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Third Evaluation Round

Addendum to the 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 69th Plenary Meeting
(Strasbourg, 12-16 October 2015)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Hungary since the adoption of the First and Second Compliance Reports 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 47th Plenary Meeting (7-11 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 56th Plenary meeting (18-22 June 2012) and made public on 11 September 2013, following authorisation by Hungary ([Greco RC-III \(2012\) 3E](#)). The Second Compliance Report was adopted at GRECO's 64th Plenary meeting (16-20 June 2014) and made public on 13 March 2015, following authorisation by Hungary ([Greco RC-III \(2014\) 10E](#)).
3. In accordance with Rule 31, paragraph 9 of its Rules of Procedure, GRECO asked the Hungarian authorities to submit additional information regarding the implementation of the recommendations that had been partly or not implemented. This information was provided on 11 May 2015 and served as a basis for the Addendum to 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. In the Second Compliance Report, the authorities reported that a bill for the ratification of the Additional Protocol to the Convention had been submitted to Parliament on 24 April 2014. GRECO concluded that the recommendation had been partly implemented.
8. The authorities of Hungary now submit that the Additional Protocol to the Criminal Law Convention was ratified on 27 February 2015 and that it entered into force with respect to Hungary on 1 June 2015. Hungary also withdrew its reservation to Article 8 of the Criminal Law Convention (bribery in the private sector) in February 2015, with immediate effect. With respect to the offence of bribery of domestic arbitrators, the authorities also explain that a new Criminal Code entered into force on 1 July 2013. As in the old Criminal Code to which reference was made in the earlier stages of the Compliance Procedure, the new Criminal Code lists arbitrators among public officials (Section 459, subsection 11 on definitions). Moreover, in order to give a clearer definition of corruption offences and promote their criminalisation, a distinct offence of active and passive bribery in court, arbitration and other judicial proceedings has been introduced (Sections 295 and 296).
9. GRECO welcomes the ratification by Hungary of the Additional Protocol to the Criminal Law Convention, as well as the withdrawal of the reservation, although the latter goes beyond the scope of the recommendation. It also takes note of the introduction of specific offences of active and passive bribery in judicial and arbitration proceedings.
10. GRECO concludes that recommendation iii has been implemented satisfactorily.

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 v, vi and x were considered as partly implemented and recommendations iii, iv, vii, viii and ix as not implemented. Compliance with these recommendations is dealt with below.

Recommendations iii to viii, recommendation x.

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);*
 - *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);*

- *(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 (Recommendation v);*
 - *(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 (Recommendation vi);*
 - *to introduce, as a main rule, independent auditing of party accounts by certified experts (Recommendation vii);*
 - *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);*
 - *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 (Recommendation x).*
13. GRECO recalls that it noted in the Second Compliance Report that the Party Act had 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 had been clarified. GRECO had thus assessed recommendation v as partly implemented. The first part of recommendation vi had also been addressed by shortening the length of the election campaign period, increasing the spending cap and increasing the transparency of advertising; however, no considerations were reported regarding the second part of the recommendation, leading GRECO to assess recommendation vi as partly implemented. Recommendation x was also assessed as partly implemented, on account of amendments introduced by Act LXVI of 2011 on the State Audit Office, obliging all political parties to co-operate with this Office during all stages of the audits, subject to disciplinary or penal sanctions. Recommendations iii, iv, vii and viii had been assessed as not implemented, as indicated above.
14. The authorities of Hungary report that almost all of the acts relevant to party funding have to be amended by a two-thirds majority in parliament. This wide consensus among political parties is yet to be reached and no progress can therefore be reported with respect to recommendations iii to viii and to recommendation x.
15. GRECO takes note of the information provided and concludes that recommendations v, vi and x remain partly implemented and recommendations iii, iv, vii and viii remain not implemented.

Recommendation ix.

16. *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.

17. GRECO recalls that this recommendation had been assessed as not implemented, as no measures had been reported to address the shortcomings identified, namely that the State Audit Office's (SAO) 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). GRECO had stressed that improvements in this regard would not necessarily require legal changes, but rather new routines and more resources to the SAO.
18. The Hungarian authorities explain that monitoring by the SAO is carried out every two years in respect of political parties and party foundations receiving state subsidies. Monitoring of the use of state subsidies during election campaigns is carried out within one year after the elections. During the monitoring of political parties, the SAO checks the legality and regularity of the books, by randomly selecting a number of entries in the books and examining them in detail. Furthermore, the SAO closely monitors whether election campaign state subsidies are actually spent on the campaign and during the campaign period. The observance of the 5 million forint cap is also checked, as well as the correspondence of the costs of advertisements with the list of standard prices provided by media entities. The SAO is not an investigative authority, but it notifies the prosecution service if it finds irregularities or suspicious entries in the books and reports. Regarding the 2014 election campaign, the SAO notified the prosecution service of suspected budgetary fraud in three cases and of lack of co-operation in eight cases. Investigations were commenced in all of these cases and in one case, a criminal procedure is underway for breach of the accounting regulations. In order to properly manage the increased workload brought about by the monitoring of the 2014 election campaign, the SAO has hired 12 new staff on short-term employment contracts from among independent auditors and retired SAO auditors, thereby doubling the staff working on the monitoring of election campaigns. Finally, the SAO is currently evaluating its monitoring practices and experience regarding parties, party foundations and campaign expenditure. The outcome of this evaluation will be taken into account when preparing the evaluation plan for 2015.
19. GRECO notes that positive developments have been reported with respect to a more in-depth monitoring of political parties and party foundations receiving state subsidies, as well as of election campaign funding. This appears to be reflected in an increase of irregularities reported to the prosecution service and GRECO hopes that this positive trend will be confirmed and that more robust monitoring will ensure that a greater number of the numerous violations concerning financing and spending regulations highlighted in the Evaluation Report will come to light. The doubling of the specialised staff working on monitoring the 2014 election campaign is also to be welcomed, even if the persons hired are on short-term contracts. However, several of the shortcomings noted above still have not been addressed. The time-frames for monitoring of party, foundations and campaign accounts remain unchanged and it is still not the case that all parties, even those not receiving state subsidies, are subject to monitoring. If all parties are subject to more frequent and swift monitoring, as foreseen in the first part of the recommendation, the staff and budgetary situation of the SAO may need to be further adjusted, as mentioned in the second part of the recommendation. GRECO encourages the authorities to address these questions, using the outcome of the evaluation mentioned above.

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

III. CONCLUSIONS

21. **With the adoption of this Addendum to the Second 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 seven of the fifteen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations four have been partly implemented and four have not been implemented.
22. More specifically, with respect to Theme I – Incriminations, all five recommendations have now been implemented satisfactorily or dealt with in a satisfactory manner. 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, ix and x have been partly implemented; and recommendations iii, iv, vii and viii have not been implemented.
23. 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 now welcomes the ratification of the Additional Protocol to the Criminal Law Convention on Corruption, which completes the implementation of the recommendations for this part of the report.
24. In so far as transparency of party funding is concerned, GRECO regrets that the situation still remains to a large extent the same as at the time of the adoption of the Compliance Report, more than three years ago. In the absence of the broad political majority needed to adopt the legislative changes necessary to implement most of the recommendations, the only positive development concerns the State Audit Office, with an increase of the staff in charge of monitoring election campaign accounts and steps taken towards a more robust and efficient monitoring.
25. 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 Second 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 recommendations iii-x (Theme II – Transparency of Party Funding), by 31 July 2016 at the latest.
26. 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.