Minister of the Interior requested that the President of the *Bundestag* inform him of the Parliament's position as regards the outstanding recommendations and to what extent further measures for their implementation had been taken or were planned. By letter of 4 July 2014, the chair of the Committee on Internal Affairs of the *Bundestag* reported that the Committee had held discussions on the transparency of party funding at its meeting of 2 July 2014. The parliamentary groups of the governing coalition parties had announced that they would convene a meeting of rapporteurs from all parliamentary groups to discuss the recommendations and statements made in GRECO's Second Interim Compliance Report. The letter of 4 July 2014 also states that the suggestions by the President of the *Bundestag* – which are contained in his communication, pursuant to section 23 (4) of the Political Parties Act, on the 2010 and 2011 statements of accounts submitted by the political parties and on the development of the parties' financial situation which he had presented at the meeting of the Internal Affairs Committee on 19 March 2014 – would also be taken into account.
55. GRECO notes that no tangible progress has been achieved since the adoption of the Second Interim Compliance Report. At the same time, GRECO notes that the relevant parliamentary committee has again debated the pending recommendations and that it plans to continue the reflection process. GRECO urges the authorities to pursue the discussions initiated and to take appropriate action in line with the recommendations.
56. GRECO concludes that recommendations ii, iii, iv, v, viii and x remain partly implemented and recommendation vii not implemented.

III. CONCLUSIONS

57. **In view of the above, GRECO concludes that Germany has now implemented satisfactorily or dealt with in a satisfactory manner six of the twenty recommendations contained in the Third Round Evaluation Report. Eleven recommendations have been partly implemented and three have not been implemented to date.**
58. With respect to Theme I – Incriminations, recommendations ii, iii and iv have been implemented satisfactorily and recommendations v-viii and x have been partly implemented. Recommendations i and ix have still not been implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii, iv, v, viii and x have been partly implemented and recommendation vii has not been implemented.

59. GRECO very much welcomes the fact that the German authorities have taken several steps aimed at addressing all the recommendations made with respect to Theme I – Incriminations. Five years after the adoption of the Evaluation Report, Germany has now found a way to take determined action as evidenced by the recent introduction of completely revised offences of bribery of members of public assemblies. Moreover, the Federal Ministry of Justice and Consumer Protection has presented draft legislation aimed at implementing GRECO's further recommendations relating to the provisions of the Criminal Law Convention on Corruption and its Additional Protocol, thus paving the way for their ratification. Despite the fact that the legislative process is still at an early stage, GRECO is confident that the German authorities will swiftly complete this process which is one of the Ministry's priorities. The German authorities are encouraged to make every effort to carry through the legal reform initiated, which corresponds to a large extent and in a consistent manner to the requirements of the outstanding recommendations, as soon as possible. With respect to Theme II – Transparency of party funding, GRECO still has strong misgivings about the very limited attention paid to several recommendations on issues of prime importance – such as the introduction of 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.
60. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
61. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of the German delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i and v-x regarding Theme I, and recommendations ii-v, vii, viii and x regarding Theme II) by 31 July 2015.
62. 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.