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Third Evaluation Round

Compliance Report on Austria

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

"Transparency of Party Funding"

Adopted by GRECO
at its 63rd Plenary Meeting
(Strasbourg, 24-28 March 2014)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Austria to implement the 21 recommendations issued in the Third Round Evaluation Report on Austria (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 53rd Plenary Meeting (9 December 2011) and made public on 13 January 2012, following authorisation by Austria (Greco Eval III Rep (2011) 3E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, Austria authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 1 July 2013 and served as a basis for the Compliance Report.
4. GRECO selected Estonia and Portugal to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Urvo KLOPETS, on behalf of Estonia, and M. Daniel PIRES on behalf of Portugal. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 10 recommendations to Austria in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The Austrian authorities, in a preliminary general comment, report that the Corruption Criminal Law Amendment Act 2012 (Federal Law Gazette No. 61/2012) came into force on January 1, 2013. It has changed considerable parts of the pertinent provisions contained in the Austrian Penal Code (PC) ([link to the version in force](#)), and its explanatory report¹ refers repeatedly to the GRECO evaluation of 2011. Moreover, in the perspective of the 40th anniversary of the PC on 1 January 2015, the Federal Minister of Justice has established a group of experts composed of: several criminal law professors, representatives of the Supreme Court and of the General

¹ http://www.parlament.gv.at/PAKT/VHG/XXIV/A/A_01950/fname_253363.pdf (page 4 et seq.)

Prosecutor's Office, members of the Ministry of Justice and of the Ministry of the Interior, as well as members of the Bar Association. The task given to the group is to review various aspects of the code and it is anticipated that the work will have been completed sometime during the first half of 2014.

8. GRECO observes also that the Ministry of Justice has produced and published on-line a document explaining the impact of the changes made in 2012².

Recommendation i.

9. *GRECO recommended to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) as well as the signature and ratification of its Additional Protocol (ETS 191).*
10. The authorities of Austria report that the Parliament approved the ratification of these two instruments in July 2013. Subsequently, the ratification of ETS 173, without reservation, took place on 25 September 2013; the Convention shall enter into force in respect of Austria on 1 January 2014. For technical reasons (Austria had not yet signed the Protocol ETS191), the signature and ratification took place at a later stage, on 13 December 2013 and the Protocol will enter into force in respect of Austria on 1 April 2014.
11. GRECO is pleased to see that measures have been taken to implement this recommendation, and that Austria has not formulated any reservation when ratifying the Convention.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended to keep under review the application of Sections 305 and 307a of the Penal Code (concerning active and passive bribery not involving a breach of duty) concerning the requirement that the advantage concerned has to be in contravention of general service regulations or the employing institution's internal rules, in order to ascertain possible implications for legal security, including in matters of investigation and prosecution of corruption offences and, if need be, to take appropriate measures.*
14. The authorities of Austria report that with the amendments mentioned in paragraph 7 (which became effective on 1 January 2013), the requirement that the advantage concerned has to be in contravention of general service regulations or the employing institution's internal rules was deleted, among other changes. Sections 305 and 307a of the Penal Code (PC) now read as follows:

Section 305 PC - Acceptance of a benefit by a public official

(1) A public official ~~according to section 74 par 1 (4a subpar b to d)~~ or an arbitrator who accepts or allows him/herself to be promised an undue advantage (para.4) ~~contrary to public service or internal organisational rules~~ for himself or a third person for performing or refraining from performing an official act in accordance with his duties shall be punished by imprisonment up to two years.

²http://www.justiz.gv.at/web2013/file/2c948485398b9b2a013c6764c78f2bfb.de.0/korrstrag_fibel_webversion.pdf

~~(2) Likewise such a public official or arbitrator shall be punished who demands an advantage for himself or a third person for performing or refraining from performing an official act in accordance with his duties, unless that was explicitly permitted according to a public service law or organisation law provision or by a public service approval.~~

~~(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 euros shall be punished by imprisonment up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 euros shall be punished by imprisonment from six months up to five years.~~

~~(4) The following advantages are not considered undue:~~

~~1. advantages, the acceptance of which is explicitly permitted by law, or which are granted in the framework of events which are being attended because of an official or objective interest,~~

~~2. advantages for charitable purposes (section 35 BAO) on the usage of which the arbitrator or official does not exercise any influence, and~~

~~3. if there are no laws in the sense of item 1 advantages of minor value given in accordance with local customs unless the act is committed on a professional scale.~~

Section 307a PC Granting of a benefit to a public official

~~(1) Whoever offers, promises or grants an undue advantage (Section 305 para.4) to a public official according to section 74 par 1 (4a) subpar b to d or an arbitrator contrary to public service or internal organisational rules, for him/her or for a third person for performing or refraining from performing an official act in accordance with his/her duties shall be punished by imprisonment of up to two years.~~

~~(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 euros shall be punished by imprisonment from one up to ten years.~~

15. GRECO takes note of the above information and it is pleased to see that the problematic provisions contained in Section 305 para 1 and 2 PC, and Section 307a para.1 PC have been abolished and that these changes became effective as of 1 January 2013. They have been replaced with a set of more specific and restrictive criteria (contained in Section 305 para.4).

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

Recommendation iii.

17. *GRECO recommended to examine whether additional initiatives need to be taken to ensure that all cases of bribery and trading in influence are adequately dealt with, even in case of non-material undue advantages.*

18. The authorities of Austria report that the expert group working on possible amendments to the Penal Code, which is mentioned at paragraph 7, is looking i.a. at the levels of punishment available. Although the result of its work will not be available before the first half of 2014, during its most recent meeting, held on June 21, 2013, the group discussed the question of penalties available for cases of corruption where the advantage would be of an intangible nature. There was a broad consensus that in the light of the practitioners experience there are only few cases of advantages which in the end may not be expressed in monetary value (which is the case for most services, including sexual favours or support for a candidacy or a promotion). One example maybe the obtaining of a non-pecuniary award for a public official. For such rare cases of real intangible advantages – which seemingly do not play a role in practice – only the available basic levels of punishment are applicable: imprisonment up to three years in cases of corruption with a

view to the violation of the public official's duties; imprisonment up to two years in cases of corruption with a view to the public official acting or refraining from acting in conformity with his/her duties as well as in cases of trading in influence. However, these have been considered sufficient by the experts group.

19. GRECO welcomes the fact that the expert group has started to work on the issues addressed in this recommendation. It would appear that the participants of the group consider that a) intangible advantages are covered by the existing provisions and that b) because they cannot be expressed in monetary value and the Austrian incriminations foresee a scale of sanctions determined by reference to the value of the undue benefit, it is the lowest penalty that would systematically be applicable. Pending the final adoption of the report, and possible subsequent policy decisions as to whether or not guidance is needed for practitioners, or whether or not the system of sanctions needs to be reviewed to ensure adequate penalties for acts of bribery and trading in influence involving significant intangible advantages, GRECO cannot consider that this recommendation has been fully implemented as yet. GRECO takes this opportunity to underline that the criminal justice response to corruption also needs to take into account the damage for society. One cannot exclude that a corruption-related offence can have significant negative consequences or risks even where the undue advantage is of a non-material nature or its value is low. This can be a weakness in a legal system where sanctions for corruption-related offences are only defined by reference to the size of the undue advantage. This kind of considerations may need to be borne in mind during the consultations which are on-going in Austria on the implementation of this recommendation and more generally, on the PC's system of sanctions.
20. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

21. *GRECO recommended to substantially broaden the incrimination of active and passive bribery of members of domestic assemblies resulting from the definition of public officials in section 74 paragraph 1 (4a) of the Penal Code, and thus bringing this incrimination in line with article 4 of the Criminal Law Convention on Corruption (ETS 173).*
22. The authorities of Austria report that the reform of 2012 has amended sections 305 and 307a PC (see text under the above recommendation iii) and section 74 paragraph 1 no. 4a:

Section 74 paragraph 1 (4a) PC – Definition of public official:

(4a) public official: anyone who

~~a) is member of a domestic constitutional assembly, insofar as s/he votes in an election or ballot or otherwise acts or refrains from acting in the exercise of the duties determined in the internal rules of procedure,~~

b) as an organ or employee discharges tasks of legislation, administration or justice for the federation, for a province (Bundesland), for an association of municipal corporations, for a commune, for a social insurance institution or its association, for another state or for an international organisation, ~~with the exception of public officials mentioned under a) when executing their duties,~~

c) is otherwise authorised to perform official duties in fulfilment of the law for a body mentioned under b)
(...)

23. With the deletion of the sub-paragraph a), assembly members are now captured by the broad coverage of the subsequent sub-paragraph b) of the above provision. As a result, the coverage of assembly members is no longer restricted to particular situations in the exercise of their functions (e.g. voting) and more generally, there is no longer any difference between assembly members and other public officials. Moreover, due to the amendments of sections 305 and 307a – which in their previous versions excluded domestic assembly members from their scope – all bribery offences are applicable to parliamentarians (the same goes for trading in influence which has always referred to “public officials” as a target of the influence).
24. GRECO is pleased to see the above changes, which became effective as of 1 January 2013, and it concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

25. *GRECO recommended to abolish the requirement for a prior complaint before prosecutions are brought for bribery in the private sector (Section 168e of the Penal Code).*
26. The authorities of Austria report that with the reform of 2012, the previous Sections 168c and 168d PC, criminalising respectively passive and active bribery in the private sector have been merged and transferred to a new section 309 PC (par. 1 now dealing with the passive side, par. 2 now dealing with the active side). Section 168e PC, which previously contained the requirement for a prior complaint before prosecutions under one of these provisions could be brought, is thus no more applicable in relation with private sector bribery offences. In fact, Section 168e PC has been completely deleted by the amendments of 2012 (without any alternative language or provision). The new Section 309 PC reads as follows:

Section 309 PC

(1) A servant or agent of a company, who, in the course of business activities, demands, accepts or allows him/herself to be promised an advantage for him/herself or for a third person for performing or refraining from performing a legal act contrary to his/her duties, shall be punished by imprisonment up to two years.

(2) Likewise, anyone shall be punished, who offers, promises or gives an advantage in the course of business activities to servants or agents of a company for performing or refraining from performing a legal act contrary to his/her duties.

(3) Whoever commits the offence with regard to a value of the advantages exceeding 3.000 euros shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 euros shall be punished by imprisonment from six months up to five years.

27. GRECO notes with satisfaction the clear-cut amendments reported above, which became effective on 1 January 2013, and it concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

28. *GRECO recommended (i) to review the need to keep provisions on bribery in the Unfair Competition Act and (ii) to take such measures as may be necessary to assure that the prosecution of acts of bribery leads in practice to a penal response which reflects the needs of an effective anti-corruption policy.*

29. The authorities of Austria report that, in respect of the first part of the recommendation, before the amendments introduced in 2012 (see paragraph 7), there was a tiny room for the application of the bribery provision in the Unfair Competition Act (UCA), at least theoretically. Section 168d PC which criminalised the active form of the private sector bribery offence had a *de minimis* threshold, excluding „minor advantages“ (i.e. advantages worth less than 100 euros) from its scope, which is not present in the bribery provisions of the UCA. In all other cases of private sector bribery, according to the general rules of criminal law, Sections 168c and 168d would have taken precedence over the Unfair Competition Act. Now, with the suppression of sections 168c and 168d PC and their merger into a new Section 309 PC (see paragraph 26 above), this previous „gap“ in the Penal Code does no longer exist since Section 309 PC does not refer to a minimum threshold as regards the undue advantage. Therefore the bribery provision in the UCA have now become of marginal applicability, something which has been explicitly stated in the explanatory memorandum of the Corruption Criminal Law Amendment Act 2012.
30. As for the second part of the recommendation, the Austrian authorities provide the following explanations: a) in what concerns the relationship between the offence of Abuse of power of Section 302 PC, and that of bribery of Section 304 PC (or 307 PC), the Supreme Court has considered in a recent decision that Section 304 PC (or 307 PC) is no longer absorbed by Section 302 PC. Hence, if a public official has him/herself committed an act of bribery and this is connected with an abuse of his/her official power, he/she now has to face both offences. As for the relationship between Section 153 and the bribery offences of Sections 304 or 307, the Austrian authorities point out, that also in this case a public official may be held responsible for both offences, if the requirements of both provisions are fulfilled. One typical case of breach of trust constituting corruption is when an employee takes a secret commission without disclosing this to his employer. The financial damage mentioned in the analysis then simply is considered to be tantamount to the commission. In these cases there are also no obstacles for confiscating the commission – if it is not claimed by the employer.
31. GRECO takes note of the above. It would appear that adequate measures have been taken to implement the first part of the recommendation through a better differentiation between the provisions contained in the Unfair Competition Act and those of the Penal Code. As for the second part of the recommendation, GRECO is not convinced that the situation has improved in a way that would address the concerns expressed in the Evaluation Report³; the example given by

³ As indicated in paragraph 92: « The Austrian authorities also stressed that the main provisions which have been used in practice to date for the prosecution of acts of bribery, both in the public and in the private sector are in fact those of the Penal Code on Abuse of power – Section 302 PC – and on breach of trust – Sections 153 and 153a PC. This is not uncommon among GRECO member states. However, in Austria it seems to be particularly salient and the available statistics on convictions seem to confirm this (see paragraph 83). As regards Section 302 PC, it was explained to the GET that all public sector bribery offences automatically constitute an “abuse of power” and they are thus absorbed by this offence, which entailed traditionally a higher level of punishment. As for the offence of “breach of trust”, the GET noted that the two Sections concerned (i.e. Section 153 and Section 153a PC) are not fully consistent and Section 153a (which applies specifically to cases involving persons with executive functions) is drafted in a way which resembles the offence of bribery as it refers to the acceptance of “more than a merely minor advantage”. Leaving aside the fact that there is some room for interpretation of this expression, overall the level of punishment is much lower than for bribery offences, bearing also in mind that aggravating circumstances pursuant to Section 153 PC may not be easily applicable in a bribery case since they are defined by reference to the financial dimension of the damage. This could lead to the consequence that bribery offences in the private sector are not adequately captured and sanctioned in practice. Finally, it was confirmed that the offences of abuse of power and of breach of trust do usually not lead to the initiation of a financial investigation which would allow to seize and confiscate the proceeds of crime. The Austrian authorities admitted however, that this was still a general issue for all corruption-related offences (see also the joint first and second round evaluation report). In light of the above, the GET recommends (i) to review the need to keep provisions on bribery in the Unfair Competition Act and (ii) to take such measures as may be necessary to assure that the prosecution of acts of bribery leads in practice to a penal response which reflects the needs of an effective anti-corruption policy.”

Austria is of marginal relevance in practice and neither legal nor practical measures have been adopted to date to improve the situation (amendments of the rules on breach of trust; encouraging prosecutorial bodies to apply the provisions on bribery as opposed to those on breach of trust).

32. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

33. *GRECO recommended to ensure, for instance by amending Section 308 of the Penal Code on illicit intervention, that the various elements of the offence of trading in influence established under article 12 of ETS 173 are implemented in Austrian criminal law.*
34. The authorities of Austria report that with the amendments of 2012, Section 308 PC has been amended to bring it in line with article 12 of the Convention (the explanatory memorandum of the amending legislation also makes explicit reference to the present recommendation in the explanatory memorandum). The definition of the offence was amended on four points, which reflect the underlying considerations which had led GRECO to issue this recommendation:
- a) the offence no longer requires that the influence has actually been exerted. Although the offender could have been punished for the attempt of illicit intervention in the “old” version, it has now been made clear that – as is the case with all other corruption offences – the offence on the passive side is already completed with demanding, accepting or having him/herself promised the advantage, whereas on the active side offering, promising or giving an advantage is sufficient for the completion of the offence – no matter whether the influence is actually exerted afterwards;
 - b) the offence no longer requires that the intervention must be aiming at an act belonging to the public official's “official duties”. Reflecting the logic of article 12 of the Convention, it suffices that the act aims at influencing the official’s decision-making;
 - c) the offence is no longer restricted to cases where the influence on the public official is intended to lead to a breach of the official’s duties. Instead, in accordance with the text of article 12 of the Convention, the offence now requires that the official’s decision-making is intended to be influenced “improperly”. Whereas the text of the Convention itself does not contain a definition of “improper influence” (to be distinguished from proper influence), the explanatory report to the Convention states that “‘Improper’ influence must contain a corrupt intent by the influence peddler.’ While not further defining what may constitute a corrupt intent, the explanatory memorandum to the Convention confirms that ‘acknowledged forms of lobbying do not fall under this notion.’ Accordingly, the definition of “improper influence” in Section 308 paragraph 4 PC distinguishes two cases: the influence is either intended to aim at a violation of the official’s duties, in which case it is not necessary that there is any advantage for the public official (neither for him/her nor for a third person); or the influence is not intended to aim at a violation of the official’s duties, in which case the influence must be connected with an undue advantage for the public official (or for a third person). Other forms of improper influence, which are not related to corruption, such as using threat or violence, are covered by other offences in the Penal Code;
 - d) finally, the active form of trading in influence – which was not explicitly mentioned in the definition of the offence but covered due to Supreme Court jurisprudence (and thus not a particular source of concern for GRECO) – is now also mentioned explicitly in Section 308 PC.

35. Section 308 PC now reads as follows:

Section 308. Illicit Intervention

(1) Who demands, accepts or allows him/herself to be promised an advantage for himself/herself or for a third person for exercising improper influence on the decision-making process of a public official or an arbitrator shall be punished by imprisonment up to two years.

(2) Likewise, anyone shall be punished, who offers, promises or gives an advantage to someone to have him/her exercise improper influence on the decision-making process of a public official or an arbitrator.

(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 euros shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 euros shall be punished by imprisonment from six months up to five years.

(4) Influencing the decision-making process of a public official or an arbitrator is considered improper if it aims at performing or refraining from performing a legal act contrary to his/her duties or is connected with offering, promising or giving an undue advantage (section 305 para. 4) to the public official or a third person.

(5) The perpetrator is not to be punished according to the above-mentioned provisions if the act is punishable with a more severe punishment according to other legal provisions.

~~A person who knowingly, either directly or indirectly, exercises influence on a public official or an arbitrator in order to make that person perform or refrain from performing an act belonging to his/her official duties, thus violating these duties, and who demands, accepts, or allows him/herself to be promised an advantage for him/herself or a third person is to be punished by imprisonment up to two years. Whoever commits the offence in regard of the value of the advantage exceeding 3.000 Euro shall be punished with up to three years imprisonment, whereas who conducts the acts with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six month up to five years.~~

36. GRECO takes note of the various improvements made in relation to the incrimination of trading in influence, which appears to be in line with the concerns expressed in the Evaluation Report, and which became effective as of 1 January 2013.

37. GRECO therefore concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

38. *GRECO recommended to consider increasing the maximum criminal sanctions in respect of active and passive bribery in the private sector of Section 168d of the Penal Code.*

39. The authorities of Austria report that with the amendments passed in 2012, the maximum penalty for private sector bribery offences was increased from three years imprisonment (for the passive form of the offence) and two years imprisonment (for the active form of the offence) to a sanction in the range of 6 months to five years imprisonment in both cases (where the value of the undue advantage exceeds 50.000 euros).

40. GRECO takes note of the above and the fact that despite the amendments which became effective on 1 January 2013, private sector bribery remains subject to lesser penalties than public sector bribery – for which the maximum penalty is 10 years imprisonment in the same circumstances i.e. where the value of the undue advantage exceeds 50.000 euros. GRECO recalls that in the view of the drafters of the Criminal Law Convention on Corruption, private sector bribery and public sector bribery are equally important from the perspective of effective

anti-corruption policies and the threat corruption poses to society. Therefore, it could be worth re-considering this matter in the context of the current consultations led in connection with the PC's 40th anniversary (see paragraph 7), which include a debate on the Penal Code's system of sanction. This being said, Austria has responded positively to this recommendation; it has made the level of sanctions for private sector bribery more effective, proportionate and dissuasive and it has managed to bring it closer to that of most comparable GRECO member States.

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

Recommendation ix.

42. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of effective regret (Section 307c of the Penal Code).*
43. The authorities of Austria report that Section 307c PC was deleted with the amendments of 2012, which became effective on 1 January 2013.
44. GRECO takes note of this further clear-cut amendment. It concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

45. *GRECO recommended to ensure that the Penal Code provides for rules on jurisdiction which are in line with article 17 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173) without the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad.*
46. The authorities of Austria report that with the amendments of 2012, Section 64 of the Austrian Penal Code – which enumerates the cases where Austria has jurisdiction over offences committed abroad without the requirement of dual criminality – was amended to fulfil this recommendation. Thus, Article 17 paragraph 1 b of the Convention requires countries to establish their jurisdiction for cases where the offender is one of its nationals, one of its public officials, or a member of one of its domestic public assemblies; accordingly:
- cases where the offender is an Austrian national are covered by the new section 64 paragraph 1 no.2a lit a PC;
 - cases where the offender is an Austrian public official are covered by Section 64 paragraph 1 no. 2 PC; since the members of public assemblies are included in the definition of public officials, this provision also applies in case the offender is a member of an Austrian public assembly.
47. Article 17 paragraph 1 c of the Convention requires jurisdiction for cases where the offence involves one of its public officials or members of its domestic public assemblies or any person referred to in Articles 9 to 11 who is at the same time one of its nationals; accordingly:
- cases where the offence involves one of Austria's public officials are now covered partly by Section 64 paragraph 1 no. 2a lit. b PC and partly by Section 64 paragraph 1 no. 2 PC. Since the members of public assemblies as well as persons referred to in Articles 9 to 11 of the

Convention who are at the same time Austrian nationals are included in the definition of public officials, jurisdiction extends to cases involving those categories of persons.

48. The relevant parts of Section 64 PC now read as follows:

Section 64.

Criminal offences abroad being punished irrespective of the laws which are valid at the place where they are committed

(1) The following criminal acts committed abroad are subject to prosecution according to Austrian criminal law irrespective of the criminal law of the foreign state where the criminal act was committed:

1. ...

2. criminal acts committed against an Austrian public officer (section 74 para. 1 item 4), an Austrian public official (section 74 para. 1 item 4a) or an Austrian arbitrator (section 74 para. 1 item 4c) while he/she fulfils his/her tasks or because he/she fulfils his/her tasks and criminal acts committed by someone as Austrian public officer, public official or arbitrator;

2a. apart from item 2 criminal violations of the official duty, corruption and other related criminal acts (sections 302 to 309) if

a) the perpetrator was a national of Austria at the time the act was committed or

b) the act was committed for the benefit of an Austrian public official or arbitrator;

49. GRECO welcomes that with effect from 1 January 2013, Austria has broadened its jurisdiction for offences related to bribery and trading in influence in a way which is consistent with the purpose of the present recommendation.

50. GRECO concludes that recommendation x has been implemented satisfactorily.

Theme II: Transparency of Party Funding

51. It is recalled that GRECO in its evaluation report issued 11 recommendations in respect of Theme II. Compliance with these recommendations is dealt with below.

52. As a general introduction, the Austrian authorities point out that the legal framework was completely revised with the adoption in 2012 of a new Political Parties Act 2012⁴ (hereinafter the PPA) and the Support of Political Parties Act 2012⁵ (hereinafter, the SPPA). Both laws have been fully effective since 1 January 2013.

53. The federal rules have country-wide applicability, in accordance with Section 2 combined with Section 1 PPA. The provisions apply uniformly to the federation and the provinces (*Länder*), but the provinces can also enact stricter provisions with regard to the rules on donations, sponsorships and advertisements, and some of them have already done so. The provinces

⁴ [link to English version](#); original language version: *Federal Act on the Financing of Political Parties (Political Parties Act 2012) / Bundesgesetz über die Finanzierung politischer Parteien (Parteiengesetz 2012 – PartG)*, Federal Law Gazette I No. 56/2012

⁵ [link to English version](#); original language version: *Federal Act on Federal Support of Political Parties (Support of Political Parties Act 2012) / Bundesgesetz über Förderungen des Bundes für politische Parteien (Parteien-Förderungsgesetz 2012 – PartFörG)*, Federal Law Gazette I No. 57/2012

(including Carinthia, as from 13 August 2013) have adapted their legislation in the light of the PPA 2012⁶. In some of those laws, use was made of the possibility to provide for stricter rules on transparency as described above. Apart from political parties, campaigning parties participating in elections for a general representative body (at federal, provincial or municipal level) or for the European Parliament, unless they are anyway subject to the rules due to their status as a political party, must also comply with the new obligations and the provisions on donations, sponsorships and advertisements are subject to the newly devised control mechanism and sanctioning regime. In addition, donations to and advertisements and sponsorship for individual candidates are to be stated in the statement of accounts of the campaigning party.

54. The Presidential election is regulated by the Federal Presidential Elections Act 1971 ([Bundespräsidentenwahlgesetz 1971](#)), which was also amended in 2012 and aligned on the PPA.
55. The Austrian authorities point out that with those statutory provisions, far-reaching rules have been introduced to ensure transparency of political financing, to exclude certain donations, to address the commercial activities of the political parties and the financial situation of organisations affiliated with them, to address the situation of branches of the political parties which have their own legal personality, to impose limits on campaign expenditure, to address the situation of so-called “campaigning parties” and of members of parliament, and to provide for an effective sanctioning mechanism.

Recommendation i.

56. *GRECO recommended to adopt the necessary measures, including for instance the designation of a coordination body, to ensure that future legislation regarding political funding applies in a uniform manner to the whole of Austria and takes into account the principles set forth in Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.*

⁶ The list is as follows:

- Burgenland Support of Political Parties Act 2012 / Burgenländisches Parteien-Förderungsgesetz 2012, Provincial Law Gazette No. 47/2012 (http://www.ris.bka.gv.at/Dokumente/Lgbl/LGBL_BU_20121219_78/LGBL_BU_20121219_78.pdf)
- Lower Austrian Political Parties Financing Act / Niederösterreichisches Parteienfinanzierungsgesetz, Provincial Law Gazette No. 101/2012 (http://www.ris.bka.gv.at/Dokumente/LrNo/LRNI_2012101/LRNI_2012101.pdf)
- Salzburg Support of Political Parties Act / Salzburger Parteienförderungsgesetz, Provincial Law Gazette No. 2/1985 as amended by Provincial Law Gazette No. 98/2012 (<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=10000389>)
- Styrian Support of Political Parties Constitutional Act / Steiermärkisches Parteienförderungs-Verfassungsgesetz, Provincial Law Gazette No. 6/2013 (http://www.ris.bka.gv.at/Dokumente/Lgbl/LGBL_ST_20130129_6/LGBL_ST_20130129_6.html)
- Tyrolean Political Parties Financing and Support of Parliamentary Groups Act 2012 / Tiroler Parteienfinanzierungs- und Klubförderungsgesetz 2012, Provincial Law Gazette No. 151/2012 (http://www.ris.bka.gv.at/Dokumente/Lgbl/LGBL_TI_20121221_151/LGBL_TI_20121221_151.pdf)
- Upper Austrian Political Parties Financing Act / Oberösterreichisches Parteienfinanzierungsgesetz, Provincial Law Gazette No. 25/1992 as amended by Provincial Law Gazette No. 88/2012 (<http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrOO&Gesetzesnummer=10000340>)
- Vienna Support of Political Parties Act 2013 / Wiener Parteienförderungsgesetz 2013, Provincial Law Gazette No. 86/2012 (<http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/2012/pdf/lg2012086.pdf>)
- Vorarlberg Support of Political Parties Act / Vorarlberger Parteienförderungsgesetz, Provincial Law Gazette No. 52/2012 as amended by Provincial Law Gazette No. 2/2013 (<http://voris.vorarlberg.at/VorisDownload/0/0207.pdf>)
- Carinthia Support of Political Parties Act 2013 / Kärntner Parteienförderungsgesetz, Provincial Law Gazette n°57/2013: <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000130>

57. The authorities of Austria reiterate the fact that the provisions of the new Political Parties Act (PPA) are applicable country-wide. To make these uniformly applicable to all representative bodies, the term “political party” was embodied in a provision of constitutional value (Section 1 paragraph 2 of the PPA) and all parties which participate “in elections for general representative bodies and the European Parliament” are covered by the provisions of the PPA.
58. At the same time it was stipulated, also in a constitutional provision, that the federal “requirements” regarding the rules on donations, sponsorships and advertisements also apply to the provinces, but the provinces can also enact stricter provisions in provincial legislation (Section 6 paragraph 10 and Section 7 paragraph 4). The provisions apply not only to “political parties” but also to so-called “campaigning parties” (i.e. parties which have no on-going existence and political activity) and to members of parliament and candidates. All the provinces (including Carinthia, which did so more recently) have amended their existing legislation on party financing or have enacted a new one on the basis of the amended PPA. Some of these made use of the possibility to derogate from the Federal law by providing for stricter rules.
59. GRECO welcomes that the revised version of the PPA has country-wide applicability. The main underlying concern of this recommendation was addressed; moreover, it would appear that the Presidential Election Act has been aligned to a large extent on the PPA. The consistency of rules may deserve further consideration, in particular the practical consequences of diverging thresholds for the identification of donors and for the immediate disclosure of large donations in the PPA and provincial legislation. But overall, it is a positive development that even without a formal coordination mechanism, Austria now has a legal framework on political financing which applies to the whole country and which is clearly aiming at reflecting the basic principles of Recommendation Rec (2003)4.
60. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

61. *GRECO recommended i) to introduce adequate regulations on the financing of the political activities of elected representatives and ii) to invite the Länder to do the same.*
62. The authorities of Austria report that all rules in respect of accountability and the disclosure of donations, sponsorships and advertisements also apply to all members of parliament, as well as to candidates who have stood for elections on a list of candidates submitted by a political party.
63. GRECO takes note of the above. As for the first part of the recommendation, it understands from Section 5 paragraph 7 PPA that for the purposes of their submission of annual financial statements to the Austrian Court of Audit (ACA), political parties are to include information to be supplied to them in electoral years by members of parliament and by candidates for elections. The information concerns income generated by donations (which is to be included on the general list of donations to be annexed by a political party to the ACA), as well as sponsorships and advertisements provided by donors/sponsors; this information is to be included in a separate annex. As for the second part of the recommendation, since these principles prevail for the whole of Austria especially in respect of members of regional parliaments, it would appear that the main underlying concern pertaining to this recommendation was taken into account.
64. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

65. *GRECO recommended i) to ensure that the future legislation on the financing of political parties and election campaigns provides for adequate accounting standards and ii) to invite the Länder to do the same.*
66. The authorities of Austria refer to the content of various provisions of the PPA which have no direct connection with the objectives of the present recommendation but are relevant in respect of recommendation v.
67. GRECO recalls that the objective of this recommendation is to ensure that adequate general accounting standards are in place for political parties – which would also address how to conduct book-keeping in a proper manner on an on-going basis – also bearing in mind the important economic business activity deployed by the larger historical parties of Austria. As indicated in the Evaluation Report (paragraph 61), “*political parties and campaign participants are not subject to particular book- and record keeping requirements. Political party representatives met on-site described this as a grey area since the current standards used in practice are a combination of general principles, auditing standards etc. which are applied in different manners. In contrast, Austrian associations are subject to clear legal requirements and the GET was told that these could be adapted to suit the specificities of political parties.*” It would appear that the PPA as amended in 2012 makes no reference to the duty for political parties to keep proper books and accounts. In their latest comments, the Austrian authorities pointed out that despite the absence of specific provisions, political parties are not exempted from the application of civil, penal or tax law and, for instance, insofar as a party also acts as an undertaking, the Commercial Code and its accounting requirements are applicable. In the absence of further information and any new development since the evaluation, on the way accounts are to be kept by the political actors themselves, GRECO cannot conclude that this recommendation has been addressed.
68. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

69. *GRECO recommended to ensure that the future legislation on the financing of political parties and election campaigns i) requires the consolidation of party accounts and annual financial statements so as to include all territorial sections of the parties and other entities under their control; ii) addresses the question of support from third parties and iii) applies to all political parties and election campaign participants, whether or not they receive public financial support.*
70. The authorities of Austria provide the following information, as regards the first part of the recommendation. Accountability is required from a political party in its entirety: section 5 PPA requires the consolidation of annual financial statements subjected to audit and public supervision so as to include: a) the income and expenditure of all branches (territorial branches or branches formed under different criteria) irrespective of whether or not those branches have their own legal personality. To ensure transparency for the public interested, the statement of accounts comprises two parts. The first part is to state the various categories of income/revenue and expenses of the federal organisation, whereas the second part is to present the territorial branches of the party, i.e. the corresponding information on the provincial, district and municipal organisations. This second part is to be subdivided into two parts as well: The first part is to present the “finances” of the provincial organisation, and the second part that of the district and municipal organisations; for the latter, the PPA requires only the inclusion of the aggregated

amounts of income and expenditure: this simplified reporting mechanism for the lowest territorial entities is due to the rather limited commercial activity of municipal organisations.

71. The statement of accounts, including all annexes (list of donations pursuant to Section 6, of support in the form of sponsorships and advertisements pursuant to Section 7 and of undertakings pursuant to Section 5 para 6), is to be submitted to the Austrian Court of Audit (ACA). The statement of accounts is to be submitted by the federal organisation; for that purpose, all organisational subdivisions of the party, as well as its affiliated organisations and branches, are to submit the corresponding “complete” and “correct” details (for the lists of donations, sponsorships and advertisements also see § 12 para 4) to the federal organisation in due time.
72. As for the second part of the recommendation, the Austrian authorities provided no information but commented at a later stage that the necessary inclusion in the financial statements of such items as payments by affiliated organisations, donations, living subsidies, benefits in kind, other revenue and income (Section 5 paragraph 4 PPA) addresses all forms of third party contributions provided there is evidence of a legal link between the beneficiary and the third party. As for the third part of the recommendation, the PPA – as indicated earlier – applies to all political parties, campaigning parties, affiliated organisations and branches. The provision stipulates that the type and amount of the income and expenses of all political parties and campaigning parties must be disclosed annually.
73. GRECO takes note of the above. As regards the first element of the recommendation, GRECO is pleased that the PPA tries to follow a comprehensive approach. However, in the light of its Sections 6 and 7, it has reservations regarding the following: a) the financial situation of district and municipal party structures are only presented in a simplified manner: this does not give a sufficiently detailed picture, especially as regards the potentially important financial activity deployed in the large cities, and it limits the usefulness of financial disclosure in relation to municipal elections; b) territorial sections, organisations and related entities which all have a distinct legal personality are in fact taken into account in the financial statements only insofar as their own income from donations, sponsorships and advertisement is concerned; moreover, it would appear that certain party-related organisations (those pursuing a purpose of general interest such as charities, sports) are apparently left out of the scope of all disclosure duties. Overall, GRECO considers that the new rules do not ensure sufficient consolidation of accounts and financial statements, as required by the first part of the recommendation.
74. As regards the second element of the recommendation, the Austrian authorities indicate that support from distinct entities or persons without a legal link to the beneficiary are not addressed in the new legislation, although this is precisely what the concept of third party should be about. GRECO can only conclude for the time being that third party support has not been addressed in the PPA. As regards the third element of the recommendation, GRECO is pleased that the new legislation imposes the same obligations for all, no matter whether they receive/are entitled to public support or not. In conclusion, GRECO expects additional efforts in respect of the first and second elements of this recommendation.
75. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

76. *GRECO recommended i) to regulate in an adequate manner the various forms of support used in practice for the financing of political parties and election campaigns; ii) to introduce in that context*

a ban on donations from donors whose identity is not known to the political party or election campaign participant; iii) to provide for an appropriate, standardised format for the accounts and financial statements that would require the recording of all forms of income and expenditure, assets and liabilities, and the effective itemisation of campaign expenditure and in this context; iv) to issue accompanying guidance documents that would in particular deal with the valuation of in-kind support, including sponsorship and v) to invite the Länder to do the same.

77. The authorities of Austria provide the following information. Extensive rules on donations are provided for in Section 6 PPA: on the one hand, clear transparency provisions on how donations are to be stated and, on the other hand, clear prohibitions of certain donations. These prohibitions can be divided into two groups: a) certain donations are grouped according to their type. For example, there is no general prohibition of anonymous donations, but a limit of 1,000 euros is specified to make small donations possible; b) donations by certain natural or legal persons are generally prohibited. Section 5 paragraphs 4 and 5 PPA specifies how political parties and campaigning parties must state certain items/categories of income and revenue, as well as expenses. In this respect, the PPA is modelled on internationally customary provisions on disclosure and, in addition, contains specific categories, in particular “income from sponsorships and advertisements” and “income in the form of staff supplied free of charge or without corresponding remuneration (living subsidies)”. Furthermore, political parties must also account for which shareholdings they, their branches that have their own legal personality and their affiliated organisations have in undertakings. Undertakings must be stated if the shares held amount to 5% (or more) of the total shares in the undertaking. To make it easier for the political party to draw up the list, the branches and affiliated organisations must provide the required details “completely” and “correctly” to the party (cf. also Section 12 paragraph 4).
78. The Austrian Court of Accounts (ACA), in turn, is instructed to require the legal entities under its supervision to comment and to disclose the legal transactions made between those legal entities and the undertakings listed in the statement of accounts (period = the year underlying the statement of accounts). For the purposes of the Transparency in Media Cooperation and Funding Act (Medienkooperations- und –förderungs-Transparenzgesetz - MedKF-TG), Federal Law Gazette I No. 125/2011, the list of the approximately 5,600 legal entities subject to the supervision of the Court of Audit can be found at <http://url9.de/o6O>.
79. A restriction on campaign expenses to a maximum of seven million euros per party and campaign regarding elections for a general representative body and the European Parliament is provided for in Section 4. In addition, the campaign expenses must be stated in the statement of accounts in a separate annex (Section 5 paragraph 3). Following the amendment of the Federal Presidential Elections Act 1971 ([Bundespräsidentenwahlgesetz 1971](#)), those provisions will also apply to elections of the Federal President in the future.
80. GRECO takes note of the above information. As for the first part of the recommendation, GRECO welcomes the effort made by Austria to cover a variety of forms of support including donations (which are defined broadly as including also support in kind), membership fees, payments by affiliated organisations, subsidies, contributions by elected officials, income from commercial activities, sponsoring and advertisement etc.
81. As for the second part of the recommendation, it should be pointed out that Austria does not clearly require that all donors be, as a rule, identified by the recipient by means of a receipt and appropriate data in the books/accounts. Identification is indirectly required for all donations above 1000 euros through a ban on anonymous donations above this threshold. This threshold is rather

high and it can easily undermine the effectiveness of the requirement to disclose the identity of donors who provide support for an annual total amount of 3500 euros or more, for instance in case the donor makes several donations at different moments or to different entities/persons connected to a given party/list of candidates. At the same time, donations can be made in cash for a sum as high as up to 2500 euros, which increases the risk that large amounts of cash be generated without adequate information about its origin in the records of a party or list of candidates. GRECO would clearly prefer a system where all donors are, as a rule, identified as indicated in the second part of the recommendation (and which would accessorially encourage further the use of modern payment methods).

82. As for the third part of the recommendation, the PPA (Section 5 paragraph 4) lists a series of items of income and expenditure which constitute the minimum information (the PPA says “at least”) to be included in the said financial statements which are disclosed to the Austrian court of Audit. It remains unclear whether any particular standardised format has been elaborated by the ACA (possibly in cooperation with the professional association of auditors) for the purposes of submission of financial statements. The fact that the PPA refers to a minimum set of financial items suggests that such standardised templates would need to be put in place in practice for the political parties and for campaign participants. GRECO also notes that for the time being, certain important accounting items are not addressed at all in the PPA, for instance assets, debts and liabilities (only “loans” are to be mentioned in the financial statements as a source of income and revenue). It would appear that no guidance has been provided as expected by the fourth part of the recommendation. In their latest comments, the Austrian authorities indicate that political parties could nonetheless find some guidance by taking into account the Valuation-Act of 1955 (*Bewertungsgesetz*)⁷: its Section 10 provides i.a. that for the purposes of valuation, the market value has to be taken into account. GRECO is doubtful that in the absence of further, pro-active initiatives and arrangements, the mere existence of this legal provision (included in a law dealing with tax matters) is enough to ensure that parties and candidates adequately account for all the benefits in kind or services rendered under preferential conditions they can benefit from and which are used in practice (see also paragraph 64 of the evaluation report).
83. As for the last part of the recommendation, the PPA is applicable to the whole country, and there is no need to comment further on this matter, which has been addressed. Overall, GRECO expects more determined efforts for the implementation of the second, third and fourth element of this recommendation.
84. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

85. *GRECO recommended i) to publish the identity of donors whose contributions to a political party or campaign participant exceed a certain threshold and to ensure the information is made available to the general public in a timely manner and ii) to invite the Länder to do the same.*
86. The authorities of Austria indicate that Section 6 paragraph 4 stipulates that contributions of 3,500 euros or more (amalgamated amount of support in a given calendar year made to any federal and/or provincial and/or local level organisation) are to be disclosed in the statement of accounts, including the name and address of the donor. The statement of accounts is then to be published on the website of the party and that of the Austrian Court of Audit – ACA (Section 10 paragraph 3). According to Section 6 paragraph 5, donations above 50,000 euros must be

⁷ <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10003860>

disclosed immediately to the ACA, which must henceforth publish the information (amount, name and address of the donor), on its website.⁸

87. As for the second part of the recommendation, these rules also apply to the provinces, provided they have not enacted stricter provisions. For example, the new rules introduced in 2012 in Tyrol provide that donations of 1,000 euros or more must be disclosed in the statement of accounts, including the name and address of the donor, and donations of 15,000 euros or more must immediately be disclosed to the Court of Audit.⁹ Vienna has specified amounts of 3,000 euros and 30,000 euros, respectively¹⁰.
88. GRECO welcomes these new developments which should enable the public to be informed about the origin of all donations above 3500 euros. However, because of the time-line for disclosure to the ACA (30 September of the following year, with a possible extension of 4 weeks) and the fact that statements become public only once they have been verified and validated by the ACA, the information becomes available at a late stage. This is only partly compensated by the fact that donations above 50,000 euros need to be disclosed and published immediately. GRECO has on other occasions already pointed out that such a threshold is too high to provide a meaningful and real-time image of funds raised during a campaign. Moreover, regional and local politics can be influenced with amounts lower than these. Some provinces have thus adopted lower thresholds and the co-existence of different thresholds needs to be tested in practice, but the situation raises in itself some questions on paper¹¹. Moreover, since the PPA makes a strict distinction between donations on the one hand, and support in the form of sponsoring and advertisement on the other hand, forms of support which can play a crucial role during election campaigns are not captured by the immediate disclosure duty (which applies to donations *stricto sensu*). Finally, GRECO notes that in connection with the federal parliamentary elections held in 2013, the number of large donations listed on the CoA's website¹² since the end of 2012 is rather low and the major parties do not appear in the list of recipients (with the exception of one local branch of such a party). Provided all political actors are familiar enough with the new duty of immediate disclosure of large donations, this can be a clear indication that the federal threshold is too high in the context of Austria. The present arrangements need to be reviewed.
89. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

90. *GRECO recommended i) to improve the accessibility to all financial reports submitted by the political parties and by participants in election campaigns and ii) to invite the Länder to do the same.*

⁸ See: <http://www.rechnungshof.gv.at/beratung/parteispenden.html>

⁹Section 4 paragraphs 1 and 2 of the Tyrolean Political Parties Financing and Support of Parliamentary Groups Act 2012 (*Tiroler Parteienfinanzierungs- und Klubförderungsgesetz 2012*, http://www.ris.bka.gv.at/Dokumente/Lqbl/LGBL_TI_20121221_151/LGBL_TI_20121221_151.pdf)

¹⁰ Section 8 paragraph 2 of the Vienna Support of Political Parties Act 2013 (*Wiener Parteienfinanzierungsgesetz 2013*, <http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/2012/pdf/lq2012086.pdf>)

¹¹ If it is true that from the perspective of the Federal level, lower thresholds adopted by the regions would amount to "stricter" requirements, from the perspective of the regions the contrary prevails and the fact that the Federal law provides for a high threshold can be problematic.

¹² <http://www.rechnungshof.gv.at/sonderaufgaben/parteiengesetz/parteispenden.html>

91. The authorities of Austria refer to Section 10 paragraph 3 PPA by which all political parties are required to prepare a financial statement that is to be published on the party's website and on that of the Austrian Court of Audit (ACA).
92. GRECO takes note of the above, and of the fact that in addition, section 13 PPA extends the publication duty to lists of candidates ("campaigning parties"). The PPA has country-wide coverage, as indicated earlier. With the systematic publication of all financial statements on the website of the ACA, the concerns expressed in the Evaluation Report have been addressed, provided ACA will ensure in future that the information remains available year after year, in particular so that the reimbursement of debts and liabilities can be monitored to ensure the latter do not become disguised donations, and so as to allow also for comparative and research purposes. GRECO understands that in accordance with Section 16 PPA the first reports based on the new format – those for the year 2013 – will be put on line in the first half of 2015.
93. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

94. *GRECO recommended i) to strengthen the independence of the external audit of the political parties' annual statements on income and expenditure, for instance by generalising the procedure of assignment of sworn auditors chosen by the public authority from a list of auditors provided by the political party and – additionally – by introducing a reasonable degree of rotation of auditors and ii) to invite the Länder to do the same.*
95. The authorities of Austria indicate that the matter is addressed in the PPA under Section 5 paragraph 2 in connection with Sections 8 and 9. The annual financial statements of political parties (and "campaigning parties") are to be audited and certified by two professional auditors prior to their submission to the Austrian Court of Accounts (ACA) – see recommendation ix. The PPA establishes guarantees for their independent performance of duties: a) it is the ACA which selects the two auditors from a list of five candidates submitted by the party; b) the two candidates selected cannot be part of the same business entity; c) the auditors are appointed for a non-renewable term of 5 years; d) the function of auditor is subject to certain rules on incompatibilities (for instance, cannot be appointed as auditor a person who has exerted book-keeping, managerial and other responsibilities in the party concerned or in a business entity (whether incorporated or not) related to the party); e) auditors are required to perform their function conscientiously, in a non-biased manner and in confidentiality. As for the second part of the recommendation, the PPA applies to the *Länder* as well given its country-wide applicability.
96. GRECO is pleased to see that various measures have been taken in the way suggested by the recommendation to guarantee the independent auditing and certification of the political parties' annual statements, both at the federal and the *Länder* level.
97. GRECO concludes that recommendation viii has been implemented satisfactorily

Recommendation ix.

98. *GRECO recommended i) to ensure the effective and independent supervision of the financing of political parties and election campaigns, in accordance with Article 14 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; ii) to ensure that a duty to disclose financial reports applies to all*

political parties and participants in election campaigns, whether or not they receive public support and iii) to invite the Länder to do the same.

99. The authorities of Austria report, in respect of the first part of the recommendation, that the financial statements are audited by the ACA. In case of violations of accounting obligations or other alleged violations of the law, the Independent Political Parties Transparency Panel (*Unabhängiger Parteien-Transparenz-Senat*) – IPPTP – is responsible for imposing monetary penalties or fines (article 10 and 11 PPA 2012). As the name already suggests, the members of the Independent Political Parties Transparency Panel are not bound by any instructions in exercising that function. At present, the Panel is chaired by a former president of the Constitutional Court. The other members are a retired president of a panel of the Administrative Court and a lawyer.
100. As for the second and third part of the recommendation, all political parties and campaigning parties must prepare and submit to the Austrian Court of Accounts (ACA) financial statements irrespective of whether or not they receive public subsidies (or would receive such subsidies as a result of the election). As indicated earlier, the PPA applies to Austria as a whole, including the financial disclosure and the control mechanism described below.
101. GRECO takes note of the above. As for the first part of the recommendation, GRECO would have appreciated more detailed explanations on the role and powers of the ACA, which has the main responsibility for the supervision of political financing. After certification by the auditors – see recommendation viii – the financial statements are subject to verification by the ACA in the way described in Section 10. It would appear that its role and powers are limited. Its task is to verify “the numerical correctness” of the financial statements (Section 10 paragraph 2), as well as their compliance with the requirements of the PPA but along the lines strictly prescribed by the same Section. In particular, the ACA was apparently not entrusted with direct control powers to check the information and supporting material. If there are “concrete indications” that a statement is incomplete or incorrect, it has only limited possibilities. First, it can ask the reporting subject, within a certain deadline, to comment and to have these comments endorsed by its auditor (it further remains unclear whether this refers to the two auditors who have certified the statements or to the political party’s internal auditor where such a function exists). Secondly, if doubts remain, the ACA can commission an auditor – to be designated randomly by the competent professional association – to audit the financial statement; the party concerned is required to give access to the documents and records required by the auditor. Finally, if it is confirmed that the statement has given incorrect or incomplete information, and the information could not be corrected or completed (or if the reporting subject has not commented within the time limit specified), the ACA can then submit the documents to the IPPTP. The scope of control was delimited so narrowly that many important requirements set by the legislator are not addressed in this checking procedure, which leaves the ACA exclusively with the information supplied in the first hand in the financial statements (in particular compliance with the ceiling on election campaign spending, even though it would be obvious from the campaigning activity deployed by a party that the spending was underestimated). GRECO notes that on paper, the IPPTP is responsible only for imposing sanctions (see also recommendation xi), that in case of financial sanctions it is limited by the findings of the ACA and that it has no ability to act *ex officio*.
102. However, in their latest comments, the Austrian authorities indicate that the IPPTP, which has dealt with several cases in the last 6 months, holds a different legal opinion about its role and that this was published on its website. In particular, it considers itself equally competent to initiate proceedings under Section 12 PPA, without any communication from the ACA, based on general

administrative law provisions on the powers of administrative authorities. This is an interesting development since otherwise, the effectiveness of the whole public control mechanism, which involves two such important bodies as the ACA and the IPPTP, would rest entirely on the limited capacity of ACA to obtain “concrete indications” and on possible findings of one auditor appointed ad hoc (who thus bears a great responsibility). At the same time, the PPA has not provided the ACA with clear powers to solicit/receive/use information or tips from other sources, for instance election monitoring bodies, the tax administration, general public, a competing party. GRECO thus wonders how “concrete indications” can arise. Furthermore, the interaction between the ACA and the IPPTP raises some interrogations on paper (this is linked to the consistency of regimes concerning “financial penalties” and “administrative fines” – see also recommendation xi). Strictly speaking, only Section 12 PPA appears under the heading “Sanctions” and these are measures to be pronounced by the IPPTP upon a notification of the ACA. No such arrangements exist for “financial penalties” under Section 10 and the PPA does not specify who has competence to initiate proceedings leading to possible penalties under Section 10. The Austrian authorities point out in their latest comments, that the IPPTP is of the opinion that it has competence to initiate proceedings also in connection with Section 10.

103. GRECO recalls that the independence of ACA has not been questioned so far, and although the members of the IPPTP are designated by the Executive Power (they are appointed by the President upon a proposal by the government), Section 11 PPA seems to provide for adequate guarantees of independence: members and substitute members (appointed for a 5-year term renewable once) are independent and shall not be bound by instructions, and the function is incompatible with other functions that could jeopardize their independence. GRECO acknowledges that a new supervisory mechanism may take some time to be settled in practice. For the time being, the arrangements described in the above paragraphs raise various questions as to the effectiveness of the mechanism and GRECO considers that it will be necessary to come back on these in 18 months, once a clearer picture is available on how the first part of the recommendation has actually been addressed.
104. As for the second and third elements of the recommendation, GRECO considers that these appear to have been implemented: following the global review of the political financing legislation in 2012, considerable changes have been made to the effect of introducing a much more ambitious financial reporting and supervisory mechanism than the one in place at the time of the visit, which was basically limited to supervising the adequate use of public subsidies. With the new disclosure and reporting arrangements which have become effective as of 2013, financial statements are to be submitted by political parties annually, as well as other campaign participants – in connection with elections – in accordance with Section 13 PPA by 30 September of the year following the reference year or the year in which elections have been held. The new legal framework is applicable country-wide, i.e in connection to elections in the Länder and at local level.
105. In conclusion, GRECO welcomes of course the improvements made in 2012 in respect of the supervision of political financing and the care taken to ensure adequate independence of the public bodies concerned. In GRECO’s view, these changes should be seen as a first step. More determined efforts are needed if Austria is to have an effective control mechanism. It recalls the reservations already expressed in the Evaluation Report as to the ACA’s ability to deal with this task given its generally limited powers and audit methods¹³. GRECO also notes that most of the

¹³ As indicated in paragraph 68: “The GET was also concerned to learn that despite the many allegations of public bodies providing disguised support to political parties, especially at local level, the ACA does not apply the general principles and guidelines for public auditing such as the appropriateness of public expenditure, the efficiency for the tax payers and

issues discussed in the above paragraphs have been raised in Austria as well, by the media, the ACA itself and academic works.

106. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

107. *GRECO recommended to introduce suitable measures that would ensure that the Austrian Court of Audit is in a position to report to the competent authorities both suspicions of corruption in connection with political financing and cases of mismanagement liable to attract criminal sanctions.*

108. The authorities of Austria, in their Situation Report, indicate that the Austrian Court of Audit (ACA) audits the statements of account of the political parties and the campaigning parties. In case of violations of accountability obligations, sanctions will be imposed (Section 10 paragraphs 6 to 8 in connection with Section 11 and Section 12). This does not answer GRECO's concerns. In their latest comments, the Austrian authorities therefore recall that since the joint first and second round evaluation, there has been some uncertainty and incorrect information supplied about the rules governing the reporting to criminal justice bodies by the ACA (see also paragraph 69 of the Evaluation Report). They explain that only authorities of the executive branch of power have such a duty to report whereas the ACA – as a parliamentary support body – is not a part of this branch of power. But it has the right as any citizen, to inform the prosecution authorities.

109. GRECO takes note of the latest explanations provided above. Bearing in mind the long-standing uncertainties about this matter and ACA's members general confidentiality duty with respect to information gathered about audited subjects and entities, GRECO would have preferred to see measures adopted to clarify this matter once and for all, or at least some conclusive examples provided by the Austrian authorities to substantiate their latest statement. For the time being, GRECO is not in a position to conclude that suitable measures have been adopted, as it was recommended.

110. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

111. *GRECO recommended i) to clearly define infringements of existing (and yet to be established) provisions with regard to the transparency of party funding and to introduce effective, proportionate and dissuasive sanctions for these infringements, in accordance with Article 16 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns and ii) to invite the Länder to do the same.*

112. The authorities of Austria indicate that in case of specific violations by parties, campaigning parties, affiliated organisations or branches of the parties, the Independent Political Parties Transparency Panel can impose monetary penalties and fines (see Section 10 paragraphs 6 to 8 in connection with Sections 11 and 12).

accountability on local level. It would also appear that the ACA has no adequate legal and other means to carry out proper administrative enquiries and investigations. In the context of the planned revision of the legal framework on political financing, different institutional models for the future supervisory body have been discussed. It would however appear that the ACA seems to be the most appropriate body, on condition that its supervisory function is strengthened through adequate means of control and the provision of the necessary staffing and expertise.”

113. GRECO welcomes the introduction of sanctions applicable in respect of infringements to the rules on political financing, which apply to the whole of Austria. A detailed picture of the respective infringements and sanctions provided for in the PPA would have been appreciated. As far as GRECO itself can take from the PPA, the situation is as follows as regards financial penalties, administrative fines and other measures:

Infringement	Sanction	Subject of the offence/sanction
<p>Violation of rules on financial statements</p> <p>- Incorrect or incomplete information disclosed with respect to sources of income and expenditures, list of undertakings, list of donations/sponsorship and advertisements</p> <p>(Section 10 and 13 PPA)</p>	Financial penalty of up to 30,000 euros except where incorrect/incomplete information concerns undertakings (up to 100,000 euros)	a political party, one of its branches or an affiliated organisation, or a campaigning party
<p>Violation of rules on donations</p> <p>(Section 10 PPA):</p> <p>-not stating a donation above 3,500 euros (Sec.5 para.4)</p> <p>-non immediate reporting of donations above 50,000 euro (Sec.6 para.5)</p> <p>-accepting impermissible donations (Sec.6 para.6)</p> <p>-accepting a donation of a foreign origin (Sec.6 para.7)</p>	Financial penalty of up to 3 times the amount concerned,	a political party, one of its branches or an affiliated organisation, or a campaigning party
<p>Violation of rules on donations (Section 12 para.2 and 3 PPA):</p> <p>-not stating a donation above 3,500 euro (Sec.6 para.4)</p> <p>- non immediate reporting of donations above 50,000 euros (Sec.6 para.5)</p> <p>-accepting a donation of a foreign origin (Sec.6 para.7)</p> <p>-splitting a donation to evade requirements of Section 6 para.6 item 9</p>	Administrative fine up to 20,000 euros in all cases	Natural persons accepting such a donation: e.g. member of a party, parliamentarian, election candidate
	+ forfeiture of equivalent amount in the first three cases (not in respect of Section 6. para.6 item 9)	members of parliament (running for elections) and election candidates
<p>Providing incorrect information (Section 12 para.4 PPA)</p>	Administrative fine up to 10,000 euros	The person responsible for the conformity of financial statements ¹⁴
<p>Exceeding the ceiling on campaign expenditure (Section 10 and 13 PPA)</p>	Financial penalty of up to 10% or 20% of over-spending, depending on the amounts concerned.	Political parties and campaigning parties

114. Austria has clearly made an effort to address with appropriate sanctions both the regular financing of political parties and the specific situation of election campaigns (which may involve other campaign participants). Nonetheless, it would appear that for the time being, further

¹⁴ This is the « special responsible representative » who has to be appointed by each political party, as set out in Section 12 paragraph 4 PPA.

improvements are needed to ensure that the various important requirements are enforceable and sanctionnable. For instance, there are no arrangements in place on how to deal with the late or non-submission of financial reports. This means that a party or campaign participant could delay unreasonably the supervision of the Austrian Court of Accounts (ACA) in respect of its financial obligations and compliance with the PPA: consequently, its financial statements could be published a long time after elections for instance, which further jeopardises the overall transparency of political financing and prevents drawing possible consequences for the validity/legitimacy of an election for instance.

115. Moreover, GRECO notes that Section 6 paragraph 7 seems to introduce an exemption of liability for all inadmissible donations listed under Section 6 paragraph 6: any such donations must be transferred to the ACA, in which case the party is not subject to the sanctions provided for in the PPA. This mechanism raises two series of issues. First, in principle such donations must be reported immediately to the ACA but no later than at the time of submission of financial statements to the ACA, i.e. 30 October of the following year at the latest. This creates unnecessary risks that a total exemption of liability could benefit also to political parties which would deliberately seek large support from illegal sources, achieve sufficient electoral success or win elections (with that support) to be entitled to public support and then report/forward these amounts to the ACA at a much later stage. Second, the very existence of an exemption of liability in case of reporting such donations even at a late stage is incompatible with the principle of liability for violating the rules on donations. This is likely to make the system of sanctions unmanageable because of an unclear demarcation line between situations of good faith and situations of bad faith of the beneficiary. GRECO considers that the situation needs to be changed and that a stricter approach should prevail (immediate forwarding, limiting it to situations which are beyond the control of the beneficiary etc.). This would also contribute to strengthen the internal discipline of political formations. In the latest information submitted, Austria points out that the IPPTP has issued a legal opinion concerning a timeframe in which a political party could benefit from an exemption of liability, so as to draw a demarcation line.
116. Finally, it remains unclear whether additional consequences are attached to certain infringements/sanctions, in particular when it comes to the entitlement to public support. Public support to political parties is quite significant in Austria and it remains debatable whether a party which has committed serious violations should still be entitled to public support and/or whether public support can be suspended until certain irregularities have been addressed (in the latest information supplied, Austria points out that in the case of two *Länder* – Salzburg and Vorarlberg – non-compliance with the regional rules can lead to a reduction or reimbursement of the public subsidy). In the absence of clear rules on the applicable book- and record keeping requirements, except in respect of commercial activities conducted by political parties, it also remains unclear to what extent relevant criminal law provisions on accounting offences or falsification of evidencing documents are applicable. Neither the PPA nor the Support of Political Parties Act addresses the above matters and in the absence of such provisions, certain sanctions of the PPA may appear insufficiently effective, proportionate and dissuasive, for instance where the dissimulation of significant amounts concerning income or expenditure may attract a financial penalty of 100,000 euros at most or a maximum penalty corresponding to 20% of a possible over-spending (above the 7 million euros threshold). And finally, the doubts expressed under recommendation xi as regards the consistency of sanctioning arrangements could impact on the applicability and effectiveness of certain sanctions.
117. GRECO concludes that recommendation xi has been partly implemented.

III. CONCLUSIONS

118. **In view of the above, GRECO concludes that Austria has implemented satisfactorily 12 of the 21 recommendations contained in the Third Round Evaluation Report. Of the nine remaining recommendations, seven have been partly implemented and two have not been implemented.**
119. More specifically, with respect to Theme I – Incriminations, recommendations i, ii, iv, v, vii to x have been implemented satisfactorily, and recommendations iii and vi have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, ii, vii and viii have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations iv, v, vi, ix and xi have been partly implemented and recommendations iii and x have not been implemented.
120. With regard to incriminations, GRECO welcomes that Austria has ratified the Criminal Law Convention on Corruption in 2012 and its additional Protocol in 2013. As a result, various amendments have been made to align the national criminal legislation with these legal instruments, including as regards the incriminations of active and passive bribery involving a public official or a member of an elected assembly and the offence of illicit intervention (trading in influence). The level of sanctions for private sector bribery was increased and the effective regret mechanism of Section 307C of the Penal Code was abolished. Austria has also extended its rules on jurisdiction and has thus improved its capacity to prosecute cross-border bribery and trading in influence. Further consideration needs to be given to the issue of non-material undue advantages to ensure that all cases of bribery and trading in influence are adequately dealt with and additional measures need to be taken to ensure that the prosecution of acts of bribery leads in practice to a penal response which reflects the need of an effective anti-corruption policy.
121. With regard to political financing, GRECO is pleased to see that Austria has come a long way since the on-site visit, and has adopted in 2012 a new Political Parties Act which aims at increasing the transparency in this crucial area. Austria has now country wide rules which regulate the sources of income of political parties and (other) campaign participants, which require the disclosure of financial statements and the subsequent supervision by the Austrian Court of Audit (ACA), with possibilities to impose penalties in case of breach to the rules. The public will have access to these statements since they will be made available on the parties' and ACA's website. This legislation became fully effective in the beginning of 2013 and for obvious reasons, practice with the new arrangements is limited. GRECO has nonetheless identified areas where additional progress will be needed without awaiting for the first financial statements to be examined by the ACA towards the end of 2014 or the beginning of 2015. For the time being, some recommendations have been fully addressed. At the same time, a majority of recommendations have received a partial follow-up, for instance concerning the applicable accounting and book-keeping standards, the consolidation of accounts, the availability of financial information to the general public in a timely manner, the range of penalties applicable in case of infringements. Of particular importance is the new control mechanism, which raises several questions as to its consistency and effectiveness, in particular due to the absence of real control powers granted to the ACA.
122. GRECO invites the Head of the delegation of Austria to submit additional information regarding the implementation of recommendations iii and vi (Theme I – Incriminations) and recommendations iii, iv, v, vi, ix, x and xi (Theme II – Transparency of Party Funding) by 30 September 2015 at the latest.
123. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.