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## **Third Evaluation Round**

### **Second Compliance Report on Hungary**

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

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#### **"Transparency of Party Funding"**

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

## **I. INTRODUCTION**

1. The Second Compliance Report assesses further measures taken by the authorities of Hungary since the adoption of the Compliance Report in respect of the recommendations issued in the Third Round Evaluation Report on Hungary, 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 47<sup>th</sup> Plenary Meeting (11 June 2010) and made public on 29 July 2010, following authorisation by Hungary (Greco Eval III Rep (2009) 8E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 56<sup>th</sup> Plenary meeting (22 June 2012) and made public on 11 September 2013, following authorisation by Hungary (link to [Compliance Report](#)).
3. As required by GRECO's Rules of Procedure, the Hungarian authorities submitted their Second Situation Report with additional information regarding action taken to implement the recommendations that were partly or not implemented, according to the Compliance Report. This report, which was received on 3 February 2014 and additional information received on 15 May 2014, served as a basis for the Second Compliance Report.
4. GRECO selected Poland and Switzerland to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Alicja KLAMCZYNSKA, Chief specialist, European Criminal Law Division, Criminal Law Department, Ministry of Justice, on behalf of Poland, and Mr Ernst GNAEGI, Head of the International Criminal Law Unit of the Federal Office of Justice, on behalf of Switzerland. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that GRECO in its evaluation report addressed five recommendations to Hungary in respect of Theme I. Recommendations i, ii, iv and v were considered as satisfactorily implemented and recommendation iii as partly implemented. Compliance with the latter recommendation is dealt with below.

#### **Recommendation iii.**

6. *GRECO recommended to ensure that the Criminal Code covers the offence of bribery of domestic arbitrators and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*

7. GRECO recalls that the authorities of Hungary had already reported in the Compliance Report that Section 137, point 1 of the Criminal Code had been amended to criminalise bribery of domestic arbitrators, in accordance with the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191). The amendment entered into force on 1 January 2011. At that time, the authorities stressed that no further obstacle was left concerning the ratification of the Additional Protocol to the Convention and that the process to this end was well underway. GRECO concluded that the recommendation had been partly implemented.
8. The authorities now submit that the Government has prepared a bill for the ratification of the Additional Protocol to the Criminal Law Convention which was submitted to Parliament on 24 April 2014.
9. GRECO notes that Hungary signed the Additional Protocol to the Criminal Law Convention already in 2003 and that the Evaluation Report, including the recommendation to ratify this instrument, was adopted in July 2010 and also that the process of ratifying this instrument was underway at the time of adoption of the Compliance Report on 22 June 2012. GRECO regrets that the ratification of this instrument has not yet taken place after such a long period of time. It urges the authorities to further pursue this matter.
10. GRECO concludes that recommendation iii remains partly implemented.

## **Theme II: Transparency of Party Funding**

11. It is recalled that GRECO in its evaluation report addressed 10 recommendations to Hungary in respect of Theme II. Recommendation i was considered to have been dealt with in a satisfactory manner and recommendation ii as implemented satisfactorily. Recommendations iii-x were not implemented and no substantial progress was reported in the Compliance Report; compliance with these latter recommendations is dealt with below.

### **Recommendations iii and iv.**

12. *GRECO recommended to introduce a legal requirement for political parties – bearing in mind factors such as the size of parties and their level of activity – (i) to keep proper books and accounts in accordance with accepted accounting standards and (ii) to ensure that appropriate information contained in the annual books and accounts is made public in a way which provides for easy and timely access by the public (Recommendation iii).*
13. *GRECO recommended to seek ways to consolidate the books and accounts of political parties to include the accounts or other relevant information of entities which are related directly or indirectly to a political party or otherwise under its control (for example, party foundations proper and other foundations) (Recommendation iv).*
14. The authorities of Hungary report that although there have been some amendments to the Party Act (described below), these have not been relevant to recommendations iii and iv and the situation as described in the Evaluation Report remains the same. The authorities add that consultations between the Government, constitutional partners and non-governmental organisations are planned to take place after the parliamentary elections in April 2014 in order to deal with these two recommendations.

15. GRECO takes note of the information provided. It regrets that these recommendations have not been addressed and concludes that recommendations iii and iv remain not implemented.

**Recommendation v.**

16. *GRECO recommended (i) to ensure that political parties and party foundations are subject to equivalent legal requirements in respect of donations over a certain value, in particular, that political parties are obliged to publish the identity of such donors; (ii) to establish precise rules for the evaluation of in-kind donations; and (iii) to take measures to prevent the ban on anonymous donations to political parties from being circumvented through such donations via other entities or election candidates.*
17. The authorities of Hungary report that the Party Act (XXXIII) of 1989 was amended by the adoption of Act LXXXVII in 2013. It entered into force on 1 January 2014. The authorities submit that the new Party Act has been modified as follows: the Party Act now prohibits parties from accepting contributions from domestic legal entities or organisations not having legal personality, in order to prevent such contributors from exercising influence over parties. (Before this amendment was included, the prohibition only concerned legal persons which were connected to the state budget). Furthermore, the amended Party Act also sets out that a party shall not accept contributions from other states or from foreign organisations irrespective of their legal status, or from a natural person not having Hungarian nationality. Furthermore, a party shall not accept anonymous contributions; this type of contribution has to be paid for the purposes of the foundation established by the Parliament.
18. The authorities also report that the amended Party Act now provides exactly what kind of property a political party can hold; a) fees paid by its members, b) subsidies provided from the state budget, c) real-estate properties transmitted free of charge by the State, d) financial contributions of natural persons who are Hungarian nationals, e) inheritance of natural persons based on testamentary dispositions, f) business activity of the political party and g) after-tax profit of a company or a single-member limited liability company established by the party.
19. Regarding publicity, the authorities stress that a party is obliged to publish a financial statement in the Hungarian Official Gazette in which each contribution exceeding 500 000HUF (approx. 1 667€) obtained in the calendar year shall be displayed separately with the contributor's name and the amount. (This was already the case at the time of the adoption of the Evaluation report).
20. GRECO takes note of the information provided. It recognises that the Party Act has been amended, *inter alia*, so as not to allow donations from domestic organisations unless they have legal personality and so as to ban foreign donations. Furthermore, the different types of property a party can hold have been clarified. However, in respect of the precise requirements of recommendation v, hardly any pertinent measures have been taken: the requirements in respect of donations to political parties and political foundations have not been aligned (i) and rules for the evaluation of in-kind donations have still not been established (ii). However, GRECO accepts that the prohibition on entities not holding legal personality from providing donations to political parties may to some extent meet the concerns of the third part of the recommendation.
21. GRECO concludes that recommendation v has been partly implemented.

### **Recommendation vi.**

22. *GRECO recommended (i) to review the length of the election campaign period and to ensure that the financial campaign income and expenditure during that period is properly accounted for and (ii) to consider the introduction of reporting of income and expenditure during election campaigns to the public at appropriate interval.*
23. The Hungarian authorities report that the Election Procedure Act has been amended with the adoption of Act XXXVI of 2013. According to Article 139 of this Act, the “*electoral campaign period lasts from the 50th day prior to the voting day until finishing the voting on the voting day*”, which is shorter than previously. The authorities also refer to a new system for providing public subsidies to candidates and parties, how to account for them and to pay them back in case rules are not being followed (see also recommendation x below). Moreover, the new legislation determines a new maximum amount that can be spent on electoral campaign activity per candidate of 5 000 000HUF (approx. 16 667€). The law does not require continuous reporting on the use of funds during the election campaigns. The law provides that media entities that are to publish a political advertisement must, within 5 working days, report on the cost of this advertising service to the State Audit Office which, in turn, will publish this information. Furthermore, single mandate constituency candidates must submit detailed accounts on the use of public funding to the treasury and the State Audit. Finally, according to the Electoral Procedure Act, each candidate and nominating organisation (often the parties) shall publish in the Hungarian Official Gazette the amount, source and means of use of subsidies given by the State, other funds and financial support within 60 days following the general parliamentary elections. The latter provision was maintained from the old legislation.
24. GRECO takes note of the information provided. In so far as the first part of the recommendation is concerned, it acknowledges that the length of the election campaign period has been reviewed and made shorter, from an unfixed minimum period of 74 days to a fixed period of 50 days. Moreover, the earlier spending cap (1 000 000HUF) has been increased five times to 5 000 000HUF (approx. 16 667€), which is likely to be more realistic than the previous amount and which hopefully will lead to more accurate accounting in this respect. It would appear that some other changes to increase the transparency of election campaign financing have been made, for example, concerning advertising during election campaigns. That said, the authorities have not yet considered introducing any reporting of income and expenditure during election campaigns.
25. GRECO concludes that recommendation vi has been partly implemented.

### **Recommendations vii and viii.**

26. *GRECO recommended to introduce, as a main rule, independent auditing of party accounts by certified experts (Recommendation vii).*
27. *GRECO recommended to ensure that the supervision of political parties be extended to cover the books and accounts of entities which are related directly or indirectly to a political party or are otherwise under the control of a political party (Recommendation viii).*
28. The Hungarian authorities report that no measures have been taken in respect of these recommendations. The authorities add that consultations between the Government, constitutional

partners and non-governmental organisations are planned to take place after the parliamentary elections in April 2014 in order to deal with these two recommendations.

29. GRECO concludes that recommendations vii and viii remain not implemented.

**Recommendation ix.**

30. *GRECO recommended (i) to ensure more frequent, pro-active and swift monitoring of political financing by the State Audit Office, including preventive measures as well as more in-depth investigations of financing irregularities; and (ii) to adjust the financial and personnel resources accordingly.*
31. The Hungarian authorities reiterate that the State Audit Office (SAO) plays an increasingly important role in the controlling system of the Party Act as amended, since it has a controlling role regarding all state subsidies. Furthermore, the SAO also examines whether the candidates and the nominating organisations observe the legal regulations on maximisation of campaign costs. The use of state subsidies and other funds defined in the Party Act is checked by the SAO within one year after the election in respect of candidates and nominating organisations. The authorities add that the SAO checks every two years the financial management of those parties which receive state funding, which does not exclude that the SAO could do more frequent checks.
32. GRECO recalls that this recommendation was triggered by the fact that it was considered that the SAO's functions needed to be reinforced, that the monitoring was limited to the legality of the books rather than the real money flows, that its monitoring was carried out only once every two years for parties in Parliament and even less in respect of other parties and that the monitoring of the financing of election campaigns could be done as late as one year after the elections (Evaluation Report paragraph 97). Improvements in this regard would not necessarily require legal changes, but rather new routines and more resources to the SAO. GRECO cannot see that what has been submitted by the authorities has addressed the aforementioned shortcomings in a substantial manner.
33. GRECO concludes that recommendation ix remains not implemented.

**Recommendation x.**

34. *GRECO recommended to review current sanctions relating to infringements of political financing rules and to ensure that existing and yet-to-be-established rules on financing of political parties and election campaigns are accompanied by appropriate (flexible) sanctions, which are effective, proportionate and dissuasive.*
35. The authorities of Hungary report that the Act LXVI of 2011 on the State Audit Office (SAO) obliges the entities to be audited (including political parties) to co-operate with the SAO before, during and after the audits in providing the necessary data and documents as well as to provide the premises during the audit (Article 28.1 Act on SAO). Should the audited entity fail to do so, the SAO may order the entity to comply within a short deadline (to provide information, answer questions or submit action plans etc.) and the SAO may ultimately introduce either disciplinary or criminal proceedings against the entity. Possible sanctions include suspension of disbursement of subsidies and allowances. The Act on SAO also introduces a new criminal offence in the Criminal Code: *Violation of Obligations Relating to Audits*, which may lead to sanctions such as fines and imprisonment. The authorities of Hungary furthermore submit that, since the legal amendments of

the Party Act (adoption of Act LXXXVII in 2013), election candidates or nominating organisations which do not comply with the rules on public funding or violate the rules on maximum campaign spending, as a main rule, would be obliged to refund or pay the State twice the amount involved in the violation. According to the previous Electoral Procedure Law, illegal or inappropriate consumption could not be sanctioned. The repayment/payment is to be collected as taxes by the National Tax and Customs Administration.

36. GRECO takes the view that the amendments introduced by the Act LXVI of 2011 on the State Audit Office, i.e. the obligation upon political parties to co-operate with this Office during all stages of the audits, subject to disciplinary or penal sanctions, is an approach which may well be effective and dissuasive if applied as intended. The sanction introduced in the Party Act, i.e. to double the repayment to the State of public funding provided when there has been illegal or inappropriate use of state funding to parties and/or candidates is new, however, built on an old principle. A similar increase in sanctions has been introduced in respect of violations of election campaign spending limits. GRECO recalls that the Evaluation Report was critical about the lack of specific sanctions, for example, measures to be used by the SAO directly in situations such as when a reporting entity does not comply with obligations (outside the audit) to submit a report or to publish a final statement or when a candidate does not follow a request to submit information etc. The new means provided to the SAO go in this direction; however as already noted, they are valid for the audit of any entity but not specifically designed for political party and candidate monitoring and they do not appear to be very flexible, as they require the introduction of specific procedures. Although GRECO welcomes the measures taken, which deal with this recommendation to some degree, it takes the view that flexible sanctions for a variety of situations of violations of political financing rules would still appear necessary to introduce.
37. GRECO concludes that recommendation x has been partly implemented.

### III. CONCLUSIONS

38. **In view of the conclusions contained in the Third Round Compliance Report on Hungary and in view of the above, GRECO concludes that Hungary has implemented satisfactorily or dealt with in a satisfactory manner in total six of the fifteen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations four have been partly implemented and five have not been implemented.
39. More specifically, with respect to Theme I – Incriminations, recommendations i, ii, iv and v have been implemented satisfactorily or dealt with in a satisfactory manner and recommendation iii remains partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i and ii have been implemented satisfactorily or dealt with in a satisfactory manner; recommendations v, vi and x have been partly implemented; and recommendations iii, iv, vii, viii and ix have not been implemented.
40. Concerning incriminations, GRECO already stated in the Compliance Report that it was pleased that almost all recommendations had been implemented following legal amendments to the Criminal Code. GRECO then urged the authorities to conclude the ratification process in respect of the Additional Protocol to the Criminal Law Convention on Corruption as soon as possible, thus implementing recommendation iii, which was the only one pending. GRECO now regrets that this process has still not come to an end and urges the authorities to pursue this matter further.

41. In so far as transparency of party funding is concerned, the situation remains to a large extent the same as at the time of the adoption of the Compliance Report. In addition to the steps taken to provide for more transparency as regards the registries of political parties, acknowledged in the Compliance Report, only minor progress has been made in respect of the pending recommendations. This is particularly disappointing as some parts of the Party Act and the Election Procedure Act have been amended. Having said that, GRECO welcomes improvements such as that the sources of party income have been clarified and that the election campaign periods have become precise. Nevertheless, further efforts are needed, for example, in order to establish transparent accounting of political parties and to ensure independent auditing and efficient monitoring of party accounts, as required in the pending recommendations.
42. In view of the situation that only two out of ten recommendations concerning transparency of party funding have been implemented or dealt with in a satisfactory manner and only limited progress has been achieved since the adoption of the Compliance Report, GRECO - in accordance with Rule 31, paragraph 9 of its Rules of Procedure - asks the Head of delegation of Hungary to submit additional information regarding the implementation of recommendation iii (Theme I – incriminations) and recommendations iii-x (Theme II – Transparency of Party Funding), by 31 March 2015 at the latest.
43. GRECO invites the authorities of Hungary to authorise, as soon as possible, the publication of the current report, to translate it into the national language and to make the translation public.