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Interim Report

Third Evaluation Round

Second Interim **Compliance Report** **on Greece**

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 64th Plenary Meeting
(Strasbourg, 16-20 June 2014)

I. INTRODUCTION

1. The Third Round Evaluation Report on Greece was adopted at GRECO's 47th Plenary Meeting (7-11 June 2010) and made public on 7 July 2010, following authorisation by Greece (Greco Eval III Rep (2009) 9E, [Theme I](#) and [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Greek authorities submitted a Situation Report on measures taken to implement the recommendations.
3. In the Compliance Report, which was adopted by GRECO at its 56th Plenary Meeting (Strasbourg, 20-22 June 2012), it was concluded that Greece had implemented satisfactorily only one of the twenty-seven recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO had qualified the very low level of compliance with the recommendations as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report and asked the Head of the Greek delegation to provide a report made on the progress in implementing the pending recommendations (i.e. recommendations i-viii and x-xi regarding Theme I, and recommendations i-xvi regarding Theme II) by 31 December 2012, pursuant to paragraph 2(i) of that Rule.
4. In the Interim Compliance Report, which was adopted by GRECO at its 60th Plenary Meeting (Strasbourg, 21 June 2013), the level of compliance had been assessed again as "globally unsatisfactory" since out of the twenty six recommendations which were outstanding, only eight had been partly implemented and all the rest had remained not implemented. Furthermore, GRECO requested the Head of the Greek delegation to provide a report, regarding the action taken to implement the pending recommendations (i.e. recommendations i-viii and x-xi regarding Theme I and recommendations i-xvi regarding Theme II) by 31 March 2014. This report was submitted on 8 April 2014 and served as a basis for this Second Interim Compliance Report.
5. GRECO selected Georgia and the United States to appoint Rapporteurs for the compliance procedure. The rapporteurs - Ms Natalia BARATASHVILI, Coordinator of Anti-Corruption Issues, on behalf of Georgia and Mr Donald CABELL, Justice Attaché, on behalf of the United States of America - were assisted by GRECO's Secretariat in drawing up this Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that, in its Evaluation Report, GRECO had addressed 11 recommendations to Greece in respect of Theme I. One of them – recommendation ix – had been assessed as satisfactorily implemented in the Compliance Report. In the Interim Compliance Report, recommendations i, iii, iv, v, vii and viii had been assessed as partly implemented and recommendations ii, vi, x and xi had been assessed as not implemented. Compliance with the pending recommendations is dealt with below.
7. It is also recalled that information detailing the action taken in respect of individual pending recommendations was not provided for the Interim Compliance Report, bar information on recommendations iii and vi. For this reason, GRECO had abstained from analysing the state of play under the outstanding recommendations one by one. While welcoming the establishment of

the special law-drafting committee and the intention expressed by the authorities to amend the Penal Code and the Code of Criminal Procedure so as to entirely review their anti-corruption provisions, GRECO had recalled that such an intention was already announced by the authorities at the stage of the Compliance Report. It had expressed concerns that the pertinent amendments had still not been presented to Parliament and underscored again the lack of concrete progress in the implementation of the pending recommendations.

8. The authorities of Greece now refer to the new Law on the Reform and Rationalisation of Anti-Corruption Criminal Law, which was adopted by Parliament on 30 March 2014 and published in the Official Gazette on 7 April 2014. The new law was subject to public consultation held by the Ministry of Justice, Transparency and Human Rights. The authorities stress that the objective of this new law is to respond to the GRECO-issued recommendations, in particular, by codifying all corruption offences. The text of the new law together with the Explanatory Memorandum, have been submitted to GRECO for scrutiny.

Recommendation i.

9. *GRECO recommended to consolidate all relevant provisions on bribery and trading in influence, preferably within the Penal Code.*
10. It is recalled that this recommendation had been assessed as partly implemented in the Interim Compliance Report. In the absence of any detailed information provided by the authorities, GRECO saw no need to analyse the situation on this recommendation separately from other outstanding recommendations under Theme I.
11. The authorities of Greece now indicate that all relevant provisions on bribery and trading in influence have been consolidated within the Penal Code, by virtue of the newly adopted Law on the Reform and Rationalisation of Anti-Corruption Criminal Law.
12. GRECO commends the efforts invested by the authorities in the consolidation of the provisions on bribery and trading in influence in the Penal Code. In its Evaluation Report (see paragraph 109), reference was made to the excessive complexity of the legal framework which encompassed the Penal Code as well as the successive laws of ratification of international anti-corruption instruments. The latter not only contained substantive and procedural provisions but also amended related articles in the earlier ratification laws and other domestic laws, including the Penal Code. The outdated versions had not been repealed but co-existed in parallel. Numerous inconsistencies bred legal uncertainty which precluded the effective prosecution of corruption offences. The Law on the Reform and Rationalisation of Anti-Corruption Criminal Law has created an entirely new and more robust legal framework, which brings together all relevant provisions on bribery and trading in influence within the Penal Code, fully in line with the recommendation. As is well illustrated by the subsequent paragraphs of this Report, some old approaches pertaining, for example, to the determination of the scope of a public official's duties within which his/her acts or omissions should necessarily fall in order for them to be qualified as bribery, have been abandoned. Also, more consistent terminology has been introduced, although in some cases certain elements required by the Criminal Law Convention on Corruption or its Additional Protocol are still missing. GRECO is moreover satisfied that the opportunity of the legal reform was seized by the authorities to include the provisions on bribery in the private sector and on "*leniency for persons who reveal acts of corruption*" in the Penal Code. In conclusion, although certain shortcomings can still be observed, the authorities merit an express recognition of the important reform successfully carried out.

13. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

14. *GRECO recommended to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences.*
15. This recommendation had been assessed as not implemented in the Interim Compliance Report. The explanations provided by the authorities on the intention of drafters of the amendments to the Penal Code not to consider as bribery the acts/omissions of an official outside of his/her competences were considered by GRECO as not responding to the concerns of the recommendation.
16. The authorities of Greece now make reference to new Articles 235 and 236 of the Penal Code¹ on active and passive bribery in the public sector.
17. GRECO welcomes the change of approach demonstrated by the revised wording of Articles 235 and 236 PC. It notes that both articles now standardise, in line with the requirements of the Criminal Law Convention, the offences of passive and active bribery in the public sector, by expanding their application to acts/omissions in connection with the performance of any official act of a public official whether or not that act was within the scope of his/her official duty. Separate provisions under both articles criminalise bribery for acts/omissions which are in conflict with the official's duties and which are intended to alter the outcome of the matter on which the official is acting or failing to act. GRECO recalls that, in their initial wording, both articles only covered acts/omissions "*pertaining to the duties or being contrary to them*", which required the interpretation of the exact competences of an official by court. Such a restrictive definition was found to be at variance with the wording and the spirit of the Criminal Law Convention. The new wording, as is confirmed by the Explanatory Memorandum to the new law, is no longer confined to the narrow circle of an official's responsibilities but encompasses also those acts which can be

¹ Article 235 - Passive Bribery

1. An official who requests or receives, directly or through a third party, for himself/herself or for another person, any undue advantage of any manner, or accepts the promise to provide such an advantage, for actions or inactions on his/her part, future or already completed, in connection with the performance of his/her duties, shall be punished by at least one year of imprisonment and a fine of EUR 5 000 to 50 000.

2. If such action or inaction of the offender conflicts with his/her duties, it shall be punished by up to ten years imprisonment and a fine of EUR 15 000 to 150 000.

3. An officer who requests or receives, directly or through a third person, for himself/herself or for another person, an unfair property advantage, taking advantage of his/her office, shall be punished by up to three years imprisonment if the action is not punished more severely by another criminal provision.

4. Heads of services inspectors or persons who have decision-making or control power in government services, local government authorities and legal persons referred to in Article 263A, shall be by up to three years imprisonment if the act is not punished more severely, if, by negligence or in breach of a certain official duty, failed to prevent a person under their command or subject to their control from committing an act under the preceding paragraphs.

Article 236 - Active Bribery

1. Anyone who offers, promises or gives to an official, directly or through a third party, any undue advantage of any manner, for himself/herself or for another person, for an action or inaction, future or already completed, on the part of the official in relation to the performance of his/her duties, shall be punished by at least one year imprisonment and a fine of EUR 5 000 to 50 000.

2. If such action or inaction conflicts with his/her duties, the offender shall be punished by up to ten years imprisonment and a fine of EUR 15 000 to 150 000.

3. Heads of business or other persons who have decision-making or control power in a business shall be punished by up to three years imprisonment, if the act is not punished more severely under another criminal provision, if they failed to prevent a person under their command or subject to their control from committing, to the benefit of the business, an act under the preceding paragraphs.

4. With regard to the applicability of this article to acts committed abroad by a foreign national, it is not necessary that the conditions under Article 6 are satisfied.

committed in the exercise of his/her duties or by taking advantage of his/her position. Furthermore, discretionary acts – regardless of the verbatim compliance with the formal procedures – have been included in the scope of acts/omissions which are in conflict with the official's duties in cases where a *“bribe is objectively linked to the official's act and played (or was meant to play) a role in the exercise of the discretionary act, inclining the balance or at least jointly forming the final decision of the public official.”* GRECO considers that the concerns expressed in the recommendation have been addressed in an adequate manner.

18. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

19. *GRECO recommended to take the appropriate measures, such as circulars or training, to make it clear to or to remind those concerned that the offences of active and passive bribery are autonomous and do not necessarily require an agreement between the parties.*
20. It is recalled that this recommendation had been assessed as partly implemented in the Interim Compliance Report. While taking note of both decisions of the Supreme Court (decisions 1202/2011 and 253/2012), GRECO had found their conclusions, namely that the existence of an agreement between the parties was not required as one of the conditions for the commission of the offence of passive bribery and that the offences of active and passive bribery were autonomous, to be implicit and not clearly spelled out. Also, the seminar held by the Hellenic Criminal Bar Association had been found by GRECO to be insufficient to fulfil the objectives of the recommendation and the authorities had been called upon to take further measures targeting the police and the prosecution service as the bodies in charge of the investigation and prosecution of corruption offences.
21. The Greek authorities furnish no information that would evidence any concrete action taken to implement this recommendation.
22. GRECO recalls the findings of the Evaluation Report (paragraph 111), namely that, because of the level of evidence required by courts, the prosecution in Greece seemed to require in practice the existence of an agreement between the briber and the bribee, even if active and passive bribery were criminalised as stand-alone offences. In this connection, GRECO wishes to stress that the existence of an agreement does not form an automatic element of the corruption offence since, under Articles 2 and 3 of the Criminal Law Convention, a bribe may be proposed or requested unilaterally. Consequently, bribery, as understood by the Convention, must be prosecutable as such where no agreement has taken place or where such an agreement cannot be substantiated by the prosecution authorities. In view of the foregoing, GRECO renews its invitation to the authorities to take urgent steps to provide relevant clarifications and training, as is requested by the recommendation, particularly to the police and the prosecution service.
23. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

24. *GRECO recommended to incriminate more broadly bribery of domestic, foreign and international judges, arbitrators and jurors, in accordance with Articles 2, 3, 5, 11 of the Criminal Law Convention (ETS 173), as well as Articles 2 to 6 of its Additional Protocol (ETS 191), in particular*

as regards intermediaries, third party beneficiaries and the scope of the bribe-taker's actions/omissions.

25. This recommendation had been assessed as partly implemented in the Interim Compliance Report. In the absence of any detailed information provided by the authorities, GRECO saw no need to analyse the situation on this recommendation separately from other outstanding recommendations under Theme I.
26. The Greek authorities now refer to new Article 237 of the Penal Code² on passive and active bribery of judges, which also applies to domestic jurors and arbitrators, as well as new paragraphs 2 and 3 of Article 263A of the Penal Code³.
27. GRECO welcomes the wording of new Article 237 PC which remedies most of the deficiencies identified in the Evaluation Report (see paragraph 112). In particular, the new article criminalises more broadly bribery of domestic judges, arbitrators and jurors as regards intermediaries, third party beneficiaries and the scope of the bribe-taker's acts or omissions. As concerns the latter, the Explanatory Memorandum to the new law affirms that the wording "*for an action or inaction ... relating to the performance of duties in the administration of justice or resolution of disputes*" has been introduced so as to leave no doubt that such a definition also extends to "*cases involving the performance of judicial duties containing no case "judgment", such as prosecution, imposing restrictive conditions, carrying out investigations or other preliminary procedural acts in civil or administrative proceedings, etc.*" The Explanatory Memorandum furthermore clarifies that, as concerns the non-judicial duties of a judge (e.g. administrative tasks), the general provision under Article 235 PC applies. As regards active and passive bribery of foreign and international judges, arbitrators and jurors, they are made subject to Articles 235 (1) and (2) and 236 PC by virtue of new paragraph 2 under Article 263A PC, and judges who are members of the Court of Justice and the Court of Auditors of the European Union are covered by the provisions of new Article 237, by virtue of new paragraph 3 of Article 263A PC. GRECO additionally notes that, despite the absence of an explicit reference to an "offer" of a bribe in the provisions on the active bribery of judges, arbitrators and jurors, the two verbs that are used in the Greek language are inclusive of all the three types of behaviour criminalised under the Criminal Law Convention on Corruption, i.e. "offer", "promise" and "giving", and therefore fully in line with the standards.

² Article 237 – Passive and active bribery of judges

1. If any person invited under the law to perform judicial duties or an arbitrator requests or receives, directly or through a third party, for himself/herself or for another person, any undue advantage of any manner, or accepts the promise to provide such an advantage for an action or inaction on his/her part, future or already completed, relating to the performance of his/her duties in the administration of justice or resolution of dispute shall be punished by imprisonment and a fine of EUR 15 000 to 150 000.

2. The same penalties shall apply to punish any person who for the above purpose promises or provides such advantages, directly or through a third party, to the persons in the previous paragraph, for themselves or for another person.

3. Heads of business or persons who have decision-making or control power in a business shall be punished by imprisonment, if the act is not punished more severely under another criminal provision, if they failed to prevent a person under their command or subject to their control from committing, to the benefit of the business, the act under the preceding paragraph.

³ Article 263 A of the Penal Code

2. For the implementation of Articles 235(1) and (2) and 236 officials shall also mean:

(a) the servants or other officials, under any contractual relationship, of any public international or supranational organisation to which Greece is a member, and any person authorised by such organisation to act on its behalf;

(b) the members of parliamentary assemblies of international or supranational organisations to which Greece is a member;

(c) those who perform judicial or arbitrator duties in international courts, whose jurisdiction is recognised by Greece;

(d) any person performing a public function or service for a foreign country, including judges, jurors and arbitrators; and

(e) members of parliaments and local government assemblies of other states.

3. With regard to the applicability of Article 237 as judges shall also mean members of the Court of Justice and the Court of Auditors of the European Union.

28. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

29. *GRECO recommended to incriminate more broadly bribery of domestic, foreign and international members of public assemblies, in accordance with Articles 4, 6 and 10 of the Criminal Law Convention (ETS 173), in particular as regards the “giving” and “receipt” of an undue advantage, intermediaries, third party beneficiaries and the scope of the bribe-taker’s actions/omissions.*
30. This recommendation had been assessed as partly implemented in the Interim Compliance Report. In the absence of any detailed information provided by the authorities, GRECO saw no need to analyse the situation on this recommendation separately from other outstanding recommendations under Theme I.
31. The authorities of Greece now make reference to new Articles 159 and 159A of the Penal Code⁴ on active and passive bribery of members of domestic public assemblies, as well as new paragraphs 2 and 3 of Article 263A of the Penal Code.
32. GRECO welcomes the wording of new Articles 159 and 159A PC. It observes improvements, notably as regards the scope of the bribe-taker’s acts or omissions. Thus, active and passive bribery of a member of parliament or local council “*in relation to any election or vote*” if it impels him/her to refrain from taking part in an election or vote, support a specific issue subject to vote or vote in a certain way falls under the scope of new Articles 159 and 159A PC, whereas cases not related to the performance of legislative functions are covered by the general provision of Article 235 PC. As concerns foreign and international members of public assemblies, active and passive bribery in their regard is criminalised by virtue of new paragraph 2, Article 263A PC, which makes them subject to new Articles 235 (1) and (2) and 236 PC. Despite these noticeable improvements, several gaps can be observed in Article 159, paragraph 2 on passive bribery of members of parliament. Thus, references are only made to the “*acceptance of an offer or a promise*” or a “*request*” of an undue advantage, with the element of “*receipt*” still being omitted., The possibility for the benefit to be received indirectly, through an intermediary, has also been overlooked. GRECO concludes that further steps need to be taken in order to criminalise more broadly bribery of domestic, foreign and international members of public assemblies, particularly as regards the “*receipt*” of an undue advantage and intermediaries.

⁴ Article 159 - Passive Bribery

1. The President of the Republic or the person exercising presidential power, the Prime Minister, members of government, deputy ministers, prefects, deputy prefects and mayors shall, if they request or receive, directly or through a third party, for themselves or for another person, any undue advantage of any manner, or accept the promise to provide such an advantage for an action or inaction on their part, future or already completed, relating to the performance of their duties in exercising presidential or executive power, be punished by imprisonment and a fine of EUR 15 000 to 150 000.

2. The same penalty shall apply to punish **members of Parliament**, local government councils and their committees if in relation to any election or vote carried out by the above bodies or committees they accept the offer or promise of any manner of undue advantage for themselves or for a third party, or request such undue advantage to refrain from taking part in such election or vote, to support a specific issue subject to vote or to vote in a certain way.

3. Paragraphs 1 and 2 shall apply accordingly also when the act is committed by members of the European Commission or the European Parliament.

4. The provisions of Articles 238, 263(1) and 263B(2-5) shall apply also to the crimes referred to in the previous paragraphs.

Article 159A - Active Bribery

1. The penalties of the previous article shall apply to punish whoever promises or offers any manner of undue advantages, directly or through a third party, to the persons mentioned in that article, for themselves or for another person, for the purposes referred to respectively therein.

2. Heads of business or persons who have decision-making or control power in a business shall also be punished by imprisonment, if the act is not punished more severely under another criminal provision, if they failed to prevent a person under their command or subject to their control from committing, to the benefit of the business, the act under the preceding paragraph.

33. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

34. *GRECO recommended to carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence.*
35. GRECO recalls that this recommendation had been assessed as not implemented in the Interim Compliance Report. References were made by the authorities to: a) the 2012 Annual Report of the Department of Internal Affairs of the Police and, in particular, the improved effectiveness of the investigation of corruption offences which was due, amongst others, to the possibility to report corruption anonymously, by e-mail or telephone; and b) the 2013 National Action Plan against Corruption and the establishment of an independent National Anti-Corruption Co-ordinator responsible for co-ordinating the sustained action against corruption, the on-going review of implementation of relevant measures and the proper and direct accountability at all levels of government.
36. The Greek authorities now report that the Department of Criminal Law and Criminology of the Aristotle University of Thessaloniki has launched a research programme entitled “A cohesive model to counteract financial crime and corruption in the public sector in Greece”. Its aim is to put together and propose a set of rules and principles, on substantive and procedural levels, which aim theoretically underpinning and practically facilitating the efforts to address the principal forms of financial crime and corruption in the public sector, in light of pertinent international developments. The project proposal, which will be based, *inter alia*, on an empirical and comparative study, will aspire to combine both efficiency and respect for the rule of law, thereby contributing to the long-term uprooting of these phenomena by means of repositioning criminal law in a new, desirable social, economic and institutional model. The conclusions of the questionnaire circulated amongst different institutions and experts in the anti-corruption field, as well as judges, prosecutors and competent public officials would enable the first assessment in Greece of the effectiveness of anti-corruption provisions as well as of the judicial and administrative practices. They are expected to be published in July 2014.
37. Additionally, reference is made to Circular No. 11/25-11-2013 issued by the Prosecutor attached to the Supreme Court and addressed to all prosecutors in charge of corruption crimes in Athens and Thessaloniki and to prosecutors attached to first instance courts, by virtue of which the data on all corruption felonies committed by politicians and public officials covered by Law 4022/2011 (Adjudication of corruption offences committed by politicians and senior state officials, cases of great social importance and major public interest as well as other provisions) has now been collected every three months and centralised in the Office of the Prosecutor attached to the Supreme Court as well as the National Anti-Corruption Coordinator.
38. GRECO welcomes the elaboration of the questionnaire on financial crime and corruption under the project “A cohesive model to counteract financial crime and corruption in the public sector in Greece”, carried out in the context of the “Aristeia” initiative, under the auspices of the operational programme “Education and Lifelong Learning” of the Ministry of Education, and co-funded by the Greek State and the European Social Fund. Its conclusions, when published, are likely to contribute to the overall assessment of the effectiveness of measures aimed at tackling corruption and financial crime. Nevertheless, it does not appear that a proper assessment of the bribery and trading in influence provisions, as required by the recommendation, has been carried out.

Additionally, the delineation of competences and tasks between the two law enforcement bodies empowered to investigate corruption offences, namely the Division of Internal Affairs (IAD) under the Ministry of Citizen Protection and the Special Investigative Service (YPEE) under the Ministry of Economy and Finance, has not been carried out and the gap and overlaps in their mandates have not been eliminated. As concerns the statistical data, GRECO observes that it only covers one legal act with a limited personal scope but not e.g. the Criminal Code. Also, as is stated in the Evaluation Report, completing the planned collection and analysis of statistical data at central level certainly contributes to achieving the objectives of the recommendation; however, it is not a decisive element in itself.

39. GRECO concludes that recommendation vi remains not implemented.

Recommendation vii.

40. *GRECO recommended to ensure that bribery of foreign public officials, judges, members of public assemblies, arbitrators and jurors is criminalised in respect of bribe-takers from any foreign State, in line with Articles 5 and 6 of the Criminal Law Convention (ETS 173) and Articles 4 and 6 of its Additional Protocol (ETS 191).*
41. It is recalled that this recommendation had been assessed as partly implemented in the Interim Compliance Report. In the absence of any detailed information provided by the authorities, GRECO saw no need to analyse the situation on this recommendation separately from other outstanding recommendations under Theme I.
42. The Greek authorities now refer to new paragraphs 2 and 3 of Article 263A of the Penal Code (see footnote No. 3), as well as the new wording of section (d) of Article 8 PC on “Crimes committed abroad that are always punishable according to the Greek law”.⁵
43. GRECO welcomes the new wording of paragraphs 2 and 3 of Article 263A PC, which extends the application of Articles 235 (1) and (2) and 236 PC to a broad category of foreign actors including, specifically, foreign public officials, judges, members of public assemblies, arbitrators and jurors. While expressing its satisfaction with the alignment of the provisions of the Penal Code with the requirements of Article 5 and 6 of the Criminal Law Convention and Article 6 of its Additional Protocol, GRECO remains concerned that the bribery of foreign arbitrators who are not qualified as “performing a public function or service” under domestic law is not captured by the new provision under Article 263A PC. This deficiency remains to be rectified.
44. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

45. *GRECO recommended to incriminate trading in influence in a consolidated manner, making sure that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the elements of improper influence, the active side of trading in influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries.*

⁵ Article 8 (d) PC now stipulates: “An act against or addressed to an official of the Greek State or a Greek official of an institution or body of the European Union, in the course of or in connection with the performance of his/her duties”.

46. GRECO recalls that this recommendation had been assessed as partly implemented in the Interim Compliance Report. In the absence of any detailed information provided by the authorities, GRECO saw no need to analyse the situation on this recommendation separately from other outstanding recommendations under Theme I.
47. The authorities of Greece now refer to new Article 237A of the Penal Code⁶. For reasons to do with tradition and the existing case-law under Law 5227/1931 on mediators (which used to criminalise trading in influence of domestic public officials and members of domestic public assemblies), the word “intermediaries” has been retained in its title.
48. GRECO welcomes new Article 237A PC which covers not only the passive but also the active side of trading in influence and encompasses the elements of the offence which were previously missing: improper influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries. Yet, the newly adopted article covers a limited range of officials. In contrast to the requirements of Article 12 of the Criminal Law Convention, which criminalises improper influence over the decision-making of domestic public officials (Article 2), members of domestic public assemblies (Article 4), members of foreign public assemblies (Article 6), officials of international organisations, members of international parliamentary assemblies, judges and officials of international courts (Articles 9 to 11), Article 237A PC – as clearly stems from its text – only applies to persons listed under Article 159 PC (members of domestic legislative, executive and self-governing bodies), Article 235 (1) PC (domestic public officials) and 237 (1) PC (domestic judges, jurors and arbitrators). Similarly, there is no provision in the text of the new law or its Explanatory Memorandum that would make, e.g. the previously mentioned paragraphs 2 and 3 under Article 263A PC applicable to Article 237A PC. Moreover, it is not explicitly mentioned that, for the offence to be constituted, the influence does not have to be actually exerted or lead to the intended results, although such an interpretation is provided in the Explanatory Memorandum. While being satisfied with the significant improvement in the criminalisation of trading in influence, GRECO invites the authorities to further refine relevant provisions so as to bring them in full conformity with Article 12 of the Criminal Law Convention on Corruption.
49. GRECO concludes that recommendation viii remains partly implemented.

Recommendation x.

50. *GRECO recommended to abolish the special statute of limitation for the prosecution of members of government and former members of government.*
51. This recommendation had been assessed as not implemented in the Interim Compliance Report. Since the abolition of the special statute of limitation established for members of government and former members of government required a change in the Constitution, this issue could not be prioritised in 2013 for internal political reasons. The authorities also reported that, in response to

⁶ **Article 237A - Trading in Influence - Intermediaries**

1. Whoever requests or receives, directly or through a third party, any advantage of any manner, for himself/herself or another person, or accepts the promise to provide such an advantage in return for undue influence which he/she, falsely or truly, claims or confirms that he/she can exert on any of the persons listed in Articles 159, 235(1) and 237(1) for the latter to proceed to an action or inaction relating to the performance of their duties, shall be punished by at least one year imprisonment and a fine of EUR 5 000 to 50 000.

2. The same penalties shall also apply to punish any person who offers, promises or gives, directly or through a third party, any advantage of any manner, for himself/herself or for another person, to a person who, falsely or truly, claims or confirms that he/she can exert undue influence on any of the persons listed in Articles 159, 235(1), and 237(1) for the latter to proceed to an action or inaction relating to the performance of their duties.

the growing public indignation, many prosecutors had been trying to circumvent this obstacle by indicting some former ministers for money laundering and false asset declarations.

52. The authorities of Greece furnish no information that would evidence any concrete action taken to implement this recommendation.
53. GRECO recalls that Law 3126/2003 on the penal liability of members and former members of government has put in place a five-year statute of limitation from the commitment of the offence for both misdemeanours and felonies, as opposed to five and fifteen years respectively in the common regime. It had been previously emphasised that such a derogatory limitation period for felonies – which are by definition more serious offences – constituted an obstacle to the effective prosecution of current and former members of government for bribery offences and that it was regarded as unjustified and likely to undermine the public trust. GRECO reiterates its encouragement to the authorities to promptly proceed with the abolition of this special statute of limitation, as is suggested in the recommendation.
54. GRECO concludes that recommendation x remains not implemented.

Recommendation xi.

55. *GRECO recommended to amend current legislation to expressly exclude the operation of Article 30 (2) of the Code of Penal Procedure concerning the postponement or suspension of prosecution of “political acts” and “offences through which international relations of the State may be disturbed” in the context of all domestic and foreign bribery offences.*
56. This recommendation had been assessed as not implemented in the Interim Compliance Report. The authorities of Greece reported that – by virtue of pertinent legislative amendments – the bribery of foreign public officials in international business transactions had been excluded from the scope of application of Article 30, paragraph 2 of the Code of Penal Procedure. Since this information was mentioned in the Evaluation Report and was not new, GRECO had concluded that no action seemed to have been taken to respond to the concerns expressed in the recommendation.
57. The authorities of Greece supplied no information that would be indicative of any developments regarding the implementation of this recommendation.
58. GRECO recalls that, pursuant to Article 30 (2) of the Code of Penal Procedure (CPP), “*political offences*” and “*offences through which the international relations of the State may be disturbed*” may be exempted from prosecution by a decision of the Minister of Justice, following a concurring opinion of the Council of Ministers. Following a recommendation by the OECD, this provision is no longer applicable under the OECD Convention on combating bribery of foreign public officials in international business transactions; nevertheless, it continues to apply to all other bribery offences, both in the domestic and international contexts. GRECO had previously underlined that the aforementioned tailor-made exception conveyed the wrong message as regards the commitment of Greece to tackling corruption with determination. In order to facilitate the effective prosecution of corruption offences, it calls upon the authorities to proceed as soon as possible with removing all corruption-related offences from the scope of application of Article 30 (2) CPP, as is suggested in the recommendation.
59. GRECO concludes that recommendation xi remains not implemented.

Theme II: Transparency of Party Funding

60. It is recalled that GRECO in its Evaluation Report had addressed 16 recommendations to Greece in respect of Theme II. In the Interim Compliance Report, recommendations vii and viii had been assessed as partly implemented and recommendations i-vi and ix-xvi had been assessed as not implemented.

Recommendations i-xvi.

61. *GRECO recommended to extend the financial reference period applicable to election campaigns so that the financial activity during this period is accurately and comprehensively recorded (recommendation i);*

(i) to abolish the possibility to use anonymous coupons for donations to political parties, coalitions and candidates and (ii) to introduce a requirement that all donations above a certain threshold to political parties and coalitions and, if appropriate, to election candidates, be made by bank transfer (recommendation ii);

to take appropriate measures to ensure that loans granted to political parties, coalitions and candidates are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted (recommendation iii);

to ensure that all goods and services provided in kind to political parties, coalitions, members of the Hellenic and European Parliaments and election candidates (other than voluntary work by non-professionals) are properly identified and comprehensively recorded, at their market value, both as regards parties' and coalitions' operational activities and as regards election campaigns (recommendation iv);

to properly reflect in party accounts the value of the services rendered by public officials seconded to assist members of the Hellenic or the European Parliament and to make sure this information is readily available to the public (recommendation v);

to increase the transparency of accounts and activities of entities related, directly or indirectly, to political parties, or otherwise under their control (recommendation vi);

to introduce requirements for the timely publication of private donations to political parties, coalitions and candidates above a certain threshold (recommendation vii);

to increase considerably the transparency of the financing of election campaigns, in particular by (i) making apparent the financial support by political parties and coalitions to candidates in local and regional elections and (ii) by introducing reporting and publication requirements for all election candidates or lists of candidates at all levels (recommendation viii);

to facilitate easy public access to published information on the financing of political parties and election campaigns (recommendation ix);

to ensure independent auditing in respect of political parties obliged to keep books and accounts (recommendation x);

to strengthen considerably the independence of the Control Committee from the political parties and coalitions (recommendation xi);

to ensure a more substantial and on-going monitoring of the financial documents of political parties, coalitions and candidates (recommendation xii);

(i) to ensure the publication of and easy access by the public to the reports of the Control Committee, including the appendices containing the reports of the chartered auditors and (ii) to introduce the possibility for members of the Control Committee to express and publish dissenting or minority opinions on the Committee's report (recommendation xiii);

to ensure that files may be re-opened when new information comes to light and to modify the rules on the retention of financial documentation by the parties, coalitions, candidates, as well as by the Control Committee itself, accordingly (recommendation xiv);

to ensure that political funding at sub-national level is subject to monitoring by an independent and effective control mechanism, ideally under the supervision of the Control Committee (recommendation xv);

(i) to introduce a requirement for the Control Committee and the auditors to report suspected violations of the rules on political financing to the law enforcement authorities and (ii) to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding works effectively in practice (recommendation xvi).

62. It is also recalled that information on action taken in respect of individual pending recommendations was not provided for the Interim Compliance Report. For this reason, GRECO had abstained from analysing the state of play under the outstanding recommendations one by one. It had taken note of the setting up of a legislative committee under the Ministry of Home Affairs, Decentralisation and E-governance with the express mandate to reform the party funding legislation; however, the committee's work was still on-going, and the text of the new draft law on party funding was not available yet. GRECO had welcomed the adoption of Law 3870/2010 on "Election expenses of coalitions and candidates and control thereof in the prefectural and municipal elections", which had entered into force on 9 October 2010, as adding a degree of transparency in the financing of election campaigns at local and regional level, as requested by a part of recommendation vii and the second part of recommendation viii (see paragraph 29 of the Interim Compliance Report for more details on this law). Nevertheless, doubts had persisted on whether the reported measures did contribute to the first objective of recommendation viii, namely to make more apparent the financial support of political parties to coalitions and candidates in elections at local and regional level. For this reason, GRECO had found recommendations vii and viii to have been partly implemented, whereas all other recommendations had been assessed as not implemented.

63. The authorities of Greece now refer to the new "Elections of European Parliament members and other provisions" Act, which was adopted on 11 April 2014 and replaced Law 3023/2002 on "Public funding of political parties – Income, expenditure, promotion, publications and audit of the finances of political parties and election candidates". The latter used to cover regular financing of political parties, including funding for parliamentary and European elections, supervision and sanctions. The new law has established the calendar and procedure for the allocation of public funding to political parties and their coalitions, mainly depending on the results achieved in the

most recent elections, and set relevant expenditure limits, the one for the European Parliament being 135 000 EUR per candidate in the largest electoral district.

64. The authorities further report on the legislative committee's work mentioned in paragraph 63 above, and in particular, the development of a concise code on party financing, which is currently in the final stages of preparation and expected to be adopted by Parliament in July 2014. In addition, on 9 December 2013, on the occasion of the International Anti-Corruption Day, a conference was organised in the Greek Parliament by the Parliamentary Standing Committee on Institutions and Transparency, the General Secretary of Transparency and Human Rights and the Ministry of Public Administration and E-governance. One of its objectives was to present the recommendations on party financing to MPs and to discuss follow-up steps.
65. GRECO takes note of the information provided and considers that there is no need to analyse the situation on the outstanding recommendations one by one. It regrets the very slow progress in the preparation of the draft legislation to which references were made at the stages of the Compliance and Interim Compliance Reports. While noting the development of the new legal act dealing with the public financing of political parties and coalitions in European and general parliamentary elections, GRECO finds this information inconclusive since the reported elements only pertain to certain procedural aspects of allocation of public funding and leave out more fundamental issues addressed by the recommendations. Also, the relationship between this new law and the previously mentioned Law on "Election expenses of coalitions and candidates and control thereof in the prefectural and municipal elections" remains to be ascertained and still raises the questions of convergence, consistency and potential overlaps. Since the text of the new law and of other draft legal provisions were not submitted to GRECO for examination, it is not in a position to assess whether they are indeed likely to fully address the concerns expressed in recommendation viii as well as in other pertinent recommendations under Theme II. In conclusion, GRECO renews its calls upon the authorities to take expeditious and determined steps to address each of the pending recommendations.
66. GRECO concludes that recommendations vii and viii remain partly implemented and that recommendations i-vi and ix-xvi remain not implemented.

III. CONCLUSIONS

67. **In light of the foregoing, GRECO concludes that Greece has made only little progress with the implementation of the recommendations found not to have been implemented or partly implemented in the Third Round Compliance Report.** Out of the twenty-six recommendations pending, only three have been implemented satisfactorily, six have been partly implemented and seventeen have not been implemented.
68. With respect to Theme I – Incriminations, recommendations i, ii and iv have been implemented satisfactorily, recommendations iii, v, vii and viii remain partly implemented and recommendations vi, x and xi remain not implemented. With respect to Theme II – Transparency of Party Funding, recommendations vii and viii remain partly implemented and recommendations i-vi and ix-xvi remain not implemented.
69. GRECO acknowledges the efforts made by the authorities of Greece to address some of the recommendations. As regards Theme I, the adoption of the new Law on the Reform and Rationalisation of Anti-Corruption Criminal Law can be qualified as a major step forward in that it has created an entirely new and more robust legal framework, which brings together – for the first time – all relevant provisions on bribery and trading in influence within the Penal Code. Some old approaches – which had been criticised by GRECO – have been abandoned, notably the limitation of the offence of bribery of public officials to acts which are formally part of their duties. More consistent terminology has been introduced, along the lines of the Criminal Law Convention on Corruption and its Additional Protocol. The remaining challenges concern the abolition of the special statute of limitation for the prosecution of current and former members of government, the carrying-out of a proper assessment of the effectiveness of the provisions on bribery and trading in influence and the further refinement of certain elements of bribery and trading in influence offences so as to ensure their full conformity with the relevant standards.
70. With respect to Theme II, GRECO notes, in addition to the information about new legislation affecting the procedures for public funding in national and European Parliament elections, the development of the draft legislative provisions which are meant to increase transparency in the financing of political campaigns and political parties in local, regional and European elections and to be reflected in a concise code on party funding. Yet, given the little information on the content of these new legislative drafts provided by Greece, the effect remains unclear; they await formal adoption by Parliament and, consequently, a determination by GRECO on whether or not they meet the requirements of Recommendation Rec (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns cannot yet be carried out. Therefore, decisive progress in this area remains to be achieved and the authorities of Greece are urged to implement swiftly the required and long-awaited legislative reforms.
71. In view of the above, and despite some positive signals concerning the implementation of recommendations under Theme I, GRECO concludes that the current level of compliance with the recommendations clearly remains “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
72. Pursuant to paragraph 2(i) of Rule 32 of the Rules of Procedure, GRECO requests the Head of Delegation of Greece to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations iii, v-viii and x-xi regarding Theme I and recommendations i-xvi regarding Theme II) by 31 March 2015.

73. 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 Greece, drawing his attention to the non-compliance with the relevant recommendations, and the need to take determined action with a view to achieving further tangible progress as soon as possible.
74. Finally, GRECO invites the authorities of Greece to authorise, as soon as possible, publication of the report, to translate the report into the national language and to make this translation public.