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Third Evaluation Round

Compliance report on Luxembourg

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

"Transparency of Political Party Funding"

Adopted by GRECO
at its 47th Plenary Meeting
(Strasbourg, 7 - 11 June 2010)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the Luxembourg authorities to implement the 17 recommendations in the Third Round Evaluation Report on Luxembourg (see paragraph 2), which covers two themes:
 - **Theme I – Incriminations:** articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), articles 1 to 6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (incrimination of corruption).
 - **Theme II - Transparency of Political 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 on financing of political parties and election campaigns.
2. The Third Round Evaluation Report was adopted at GRECO's 38th Plenary Meeting (13 June 2008) and was made public on 25 August 2008, following authorisation from Luxembourg (Greco Eval III Rep (2007) 6E, Theme I and Theme II).
3. As required by GRECO's Rules of Procedure, the Luxembourg authorities have submitted a situation report on measures taken to implement the recommendations. The report came in two parts, the first on 24 December 2009 (Theme I – Incriminations) and the second on 6 January 2010 (Theme II – Transparency of Political Party Funding). Additional information on the two themes was received between February and May 2010¹. This information has formed the basis for the compliance report.
4. GRECO selected Switzerland and Moldova to appoint rapporteurs for the compliance procedure. The rapporteurs are Mr Ernst Gnägi, on behalf of Switzerland, and Mrs Cornelia Vicleanschi, on behalf of Moldova. They have been assisted by the GRECO secretariat in drawing up the report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and provides an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendations (partially or not implemented) will be assessed on the basis of a situation report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. In its evaluation report, GRECO addressed 7 recommendations to Luxembourg concerning Theme I. Compliance with these recommendations is considered below.
7. From a general standpoint, the Luxembourg authorities state that the minister of justice has prepared draft legislation to strengthen anti-corruption measures, which would amend: 1) the

¹ 26 February 2010: in particular, draft legislation to strengthen anti-corruption measures; 15 March 2010: version published on 11 March 2010 of legislation introducing liability for legal persons; 28 April 2010: internal memorandum on making trading in influence an offence; 5 May 2010: first report of the Court of Auditors on political party financing; 21 May: additional information was submitted in the context of the country's comments on the earlier draft of the present report.

labour code; 2) the amended Act of 16 April 1979 establishing the general status of state officials; 3) the amended Act of 24 December 1985 establishing the general status of municipal officials; 4) the code of criminal investigation and 5) the criminal code. The draft legislation prepared by the government was discussed notably by the prevention of corruption committee (COPRECO, on which all the ministerial departments are, in principle, represented) and was sent to parliament on 25 January 2010. Various sections of the draft legislation take account of the GRECO recommendations.

Recommendation i.

8. *The GET recommended that appropriate measures be taken to ensure that the various offences of active and passive bribery are understood as including the notions of "giving" and "receiving" (an undue advantage), without involving an automatic requirement for an agreement between the parties.*
9. The Luxembourg authorities state that section VI of the draft legislation to strengthen anti-corruption measures would include drafting amendments to clarify articles 246 to 250 of the criminal code. In particular, the term "accept" ("*agr eer*") would be replaced by "receive", the term "grant" ("*octroyer*") would be replaced by "give", and each article would include the case of accepting, offering or promising a benefit.
10. GRECO notes with satisfaction that the offences of active and passive bribery, as defined in Luxembourg criminal code, now expressly include the notions of "giving" and "receiving" (an undue advantage). However, since the draft legislation has not yet adopted, GRECO cannot conclude that this recommendation has been fully implemented.
11. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

12. *GRECO recommended that, in order to harmonise the provisions in this area, the wording of article 250.2 CC be aligned with that of article 250.1 CC by adding the words "indirectly", "grant" and "unlawfully".*
13. The Luxembourg authorities state that section VI of the draft legislation to strengthen anti-corruption measures would amend article 250 of the criminal code by aligning the wording of paragraph 2 with that of paragraph 1.
14. GRECO notes these changes to the legislation; they meet the expectations of the present recommendation but they have not yet come into force.
15. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

16. *GRECO recommended that article 252 CC on the bribery of foreign public officials and international staff be extended to include the various categories of staff of international organisations.*

17. The Luxembourg authorities state that section VII of the draft legislation to strengthen anti-corruption measures would amend the fourth sub-paragraph of article 252 of the criminal code as recommended by GRECO².
18. GRECO notes the change to the legislation, which would now ensure that all categories of persons working for international organisations were covered by article 252 of the criminal code. However, since it has not yet come into force, GRECO cannot conclude that this recommendation has been entirely taken into account.
19. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

20. *GRECO recommended that consideration be given to rewording articles 310 and 310-1 CC on bribery in the private sector to ensure that the requirement that employers not be aware of or approve the criminal behaviour of the employee cannot be misused to enable them to exonerate the prosecuted employee from his/her liability.*
21. The Luxembourg authorities state that this point was discussed at the meeting of COPRECO on September 2009. COPRECO undertook a detailed analysis of the recommendation in the light of the general principles of Luxembourg law. It concluded that there was no need to change the legislation on these offences to take account of GRECO's concerns, since the offences in question were immediate offences that were completed once all the essential elements were satisfied. Once this was the case, any sort of retrospective approval on the part of a hierarchical superior was inconceivable and could not be used to exonerate the perpetrator of such a criminal offence.
22. GRECO notes the information provided. It does not entirely share the Luxembourg authorities' reasoning and regrets that they have reached this conclusion. It again refers to its concerns expressed in paragraph 83 of the Evaluation Report that such an approach might enable a company or organisation's managing bodies to "cover" or "validate" *post hoc* an act of corruption committed by one of its employees by claiming, in the event of criminal proceedings, that it was aware of what was happening. Articles 7 and 8 of the Criminal Law Convention on Corruption (CETS 173) refer to persons acting, or refraining from acting, "in breach of their duties". This can ideally be determined with reference to contractual, legal, ethical or other provisions that in principle are relatively predictable and clear, whereas it could be difficult for judicial authorities conducting corruption proceedings to check the validity of a *post hoc* statement by a company's managing body. However, the Luxembourg authorities have undoubtedly given consideration to this matter, as stated in the recommendation, and do not intend to alter the legislation.
23. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

24. *GRECO recommended to ensure that the various elements required by Article 12 of the Criminal Law Convention on Corruption - STE 173 - (in particular acting and refraining from acting,*

² The start of the fourth sub-paragraph of article 252 of the criminal code is amended as follows:
" - established and other officials of other public international organisations, members of ..."

whether or not the intended result is achieved and whether or not an intermediary is used) are included in the trading in influence offences of Luxembourg.

25. The Luxembourg authorities state that this matter was the subject of a departmental memorandum of 4 December 2009, from the general state prosecutor to the Luxembourg and Diekirch prosecutors.
26. GRECO has noted this internal departmental memorandum. This reminds those concerned of the purposes of Article 12 of the Convention, the relevant legislation and French case-law (on which Luxembourg law often relies) in this area. The memorandum points out that influence may concern both positive and negative actions and that it is irrelevant whether or not the influence has been exercised or has had the intended result, since the offence is primarily concerned with the purpose of the trading in influence. Luxembourg has thus opted for awareness raising rather than possible changes to the legislation, for example as part of the aforementioned draft legislation to strengthen anti-corruption measures; in GRECO's opinion, this initiative is consistent with the assurance required under the present recommendation.
27. GRECO concludes that recommendation v. has been implemented satisfactorily.

Recommendation vi.

28. *GRECO recommended that the necessary steps be taken to ensure that various additional penalties, particularly ineligibility, can be applied in corruption cases even as regards lesser offences and circumstances in which recategorisation of the offence occurred ("correctionnalisation" and "contraventionnalisation").*
29. The Luxembourg authorities state that section VIII of the draft legislation to strengthen anti-corruption measures would introduce a new article 253 of the criminal code³, which would specify that even in cases where bribery offences were reclassified as lesser offences the additional penalties specified in article 11 of the criminal code would apply.
30. GRECO notes with satisfaction the proposal to introduce a new legislative provision in accordance with recommendation vi. However, since the draft legislation has not yet been adopted, GRECO cannot conclude that this recommendation has been fully implemented.
31. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

32. *GRECO recommended that a) the requirement of dual criminality for lesser offences ("délits") committed by Luxembourg citizens abroad be abolished in all circumstances, including those in which recategorisation of the offence occurs ("correctionnalisation"), and b) Luxembourg consider withdrawing or not renewing the reservation relating to Article 17 of the Criminal Law Convention on Corruption (ETS 173).*

³ Article 253 of the criminal code:

"1. If the acts classified as serious offences in this chapter are deemed to be such that they should only be punished as lesser offences, the convicted person may be prohibited from exercising, in whole or in part, the rights listed in article 11, as provided for in article 24.

2. For acts classified as lesser offences for the purposes of this chapter and for offences specified in articles 310 and 310-1, article 24 of the criminal code shall apply."

33. The Luxembourg authorities state that section IV of the draft legislation to strengthen anti-corruption measures would amend article 5-1 of the code of criminal investigation to give Luxembourg courts jurisdiction to hear cases involving offences committed abroad without the dual criminality requirement⁴. It was also planned to withdraw the reservation relating to Article 17 of the Criminal Law Convention.
34. With regard to the first part of the recommendation, GRECO notes the aforementioned draft amendment. The approach envisaged by Luxembourg, including the revision of article 5-1 of the code of criminal investigation, has the benefit of clarity, since the issue of the consequences of reclassifying an offence no longer applies. However article 252 of the criminal code⁵ appears to be missing from the list of offences to which the dual criminality principle would no longer apply. This concerns, in particular, persons employed by international organisations, members of international public assemblies and judges and officials of international courts (which could include Luxembourg nationals). The matter should therefore be reconsidered. Moreover, the legislation to strengthen anti-corruption measures still has to be enacted.
35. Turning to the second part of the recommendation, GRECO notes that the reason for it was that the reservation in question was fairly restrictive in scope⁶, in particular since it excluded from Luxembourg's jurisdiction bribery offences against Luxembourg public officials committed abroad by foreign nationals (over which Luxembourg does, in theory, have jurisdiction, under the ubiquity principle). GRECO welcomes the fact that in practice the reservation has not been renewed, with effect from 1 May 2009⁷.
36. GRECO concludes that recommendation vii has been partly implemented.

Theme II: Transparency of Political Party Funding

37. In its Evaluation Report, GRECO addressed ten recommendations to Luxembourg concerning Theme II. Compliance with these recommendations is considered below.
38. The Luxembourg authorities state that at meetings on 11 and 26 November 2009, and on 19 May 2010, the institutions and constitutional review committee of parliament discussed the evaluation report (Theme II) with representatives of the political parties. The fact that the report was referred to the institutions and constitutional review committee was not considered by its members as an invitation itself to adopt a position on it, and in particular on the recommendations to the

⁴ Draft revised article 5-1:

All Luxembourg nationals, persons whose normal residence is in the country and foreign nationals apprehended in Luxembourg who have committed abroad one of the offences specified in articles 163, 169, 170, 177, 178, 185, 187-1, 192-1, 192-2, 198, 199, 199bis, 246 to 250, 310, 310-1, and 368 to 384 of the criminal code, may be prosecuted and have their case heard in the Grand Duchy, even if the actions were not offences under the legislation of the country where they took place and the Luxembourg authorities have not received a complaint from the injured party or from the authorities of the country where the offence was committed.

⁵ Article 252 of the criminal code concerning the bribery of foreign or international public officials or elected members.

⁶ In accordance with Article 17, paragraph 2 of the Criminal Law Convention on Corruption, the Government of the Grand Duchy of Luxembourg declares that, except in cases covered by paragraph 1, subparagraph a of Article 17 of this Convention, it will apply the jurisdiction rules laid down in Article 17, paragraph 1, subparagraphs b and c, only if the offender has the Luxembourgish nationality.

⁷ According to information from the Council of Europe Treaty Office, the reservation would have expired on 1 November 2008. The Office advised the Luxembourg authorities of this before the expiry date and gave them an additional six months, to 1 May 2009, to confirm or otherwise the continuation of the reservation, failing which it would be considered non-renewed. In the absence of a reply, this is what happened.

Luxembourg authorities. The committee therefore took care to associate the political parties in its discussions, since they were considered to be most concerned by the recommendations. Those taking part in the aforementioned meetings also stressed that the legislation on the funding of political parties of 21 December 2007 was intended to guarantee the independence of political parties and ensure that in future they were not financed by donations or assistance from the private sector, particularly for election campaigns. The Luxembourg authorities have found that, in general, this objective has been achieved.

39. GRECO notes that in connection with their Situation Report, the Luxembourg authorities supplied it with copies of an exchange of letters between ministers and a letter from the speaker of the Chamber of Deputies dated 14 December 2009, containing a report of the November 2009 meetings that sets out the positions of the participants.

Recommendation i.

40. *GRECO recommended that the Luxembourg authorities ensure that adequate training on the new political party funding legislation is provided, particularly as regards its financial and accounting aspects, and that this training is available to local officials.*
41. The Luxembourg authorities state, but without further precisions, that in the last two years, training initiatives have been taken for party structures at both national and local level. They also state that those taking part in the meetings of 11 and 26 November 2009 thought that training activities needed to be more clearly defined and should be more regular and more structured, particularly those for local party officials.
42. GRECO notes the information supplied concerning the organisation of certain training events, as required by the present recommendation. The absence of detailed information does not allow, however, to conclude that these initiatives are sufficient and political parties themselves acknowledge that further efforts are needed in this respect. Moreover, GRECO notes that numerous inadequacies, inconsistencies and errors have already been identified in party accounts in the Court of Auditors' first report released in January 2010 (for the year 2008); this simply confirms, were it necessary, the relevance and importance of this recommendation.
43. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

44. *GRECO recommended to set up a mechanism to undertake an evaluation of the overall system of political financing, with a view to gradually establishing with political parties the extent and nature of their obligations, determining what changes and clarifications are required to the relevant legislation and regulations, and maintaining a statistical record of breaches of obligations and any sanctions imposed.*
45. The Luxembourg authorities report that the participants at the meetings of 11 and 26 November 2009 concluded that the supervisory machinery specified in the legislation needed to be considered in the light of the Court of Auditors' observations and recommendations. They also agreed on the need to clarify the arrangements for assessing the funding of political parties on the basis of the Act of 21 December 2007 on political party funding. In Luxembourg's view, there is no doubt that any evaluation of the funding system must involve the political parties and therefore, it will be the responsibility of the Chamber of Deputies, through its institutions and

constitutional review committee, to issue suggestions and proposals for the attention of the Chamber and the Government.

46. GRECO notes the information supplied. It finds it completely appropriate to wish to relate possible evaluation arrangements to the results of the Court of Auditors' audits. Its first report on the funding of political parties, which relates to the 2008 financial year, only appeared in January 2010. GRECO therefore considers that this matter should be re-examined in the light of practical measures taken by Luxembourg for the self evaluation of its legal framework, especially since the present report on the implementation of recommendations shows that important lacuna remain in the political financing area.
47. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

48. *GRECO recommended that political parties be granted a clear status that would be recognised by the Luxembourg society, would entail full legal capacity and which could, for instance, be structured around objective criteria such as participation in legislative and European elections or the presentation of full lists of candidates, etc.*
49. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the political party representatives did not consider it appropriate, at the moment, to give political parties a legal status "structured around objective criteria such as participation in legislative and European elections or the presentation of full lists of candidates, etc." It was felt that no decision could be taken on such a status until all the implications had been assessed, particularly in the light of the constitutional right of every citizen to stand for election, in accordance with the conditions laid down.
50. GRECO notes the information provided. It points out that according to paragraph 43 of the evaluation report, in the absence of a formal status or legal personality, political parties in Luxembourg have to resort to arrangements and expedients that do not encourage transparency in their financing. In particular, they have to use non-profit making associations to manage their assets and their operational resources. The absence of legal personality also creates a general problem of how to apply sanctions to parties. According to information obtained on site, the introduction of a clear status for parties would give both organisations and members a greater sense of responsibility and could have a positive effect on parties' financial and accounting discipline. GRECO notes that despite all these concerns, no practical steps have been taken, or are even planned, to implement this recommendation.
51. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

52. *GRECO recommended that the regulation provided for in section 13 of the 2007 law be introduced and that the current provisions be supplemented by one or more instruments that would a) clarify the applicable accounting obligations and the exact scope of political parties' accounting duties; b) establish uniform arrangements for determining which services and other benefits in kind should be included in parties' income accounts; c) specify the arrangements for dealing with election expenses, clarifying their precise nature, the time period concerned etc.*

53. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the final sub-paragraph of section 13 provided that a grand ducal regulation could establish uniform accounting standards, and specify the form of accounts and balance sheets and how they should be drawn up. At the discussions in 2007 in the institutions and constitutional review committee, the political parties agreed on the uniform accounting plan to be introduced. In its first report of January 2010, the Court of Auditors also recommends to introduce a uniform accounting plan, to specify the format for financial accounts and annual balance sheets, as well as to specify accounting requirements. The Luxembourg authorities stress that a uniform accounting plan will be adopted by the end of 2010.
54. GRECO notes the information provided. Despite the acknowledged need, also in Luxembourg at present, for uniform accounting standards as required by the present recommendation, no concrete measures have been taken to date in this respect; furthermore, no initiatives are reported as regards the other elements of the recommendation.
55. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

56. *GRECO recommended that the parties with complex structures or numerous organisational elements be invited to make greater use of internal control systems.*
57. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the oversight exercised by the Court of Auditors does not absolve political parties from establishing internal control systems. The political parties undertook to make their internal control arrangements more efficient, particularly by using qualified experts to monitor their income and expenditure. At the meeting of 19 May, it appeared that one of the major Luxembourg parties is already using the services of an external auditor to supervise the adequacy of their bookkeeping; the other parties have occasionally used expert accountants and economists to introduce a system of checks over income and expenditure.
58. GRECO notes the information provided. Political parties' commitment to appoint financial experts with responsibility for certain control functions and introducing control mechanisms systems is consistent with the tenor of this recommendation; although it is not very detailed, the information provided also shows that the above commitment has already triggered effective measures. GRECO is globally satisfied with the reported developments.
59. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

60. *GRECO recommended that the financing of campaigns, including of candidates for elections, be subject to rules on transparency, accounting obligations, control and sanctions similar to those applicable to political parties.*
61. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the legislation of 21 December 2007 was only concerned with the financing of parties. It did not cover election campaigns by individual candidates and their funding. Political parties ask candidates on their electoral lists to refrain from conducting individual campaigns, something the candidates generally abide by.

62. GRECO notes the information provided. It notes that paragraphs 50 and 51 of the evaluation report identified a number of shortcomings arising from the absence of financial regulations concerning election campaigns, in connection with parties and their candidates, or independent candidates, contributions from persons holding office and direct or indirect contributions to candidates from legal persons⁸. GRECO regrets that no steps have been taken to implement this recommendation.
63. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

64. *GRECO recommended that a clear separation be made between the financing of parliamentary groups and that of political parties, or that the Court of Auditors' jurisdiction be extended to parliamentary groups, as far as is necessary for the proper application of the control system established in the 2007 legislation.*
65. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the current provisions draw a clear distinction between the financing of political parties on the basis of the 2007 legislation and the financing of groups and parties represented in the Chamber of Deputies from appropriations in the Chamber's budget. If necessary, more binding provisions might be required in the Chamber of Deputies' rules of procedure.
66. GRECO notes the information provided. It refers to the concerns it expressed in paragraph 54 of the evaluation report⁹. At the time, members of parliament had indicated that they intended the new legislation to make a clear distinction between the financing of political groups and that of parties, an idea also supported by the *Conseil d'Etat*¹⁰. However, the GET could not identify any provision to this effect in the new legislation¹¹. The information provided fails to clarify the situation and GRECO therefore regrets that, so far, no practical steps have been taken to implement this recommendation.
67. GRECO concludes that recommendation vii has not been implemented.

Recommendations viii and ix.

68. Recommendation viii: *GRECO recommended to clarify the action to be taken in response to irregularities identified by the Court of Auditors in the course of its monitoring of political financing,*

⁸ Legal persons may in practice take part in the financing of campaigns and/or candidates – a primitive form of lobbying in some respects – by initially paying funds to an office holder, who can then pass on all or part of the amount as an office holder's contribution.

⁹ "However, the expenditure of parliamentary groups falls outside the court's jurisdiction. Moreover, as members of parliament themselves have stated parliament does not monitor such financing and expenditure either and groups do not have to justify how they use their resources. Yet, the financial resources and other facilities of these groups benefit the parties considerably and there are currently no criteria for distinguishing between their different activities, as is the case in neighbouring countries with a similar situation."

¹⁰ In its opinion of 6 November 2007, the *Conseil d'Etat* said that given the legal basis for these parliamentary grants, it was clear that they could only be used to finance parliamentary activities and must not be diverted to fund other party political activities.

¹¹ The initial draft included a section 2 which stated that the financial aid to groups must not be used to cover the expenditure of the political parties that made up these groups, but this did not appear in the final version.

making it clear that it is required to report suspected offences, including corruption, directly to the law enforcement authorities.

Recommendation ix: GRECO recommended that a) steps be taken to ensure that accounting and financial information submitted by party sections and bodies to their central organisations is in a form that facilitates the Court of Auditors' oversight functions; b) the Court of Auditors or the government specify the rules applicable to the first audits, particularly regarding the manner in which assets are to be accounted for.

69. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, these two recommendations on the Court of Auditors' oversight functions will be acted on as required by the oversight body itself and that it is necessary to await the results of the Court's first report in 2010. The additional information supplied by Luxembourg after the publication of the report in question shows that the Court has limited itself to recalling the legal provisions and the situation already described in the Evaluation Report. No further development is reported in respect of recommendation ix.
70. GRECO notes the information provided and regrets that no practical steps have been taken to give effect to these recommendations.
71. GRECO concludes that recommendations viii and ix have not been implemented.

Recommendation x.

72. *GRECO recommended to a) ensure that all political parties - whether or not benefiting from public funding - which fail to comply with the various requirements of the 2007 legislation are subject to sanctions that are effective, proportionate and dissuasive and b) extend the range of sanctions available, beyond the suspension or reduction of public funding.*
73. According to the conclusions of the meetings of 11 and 26 November 2009, as reported by the Luxembourg authorities, the sanctions provided for in the legislation of 21 December 2007 will be strictly applied. An extension of these sanctions may be considered, in the light of experience. However, it is not appropriate at this stage to introduce additional sanctions to those already specified in the legislation.
74. GRECO notes the Luxembourg authorities' explanations. It notes the shortcomings identified in paragraph 59 of the evaluation report¹². So far, no action has been taken to respond to the recommendation.
75. GRECO concludes that recommendation x has not been implemented.

¹² "The nature of the sanctions, which no longer include fines, as was the case in the initial draft, means that they will only be effective in the case of parties that receive funding. The lack of any clear system of legal personality and responsibility of political parties may complicate the introduction of appropriate sanctions. As recommended in this report, this is a subject that needs to be settled. Consideration should therefore again be given to introducing a system of fines, or other penalties. Furthermore, the GET has not had an opportunity to discuss on site the new provisions introduced after the visit. This makes it difficult to ascertain whether all the possible breaches of the new legislation, apart from the requirements of section 6, are punishable by effective, proportionate and dissuasive sanctions. This applies particularly to breaches of the rules on the forms of and arrangements governing gifts, donations, legacies and so on. For example, donations from legal persons, including *de facto* legal persons, and anonymous donations are prohibited but the cross-references between sections of the legislation [...] makes it difficult to determine with certainty whether they are liable to sanctions. "

III. CONCLUSIONS

76. **In view of the above, GRECO concludes that Luxembourg has only implemented satisfactorily or dealt with in a satisfactory manner three of the seventeen recommendations in the Third Evaluation Round Report.** With respect to Theme I – Incriminations, recommendations iv and v have been implemented satisfactorily and recommendations i, ii, iii, vi and vii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation v has been dealt with in a satisfactory manner and recommendation i has been partly implemented. Recommendations ii to iv, and vi to x have not been implemented.
77. As regards incriminations, Luxembourg has examined the advisability of amending the offence of bribery in the private sector to avoid any risk that employees will be improperly exonerated from any liability after the event. It has also taken measures to confirm with the prosecutorial authorities the content of the incrimination of trading in influence and it has prepared draft legislation to strengthen anti-corruption measures; this legislation would modify several other provisions on bribery offences as proposed in the recommendations. The system of penalties will also be revised as part of this exercise, with additional penalties such as ineligibility being made more widely applicable. GRECO also welcomes the fact that the reservation relating to jurisdiction, concerning Article 17 of the Convention, has not been renewed. GRECO urges the authorities to do everything in their power to secure full compliance with all the recommendations.
78. Turning to the transparency of political party funding, GRECO notes with satisfaction that internal financial controls are being introduced by the political parties and that first measures have been taken to make party officials familiar with the implications of the new legislation of December 2007 on party financing. This being said, it greatly regrets that so far the vast majority of the recommendations have not been even partly implemented. The government has decided to leave the initiative on this topic to the political parties. Admittedly, consultations took place on 11 and 26 November 2009, but no proposals emerged. So far, the conclusions of these meetings have been more concerned with adopting a stance on the relevant recommendations of the evaluation report than with taking concrete action. Whereas in the case of incriminations, Luxembourg is demonstrating its ability to progress, the pace of improvements in the area of political financing is much too slow and there is substantial uncertainty. Finally, the very modest progress achieved to date does not concern essential elements.
79. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the head of the Luxembourg delegation to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i, ii, iii, vi and vii regarding Theme I, and recommendations i to iv, and vi to x regarding Theme II) as soon as possible, however - at the latest – by 31 December 2010, pursuant to paragraph 2(i) of that rule.
80. Finally, GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible, to translate it if appropriate into the other national languages and to publish these translations.