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Addendum

Third Evaluation Round

Addendum to the Second Compliance Report on the Netherlands

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of the Netherlands since the adoption of the previous Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on the Netherlands. 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 38th Plenary Meeting (13 June 2008) and made public on 10 September 2008, following authorisation by the Netherlands (Greco Eval III Rep (2007) 8E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report adopted at GRECO's 47th Plenary Meeting (7-11 June 2010) and made public on 23 July 2010, following authorisation by the Netherlands ([Greco RC-III \(2010\) 5E](#)), concluded that all six recommendations adopted in respect of Theme I had been implemented satisfactorily or dealt with in a satisfactory manner, whereas with regard to Theme II six recommendations had been partly implemented and seven – not implemented. In the [Second Compliance Report](#), adopted at GRECO's 56th Plenary Meeting (22 June 2012) and made public on 6 February 2013 (GRECO RC-III (2012) 9E), it was found again that none of the thirteen recommendations on party funding had been implemented satisfactorily or dealt with in a satisfactory manner. GRECO had therefore categorised the situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure and decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report.
3. In the [Interim Compliance Report](#), adopted at the 60th Plenary Meeting (21 June 2013) and made public on 27 June 2013 (GRECO RC-III(2013) 8E), GRECO agreed that the country had implemented satisfactorily or dealt with in a satisfactory manner in total fourteen out of nineteen recommendations contained in the Third Round Evaluation Report, including eight out of thirteen recommendations on Theme II, and that the level of compliance with the recommendations was no longer “globally unsatisfactory”. Application of Rule 32 was therefore discontinued and the Head of delegation of the Netherlands was asked to submit additional information regarding the implementation of recommendations iii, iv, vii, viii and ix on Theme II, by 31 March 2014.
4. The Rapporteur appointed by Spain for the compliance procedure in respect of Theme II was Mr Rafael VAILLO RAMOS. He was assisted by the GRECO Secretariat in drawing up this Addendum to the Second Compliance Report.

II. ANALYSIS

Theme II: Transparency of Party Funding

5. Reference is made throughout to the Financing of Political Parties Act (WFPP) which had entered into force on 1 May 2013.

Recommendation iii.

6. *GRECO recommended (i) to require all entities represented in parliament to disclose, at least annually, all donations and bequests received from natural persons (including party members) and legal persons, including information on the source of these donations (at least above a certain threshold), their nature and value; (ii) to lower the current disclosure threshold of €4,537.80 for (corporate) donations in the Political Parties Subsidisation Act to an appropriate level and (iii) to prohibit donations from donors whose identity is not known to the political party/grouping/candidate.*
7. It is recalled that in the *Interim Compliance Report* GRECO had considered that this recommendation had not been implemented. Since the disclosure of bequests (legacies) remained outside the scope of the WSFPP, part (i) was assessed as only partly implemented. Moreover, the conservation of a relatively high disclosure threshold - above EUR 4 500 - and the absence of a ban on anonymous donations (monetary and in-kind) below EUR 1 000 meant that parts (ii) and (iii) of the recommendation were categorised as not implemented.
8. The authorities of the Netherlands maintain their previous position. In particular, they recall that the thresholds fixed in the WFPP result from a comparative assessment of how to strike a balance between greater transparency of donations, on the one hand, and placing too heavy an administrative burden on political parties, on the other. The thresholds laid down in the law will not be reconsidered immediately. However, in five years' time, when the WFPP is evaluated, these thresholds might be altered if it is found to be justified.
9. GRECO notes the lack of progress as regards all three parts of the recommendation. It therefore renews its calls upon the authorities to lower significantly the current disclosure threshold of EUR 4 500 and to prohibit donations from donors whose identity is not known to a political party.
10. GRECO concludes that recommendation iii remains not implemented.

Recommendations iv and vii.

11. *GRECO recommended (i) to extend the applicability of the future provisions on donations (and possible limits on donations) to local and regional/provincial units of political parties and (ii) to ensure that the accounts of political parties are consolidated to include the accounts of local and regional/provincial units, in line with Article 11 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns (**recommendation iv**).*
12. *GRECO recommended to take measures to enhance transparency of income and expenditure of political parties at local level (**recommendation vii**).*

13. It is recalled that both recommendations had been assessed as not implemented in the *Interim Compliance Report*. The WFPP only established rules in respect of political parties with seats in parliament (i.e. with the national coverage). The only exception was Article 34 WFPP which obliged all parties to introduce “codes for gifts” in order to determine how to deal with contributions and their disclosure. The authorities had furthermore pledged to elaborate rules on the financing of local and regional/provincial parties comparable to those established for parties with national coverage.
14. The authorities of the Netherlands reaffirm that “the WFPP obliges political parties at all levels (national, provincial and local councils, and the district water board councils) to draw up a regulation in which they determine how they cope with donations and their disclosure”, on the basis of which the authorities draw the conclusion that recommendation vii has been complied with. Moreover, recognising the need to make the funding streams of political parties in local government as transparent as at national level, the WFPP will be amended so as to explicitly cover local parties and local/provincial units of national parties by obliging them to annually disclose donations above EUR 1 000 and debts over EUR 5 000.¹ A bill introducing such measures was prepared by the government and published at the end of 2013 (<http://www.internetconsultatie.nl/wfpp>). At the moment the government is fine tuning the bill, based on the results of public consultations, following which the bill will be promptly sent to parliament for adoption.
15. GRECO hails the drafting of the bill which, fully in line with part (i) of recommendation iv, would oblige local parties as well as local and regional/provincial units of national parties to disclose donations and debts above a certain level. Conspicuously, in respect of such parties/party units, the disclosure threshold has been lowered to EUR 1 000, as compared to the EUR 4 500 threshold for parties with national coverage which was criticised by GRECO for being too elevated. As the bill has not yet led to a final law, this part of the recommendation is considered partly implemented. As concerns part (ii) of recommendation iv, GRECO notes the absence of meaningful steps to ensure that the accounts of national parties are consolidated to include the accounts of their local and regional/provincial units. Therefore, this part of the recommendation remains not implemented. As for recommendation vii, GRECO accepts that the transparency of income and debts of political parties operating at local level would be enhanced thanks to the aforementioned bill. Its adoption would mark an important milestone, inter alia, by extending the rules hitherto applicable only to parties with seats in parliament to parties active at the sub-national level. Nevertheless, as the recommendation requires, the transparency of financing of local parties also needs to be heightened with regard to expenditure, not only income. For this reason, GRECO concludes that the recommendation has been partly implemented.
16. GRECO concludes that recommendations iv and vii have been partly implemented.

Recommendations viii and ix.

17. *GRECO recommended (i) to establish independent monitoring of political funding, including electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 and (ii) to provide the*

¹ The bill proposes that: 1) the rules on donations should also apply to political parties represented in municipal councils, provincial councils and district water boards; 2) local political parties should publish annual financial reports summarising the donations received as well as other income, financial position and debts; 3) the institutions affiliated with local parties should record donations above EUR 200 and disclose donations exceeding EUR 1 000; 4) failure to comply with the rules would be subject to sanctions and the existing monitoring regime would be expanded, although local party monitoring would rely on self-regulation not central oversight, as local parties do not receive State subsidies.

body to be entrusted with carrying out this monitoring (which is most likely to be the Electoral Council) with adequate powers and financial and human resources (**recommendation viii**).

18. GRECO recommended to take further measures to safeguard the independent and impartial functioning of the Electoral Council and its Secretariat in the future supervision of political finance rules (**recommendation ix**).
19. It is recalled that both recommendations had been considered not implemented in the *Interim Compliance Report*. GRECO had expressed serious concerns about the fact that the power to supervise compliance by parties with the political financing rules had been vested in the Minister of the Interior – whose position presupposed a clear political affiliation. This diverged significantly from the requirements of Recommendation Rec(2003)4 as regards the independence of monitoring bodies. Similarly, the advisory commission set up under the responsibility of the Minister and composed of the Minister's appointees was not an adequate remedy as it lacked the requisite independence. Even if the commission were to include a representative of the opposition, GRECO had noted that it was not clear that the latter would have the capacity to influence the decision-making process. In addition, the information provided at the time did not suggest that the supervisory body would dispose of “adequate powers and financial and human resources”, notably experts on party and election campaign funding.
20. The authorities of the Netherlands reiterate that the Minister of the Interior is in a position to safeguard objective monitoring and supervision in the sphere of political financing. The authorities recall the findings of GRECO's Fourth Round Evaluation Report which states that MPs and parliament are to be commended for attracting a high level of public trust with relatively few regulations and supervision. The Dutch Parliament is a strong supervisory body. Reference is also made to the absence of a culture of nepotism, the fact that Dutch society does not hesitate to criticise politicians and the important watchdog role played by the media in revealing misconduct. Furthermore, the Minister is said to attribute much value to the independent functioning of the commission. Established in February 2014, it consists of three members none of whom represents the governing parties and it has had occasion to advise the Minister on three matters. Moreover, financial overviews submitted by parties and lists of party donors are made public and are subject to the Freedom of Information Act. This makes it possible for anyone to request the financial information on political parties, enforceable in courts if necessary. As regards recommendation ix, the authorities reiterate that, since the Electoral Council now has no role in the supervision of the political financing rules, this recommendation is no longer applicable.
21. GRECO is disappointed by the lack of notable improvements concerning the current supervisory mechanism provided for under the WFPP. It urges the authorities to set up an independent monitoring in respect of the funding of political parties and electoral campaigns in a manner that is fully in line with the meaning of Recommendation Rec(2003)4. The information provided does not allow GRECO to draw conclusions as to the adequacy of the system for monitoring and supervising political funding established under the responsibility of the Minister of the Interior or of the financial and human resources made available. The rating of recommendations viii and ix is therefore maintained as not implemented. The authorities are also strongly encouraged to reconsider their position and to opt for monitoring which is independent of the executive. Such an opportunity might be provided by the regular (every five years) evaluation of the implementation of the WFPP that will start in 2018.
22. GRECO concludes that recommendations viii and ix remain not implemented.

III. CONCLUSIONS

23. **With the adoption of this Addendum to the Second Compliance Report on the Netherlands, GRECO concludes that the Netherlands has implemented satisfactorily or dealt with in a satisfactory manner in total fourteen of the nineteen recommendations contained in the Third Round Evaluation Report.** Of the five pending recommendations, two have now been partly implemented and three recommendations remain not implemented.
24. More specifically, with regard to Theme I – Incriminations, all six recommendations have been implemented satisfactorily or dealt with in a satisfactory manner. In respect to Theme II – Transparency of Party Funding, eight recommendations (i, ii, v, vi, x-xiii) have been implemented satisfactorily, two recommendations (iv and vii) have been partly implemented and three recommendations (iii, viii and ix) have not been implemented.
25. As for incriminations, the Netherlands has taken steps to amend the provisions of its Criminal Code on bribery of public officials and on private sector bribery with a view to complying with the Criminal Law Convention on Corruption and its Additional Protocol. Furthermore, the introduction of provisions criminalising trading in influence has received appropriate consideration and has led to the amendment of the draft criminal codes for the Netherlands Antilles and Aruba.
26. As concerns the transparency of political financing, GRECO commends the drafting of a bill which will amend the Financing of Political Parties Act and impose an obligation on local parties and local/provincial units of parties with seats in parliament (i.e. with national coverage) to annually disclose donations above EUR 1 000 and debts over EUR 5 000. Once the bill is adopted, rules broadly similar to those that apply to national parties would apply to local parties, bringing consistency and greater transparency. This positive development aside, considerable deficiencies persist. These include the reluctance to moving authority for the supervision of political financing rules from the Minister of the Interior – whose position pre-supposes a clear political affiliation – to an independent body in the meaning of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, the non-compliance with the requirement to consolidate the accounts of parties so they include those of local and regional/provincial units of political parties with national coverage, and the conservation of a relatively high disclosure threshold of EUR 4 500 for donations to political parties with national coverage. GRECO urges the authorities to eliminate these gaps. This will help ensure that the Netherlands maintains high levels of public trust in its political institutions and political parties in particular.
27. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of the Netherlands.
28. GRECO invites the authorities of the Netherlands to translate it into the national language and to make this translation public.