

Strasbourg, 19 October 2012

Public
Greco RC-III (2012) 13E

Third Evaluation Round

Second Compliance Report on Latvia

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 57th Plenary Meeting
(Strasbourg, 15-19 October 2012)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Latvia since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Latvia. It is recalled that the Third Evaluation Round covers 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 39th Plenary Meeting (6-10 October 2008) and made public on 23 October 2008, following the authorisation by Latvia (Greco Eval III Rep (2008) 1E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 48th Plenary meeting (27 September - 1 October 2010) and was made public on 1 October 2010, following the authorisation by Latvia (Greco RC-III (2010) 6E).
3. As required by GRECO's Rules of Procedure, the authorities of Latvia submitted their Second Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the Compliance Report. This report was received on 27 April 2012 and served as a basis for the Second Compliance Report.
4. GRECO selected Denmark and the Czech Republic to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Henrik Helmer STEEN on behalf of Denmark, and Ms Helena LIŠUCHOVÁ, on behalf of the Czech Republic. 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 addressed eight recommendations to Latvia in respect of Theme I in its Evaluation Report. In the subsequent compliance report, recommendations iii, iv, v and viii were considered as implemented satisfactorily, and recommendation vi was considered to be dealt with in a satisfactory manner. The remaining recommendations are dealt with below.

Recommendation i.

6. *GRECO recommended (i) to clarify in which manner the offering/promising of an undue advantage and the request for an undue advantage as well as the unrequested receipt of such an advantage are covered by the relevant provisions on bribery and attempted bribery in the Latvian Criminal Law, and (ii) to amend Section 198, paragraph 1 and 326.2 of the Criminal Law to*

ensure that the acceptance of an offer/promise of an undue advantage by private sector employees and employees of state and local government institutions is criminalised.

7. GRECO recalls that in the Compliance Report, part (ii) of the recommendation was considered to be implemented satisfactorily. As regards part (i) of the recommendation, it was stated that the amendments made to the relevant sections of the Criminal Law did little to address the clarifications requested by the recommendation, since section 323 on active bribery in the public sector and Section 199 of the Criminal Law on active bribery in the private sector still contained the text “if the offer is accepted”, which as indicated in the Evaluation Report (see paragraph 83), “seems to rule out a mere promise or an unaccepted offer of an undue advantage”.
8. The authorities of Latvia now report that the Permanent Working Group on Criminal Law at the Ministry of Justice, discussed the issue and reached an agreement to delete the words “if the offer is accepted” from Sections 323 and 199 of the Criminal Law. This amendment, which would enable the criminalisation of the promise or offer of an undue advantage as a completed offence, without taking into consideration the acceptance or refusal of the advantage, was adopted by Parliament in second reading.
9. GRECO welcomes the draft amendment of Sections 323 and 199 of the Criminal Law. If adopted in third reading, this amendment would make it clear that an offer of an undue advantage or the acceptance of such an advantage are to be qualified as a completed bribery offence.
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

11. *GRECO recommended to criminalise active bribery of employees in state or local government institutions.*
12. GRECO recalls that this recommendation was considered not implemented in the Compliance Report, as no concrete steps had been taken by the authorities to address it.
13. The authorities of Latvia now indicate that the Permanent Working Group on Criminal Law at the Ministry of Justice, decided to propose to the Parliament a draft law to criminalise active bribery of employees in state and local government institutions. The corresponding draft law on “Amendments to the Criminal Law” was adopted by the Parliament in second reading¹.
14. GRECO takes note of the information provided, and welcomes that the authorities have reached a consensus on the need to eliminate the gap highlighted in the recommendation. However, GRECO points out that the proposed text defines only the “giving” of an undue advantage as a

¹ **Draft amended Section 326³, Criminal Law**

(1) For a person who commits the giving of material values, property or benefits of other nature, in person or through intermediaries, to an employee of a State or self-government institution, who is not a State official, or a similar person who is authorised by the state institution so that he or she, using his or her authority, performs or fails to perform some act in the interests of the giver of the benefits or any other person regardless of whether the material values, property or benefits of other nature are intended for this person or any other person-

the applicable punishment is short-term deprivation of liberty, or community service, or monetary fine.

(2) For a person who commits the same act, if committed on large scale or commission thereof is by group of persons pursuant to prior agreement-

the applicable sentence is deprivation of liberty for a term not exceeding two years, or community service, or monetary fine.

punishable act and leaves the “offer or promise” of such an advantage outside the scope of the proposed article. It therefore calls upon the Latvian authorities to amend the text further before it is finally adopted by Parliament.

15. GRECO concludes that recommendation ii has been partly implemented.

Recommendation vii.

16. *GRECO recommended to (i) raise the sanctions for trading in influence, ensuring consequently that the statutory limitation period for this offence is increased and (ii) criminalise indirect active trading in influence as well as the request for an undue advantage to exert improper influence over the decision-making of certain third parties, in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
17. In the Compliance report, GRECO concluded that the amended Section 326¹ of the Criminal Law was considered to be in conformity with the requirements of the first part of recommendation. However, as regards the second part of the recommendation, GRECO concluded that the request of an advantage to exert improper influence was not expressly covered by Section 326¹.
18. The authorities state that Parliament adopted in second reading the amendments to Section 326¹ of the Criminal Law which provide liability for requests of an advantage to exert improper influence.
19. GRECO takes note of the ongoing amendment process to the Section 326¹ of the Criminal Law. However, as this amendment has not yet entered into force, it cannot consider the recommendation as fully implemented.
20. GRECO concludes that recommendation vii remains partly implemented.

Theme II: Transparency of Party Funding

21. It is recalled that GRECO in its Evaluation Report addressed five recommendations to Latvia in respect of Theme II and that recommendations i, iii and iv were considered as implemented satisfactorily in the Compliance Report. The remaining recommendations are dealt with below.

Recommendation ii.

22. *GRECO recommended to take measures to strengthen the independence of the Corruption Prevention and Combatting Bureau (KNAB) (including as regards the supervision of its activities, the procedure for appointing and dismissing its Director and deciding on its budget), thus ensuring that it can exercise its functions in an independent and impartial manner.*
23. It is recalled that, despite positive measures taken as regards strengthening the independence of the KNAB and the procedure for appointing its Director, legislative measures, including budgetary aspects, still needed to be adopted, which had led GRECO, in its Compliance Report, to rate the recommendation as partly implemented.
24. The authorities of Latvia now report that the policy proposals, prepared by the working group and mentioned in the Compliance Report (see paragraph 53), including the possible measures that

could be taken to strengthen the independence and impartiality of KNAB, are still under discussion in the Cabinet of Ministers, where no concrete decision has so far been taken.

25. Meanwhile, the authorities also stress that the Cabinet of Ministers issued on 17 August 2011 the Order number 387, dealing with the Commission which would assess the candidates to the post of the Director of the KNAB. This order sets out the composition of the commission, which will gather high ranking officials from the judiciary (Supreme Court, Prosecutor General's Office) and the executive power (State Chancellery, Constitution Protection Bureau and Security Police). The head of the commission has the right to ask for the participation of other specialists and experts (including NGO's) in the commission's work. The annex of this Order contains rules on open competition to the post of Director of the KNAB. These rules explain the general questions, procedure for the competition and the qualifications necessary for candidates to the post of Director. The authorities add that the Cabinet of Ministers has adopted a regulation on the "Procedure of Selection of Candidates to the Post of the Director of Corruption Prevention and Combatting Bureau" which stipulates the conditions and the procedure for application, selection and evaluation of candidates for the post of the Director of the KNAB. This regulation entered into force on 6 October 2012.
26. GRECO welcomes that the positive developments already noted in the Compliance Report regarding the selection of the Director of KNAB, have been formalised in a regulation, and that the possibility of political interference has been minimised. However, GRECO regrets that the Cabinet of Ministers has yet to decide on one of the policy options proposed by the working group more than two years ago. GRECO therefore urges the Latvian authorities to take more determined actions to ensure that KNAB can exercise its functions in an independent and impartial manner, as requested by the recommendation.
27. GRECO concludes that recommendation ii remains partly implemented.

Recommendation v.

28. *GRECO recommended to increase the limitation period for administrative violations of the Law on the Financing of Political Organisations (Parties).*
29. This recommendation was considered as partly implemented in the Compliance Report, as the authorities had given some consideration to the recommendation, even if they had decided not to increase the limitation periods for administrative violations of the Law on the Financing of Political Organisations (Parties). The authorities had also stated that they were planning to amend the Criminal Law in order to provide criminal liability for breaches of political financing rules, which would have longer limitation periods.
30. The authorities of Latvia now report that further to the amendments of Section 37 of the Administrative Violation Code, which were adopted on 14 June 2012 and entered into force on 1 July 2012, that the limitation period for administrative violations of the Law on the Financing of Political Organisations (Parties) was increased from one to two years from the day of commission of the violation.
31. Furthermore, the authorities stress that the Parliament adopted amendments to the Criminal Law, which foresee criminal liability for offences of illegal financing of political parties on a large scale; these entered into force on 4 October 2011. The authorities state that these amendments have contributed to strengthening the system of control of financing of political parties, as they involve

more severe sanctions, higher limitation periods and enable the use of criminal investigation techniques, which will allow KNAB to deal even with particularly complex cases.

32. GRECO welcomes the amendments to the Administrative Violation Code and the Criminal Code, which provide for higher limitation periods, as required by the recommendation.

33. GRECO concludes that recommendation v has been implemented satisfactorily.

III. CONCLUSIONS

34. **In view of the conclusions contained in the Third Round Compliance Report on Latvia and in light of the above, GRECO concludes that Latvia has implemented satisfactorily or dealt with in a satisfactory manner in total nine of the thirteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations iii, iv, v and viii have been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner and recommendations i, ii and vii have been partly implemented. Regarding Theme II – Transparency of Party Funding, recommendations i, iii, iv and v have been implemented satisfactorily and recommendation ii has been partly implemented.

35. Concerning incriminations, the preparation of draft amendments to criminalise active bribery of employees in state and local government institutions, and the active side of trading in influence are important steps towards full implementation of recommendations ii and vii. Nevertheless, these amendments still need to be adopted by parliament. Moreover, GRECO welcomes that the authorities have decided to take action to eliminate the confusion about whether a mere offer or an unaccepted offer of an undue advantage should be prosecuted according to attempted bribery or completed bribery provisions. GRECO trusts that the adoption of the amendments by parliament will enable Latvia to comply with the pending recommendations.

36. In so far as the transparency of political funding is concerned, some positive developments have occurred regarding an increase of limitation periods for violation of political financing rules and amendments were introduced in the Law on Corruption Prevention and Combating Bureau (KNAB), which intend to eliminate political interference in the selection and appointment process of the Director of the KNAB. GRECO is however concerned that policy proposals made more than two years ago to strengthen the independence of the KNAB have still not been adopted.

37. In view of the fact that still four out of thirteen recommendations concerning both themes are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure requests the Head of the delegation of Latvia to submit additional information, namely information regarding the implementation of recommendations i, ii, and vii (Theme I – Incriminations) and recommendation ii (Theme II- Party Funding) by 31 July 2013 at the latest.

38. Finally, GRECO invites the authorities of Latvia to translate the report into the national language and to make this translation public.