



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 1 April 2011

Public
Greco RC-III (2011) 2E

Third Evaluation Round

Compliance Report on Norway

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

"Transparency of Party Funding"

Adopted by GRECO
at its 50th Plenary Meeting
(Strasbourg, 28 March – 1 April 2011)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Norway to implement the 8 recommendations issued in the Third Round Evaluation Report on Norway (see paragraph 2), 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 41st Plenary Meeting (16-19 February 2009) and made public on 5 May 2009, following authorisation by Norway (Greco Eval III Rep (2008) 6E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Norwegian authorities submitted a Situation Report on measures taken to implement the recommendations. The report in respect of Theme I was only received on 17 February 2011; the one concerning Theme II was submitted on 11 October 2010 (with updates received on 24 November 2010, 21 January and 1 February 2011).
4. GRECO selected Iceland and Romania to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr. Helgi Magnús GUNNARSSON, on behalf of Iceland, and Ms. Anca CHELARU on behalf of Romania. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 2 recommendations to Norway in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to consider introducing a provision on 'gross' or aggravated trading in influence in the Penal Code.*
8. The authorities of Norway recall that GRECO concluded that the provision on trading in influence in 276c of the Norwegian Penal Code was fully in line with the Criminal Law Convention on

Corruption (ETS 173) but that it was nonetheless recommended to consider introducing a provision on 'gross' trading in influence to allow in particular the use of special investigative means. The Norwegian authorities state that this matter has been examined within the Ministry of Justice at various levels (Police department, legal department and at political level). In doing so, two alternatives have been discussed: (1) the introduction of a provision on aggravated trading in influence, as indicated in the recommendation and (2) raising the maximum sanction for trading in influence to allow in particular for the possibility of using special investigative means. However, it was concluded that the investigative techniques currently available in cases of trading in influence are adequate and therefore no change to the legal situation is currently contemplated.

9. GRECO takes note of the information provided. It recalls that special investigative means, such as the interception of communications, are available for crimes for which a sanction of ten years' imprisonment can be imposed. As the maximum sanction for trading in influence is three years, special investigative means cannot be used in investigations into trading in influence. GRECO notes that the Norwegian authorities reiterate their previous position that the means currently available in trading in influence investigations are adequate. Nevertheless, as the issue has been subject to scrutiny by the Ministry of Justice, GRECO concludes – in accordance with its standing practice – that the recommendation has been addressed in the required manner.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to consider taking appropriate measures to ensure that cases of 'gross' corruption are not being adjudicated on appeal by a panel of only laymen, in order to ensure full compliance with Article 19 of the Criminal Law Convention on Corruption (ETS 173).*
12. The authorities of Norway acknowledge that prosecuting cases of 'gross' corruption in the Court of Appeal can be challenging, but point out that practice has thus far not brought any problems to light. In the summer of 2010, a case of 'gross' corruption and breach of trust ended with a final and enforceable conviction in the Court of Appeal, in addition to the two successfully adjudicated cases of 'gross' corruption to which the evaluation report refers. The Norwegian authorities furthermore state that the arguments put forward in the Evaluation Report have been carefully considered, but that for the moment there are no sufficient reasons to take any specific measures relating to the adjudication of 'gross' corruption on appeal. Nevertheless, the issue is being further examined in the context of the on-going debate on the jury system in Norway. In the summer of 2010, the Ministry of Justice appointed a committee to assess the merits of the jury system. The report of this committee is due on the 1st of June 2011 (after which it will be subject to a public hearing before possible amendments to the existing jury system are proposed to Parliament).
13. GRECO takes note of the information provided. It welcomes the fact that no problems with appeals in cases of 'gross' corruption have been experienced in practice. GRECO understands that consequently there is currently little reason to take further specific measures as regards cases of 'gross' corruption on appeal, but notes with satisfaction that this issue will continue to be considered further in the context of the wider debate on the jury system in Norway.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

15. It is recalled that GRECO in its evaluation report addressed 6 recommendations to Norway in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

16. GRECO recommended (i) to require party organisations to disclose expenditure annually, in addition to the current disclosure of income; (ii) to oblige party organisations to submit information on their assets and debts, as appropriate, and (iii) to establish a standardised format (accompanied by appropriate guidelines, if necessary) for the provision of such information
17. The authorities of Norway recall that the largest six or seven parties already disclose their expenditure (as well as assets and debts, and other financial information), pursuant to the Accounting Act.¹ In addition – *inter alia* in recognition of the fact that these reports are difficult for ordinary members of the public to understand and that it is difficult to identify individual donations in these reports – political parties (and organisational units of the party), which have a total annual income of more than 10,000 NOK (approximately € 1,250) (excluding public funding) report on their income.² Currently, approximately 630 party units (out of a total of approximately 3,200 party units) meet the latter condition and thus report on their income.
18. In order to meet the requirements of the first and second parts of the recommendation, the Ministry of Government Administration, Reform and Church Affairs has drafted amendments to the Political Parties Act, which would require those parties / party units, which already report on their income, to prepare complete accounts in compliance with the principles of the Accounting Act. A consultation document, containing these amendments together with a comprehensive explanatory memorandum, was sent in November 2010 to around 750-800 interested entities (political parties / party units, Statistics Norway, various ministries, county governors, county assemblies, the media and auditors etc.) in November 2010, with a deadline for comments by 17 February 2011. A summary of these comments (as well as possible changes to the draft legal amendments as a result thereof) will be included in the explanatory memorandum to the draft law amending the Political Parties Act. It is expected that the draft law amending the Political Parties Act will be sent to the *Storting* (parliament) late 2011.
19. As regards the third part of the recommendation, the Norwegian authorities report that once the amendments to the Political Parties Act have been adopted, an amended version of the current electronic forms for the reporting on income (with appropriate guidance) will be provided by Statistics Norway to all those parties / party units, which will have to provide a full overview of their finances (income, expenditure, debts and assets etc.).
20. GRECO welcomes the information provided, indicating that progress has been made towards implementing this recommendation.

¹ It is recalled that political parties with an average number of 20 or more employees (full-time equivalence) or assets exceeding 20 million Norwegian Crowns (approximately €2,5 million) must comply with the Accounting Act's requirements to submit their annual accounts, report and auditor's report. Parties in the *Storting* (parliament) all do so, either because one of the aforementioned criteria applies to them or they do so voluntarily (See paragraph 40 and 73 of the Third Round Evaluation Report).

² In addition, these parties / party units have to provide separate details on individual donations, if these exceed 30,000 NOK (approximately €3,750) to the central party organisation, 20,000 NOK (approximately €2,500) to the party unit at county level or 10,000 NOK (approximately €1,250) to a party unit at local level, from a single donor in a year.

21. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

22. *GRECO recommended to provide further guidance on the reporting and valuation of in-kind donations as well as on the concept of 'political agreements' which require reporting under the Political Parties Act.*

23. The authorities of Norway report on the guidelines that have been developed by the Ministry of Government Administration, Reform and Church Affairs, in co-operation with Statistics Norway, which explain the concept of so-called 'political agreements' and how to assess and report the value of in-kind donations. The guidelines entered into force on 28 February 2011 and have been posted on the website dedicated to party financing (www.partifinansiering.no), with a view to the next reporting deadline for parties/party units on the 1 July 2011.³

24. GRECO takes note of the information provided. It expects that these guidelines will contribute to a better understanding of what constitutes in-kind donations and political agreements to be reported under the Political Parties Act.

25. GRECO concludes that recommendation ii has satisfactorily implemented.

Recommendation iii.

26. *GRECO recommended to consider introducing an obligation to report on income received and expenses incurred in connection with election campaigns.*

27. The authorities of Norway state that, half a year after the adoption of GRECO's Third Round Evaluation Report, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organisation for Security and Co-operation in Europe (OSCE) carried out an assessment of the September 2009 *Storting* elections in Norway. One of the conclusions of this assessment is that Norway should carry out "a review of the Political Parties Act to consider increasing transparency of campaign income and expenditure through regular and independently audited reports".⁴ In order to implement both recommendations (i.e. of GRECO and ODIHR), the Ministry of Government Administration, Reform and Church Affairs has considered five different alternatives, including the introduction of an obligation to report all income and expenses in the period before the elections (and have these reports verified by an auditor).⁵ After an assessment of each alternative, in particular the costs and benefits of each alternative, the Ministry proposes in the consultation document, mentioned under recommendation i, to amend the Political Parties Act, introducing a separate obligation to report all monetary and in-kind donations above the existing reporting threshold (i.e. 30,000 NOK / €3,750 for the central party organisation; 20,000 NOK / €2,500 at county level and 10,000 NOK / €1,250 at local level⁶) received in the period between 1

³ See for the English version of these guidelines (<http://www.partifinansiering.no/english/guidelines.pdf>).

⁴ OSCE/ODIHR, Election Assessment Mission Report of the Parliamentary Elections in Norway (2009), p. 11.

⁵ The other alternatives were (1) to leave the situation unchanged; (2) to introduce a separate obligation to report on donations received in a specific period before the elections; (3) to introduce an obligation to report on donations received on a continuous basis, regardless of whether it is an election year or not; (4) to introduce an obligation to report on donations received on a continuous basis, regardless of whether it is an election year or not, as well as an obligation to report all income and expenditure in a specific period before the elections.

⁶ It is furthermore clarified that this is irrespective of at what level the relevant elections take place. In other words, a municipal party branch will still have to report all donations above 10,000 NOK received in the context of parliamentary

January and the end of the last Friday before the Monday of the elections, to Statistics Norway.⁷ Information on these donations will subsequently be published before polling day on the aforementioned party financing website. As indicated above, various entities are currently being consulted on the draft amendments and it is expected that these amendments will be sent to the *Storting* (parliament) towards the end of 2011.

28. In addition, the Norwegian authorities report that it has been decided – in order to prevent circumvention of the provisions on donations – to propose to the *Storting* to explicitly stipulate in the law that donations received by entities wholly or partly controlled by political parties or party units, including party branches outside Norway, will also have to be included in the report of the party/party unit in question (regardless of whether the donation was received in the period before elections or not). A further draft amendment to the Political Parties Act provides that the Ministry of Government Administration, Reform and Church Affairs may issue additional rules requiring candidates to report on the funding of their election campaigns.
29. GRECO notes that due consideration has been given to the introduction of a special reporting obligation in the context of election campaigns, as was required by the recommendation. GRECO appreciates that, as a result of this process, an obligation to report separately on donations received in the context of election campaigns is likely to be introduced in the near future. It furthermore welcomes the drafting of further amendments to ensure that donations to entities related to the party/party unit will also have to be reported on (and that, if need be, candidates may also be required to report on the funding of their campaigns).
30. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

31. *GRECO recommended to establish clear rules ensuring the necessary independence of auditors who are to audit the accounts of political parties.*
32. The authorities of Norway recall that the Auditors' Act already contains certain requirements ensuring the auditor's independence from the audited entity.⁸ To complement these requirements, specifically as regards political parties, the Ministry of Government Administration, Reform and Church Affairs has drafted amendments to the Political Parties Act, which provide that a party's report may not be audited by the same auditor for more than seven years in a row.⁹ In addition, an auditor may not be a member of the party s/he audits.¹⁰ As indicated under recommendations i and iii above, these amendments are currently subject to a consultation procedure.

elections and, *vice versa*, the central party organisations will have to report on donations above 30,000 NOK even if it concerns municipal elections.

⁷ Information on these donations is to be reported within four weeks of their receipt and, if received within four weeks of the elections, by the end of the last Friday before elections at the latest.

⁸ *E.g.* Section 4-1 of the Auditors' Act provides: "should an auditor or an auditor's close associate be related to an entity that is subject to the statutory audit obligation or to employees or officers of such an entity in a manner that may impair the auditor's independence or objectivity, the person concerned may not audit the annual accounts of the entity in question. The same applies where other special circumstances are present which might impair confidence in the auditor." In addition, Section 4-4 of the Auditors' Act stipulates: "Auditors or audit firms may not participate in or have functions in business or other activities if doing so may lead to a conflict of the interest of the auditor or the firm concerned and those of the client undertaking or might in some other manner impair confidence in the auditor or the audit firm."

⁹ The Norwegian authorities indicate that the length of this period corresponds to the requirements of the EU Auditing Directive.

¹⁰ For audit companies, this will apply to the person having been charged with the audit of the party.

33. GRECO takes note of the information provided, which – if adopted as foreseen – will provide for an additional, more precise regulation of the necessary independence of auditors as regards political parties.
34. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

35. *GRECO recommended to ensure appropriate independent monitoring of political funding, including electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.*
36. The authorities of Norway report that, after consideration of various models for the monitoring of political parties (Statistics Norway, Political Parties Act Committee, Auditor General etc.), it has been decided to expand the mandate of the Political Parties Act Committee. It is recalled that the Political Parties Act Committee is an independent administrative body, tasked with interpreting the relevant regulations and taking decisions on the withholding of public funding when parties have not submitted the annual report on their income; the committee also decides on appeals concerning decisions relating to registration and the distribution of public funding. The Political Parties Act Committee currently comprises a High Court judge, a member of Statistics Norway and “three members with political experience”. The Norwegian authorities furthermore bring to mind that even if administratively subordinate to the King and Ministry of Government Administration, Reform and Church Affairs, neither the King nor the Ministry may issue instructions to the Committee in individual cases or amend any decision of the Committee.
37. In the abovementioned draft amendments to the Political Parties Act it is foreseen that the Political Parties Act Committee, on suspicion of incorrect reporting, can require the party/party unit in question to present all accounting information. The Norwegian authorities emphasise that – in order not to impede on the autonomy and ‘freedom of action’ of political parties and not to involve unnecessary use of resources or bureaucracy – this provision will not give the Committee general access to accounting information or other documentation of the party: the right of access of the Committee will be limited to individual cases in which there is suspicion of wrongdoing. It is foreseen that the Political Parties Act Committee can act *ex officio*, but may also act up information received by citizens or the media. In addition, the draft amendments foresee the establishment of a Party Auditing Committee under the Political Parties Act Committee, which – at the request of the Political Parties Act Committee – will be the entity verifying the accounts of parties, if there is such a need, and will have the possibility to request access to all necessary accounting information. This Party Auditing Committee will consist of auditors and/or accounting experts.
38. GRECO takes note of the information provided. It welcomes the fact that despite the apparent sensitivity of the establishment of independent monitoring of party funding in Norway, some definitive steps towards implementation of this recommendation have been taken. Although concerns can be raised about the implications of the fact that the political members of the Political Parties Act Committee outnumber the non-political members, GRECO concedes that knowledge and practical experience of political work may be to the advantage of the Committee’s functioning and may create further acceptance of such a mechanism among the parties. Recalling furthermore the statements of the Norwegian authorities in the Evaluation Report that attention would be paid to achieving a balance between the left-centre-right political axis in the composition of the Political Parties Act Committee, GRECO expects that this will be a good basis for the

committee's impartial functioning (and for being seen to be doing so, which is crucial for the public's trust in the system).

39. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

40. *GRECO recommended to introduce appropriate (flexible) sanctions for all infractions of the Political Parties Act, in addition to the current range of sanctions.*
41. The authorities of Norway recall that the only sanction currently provided for under the Political Parties Act is the withholding of state subsidies. Amendments to the Political Parties Act have been drafted, which will extend the authority of the Political Parties Act Committee to also issue formal warnings, withhold part of the state grant (as opposed to the current situation in which it is only possible to withhold the whole state grant) and/or use administrative confiscation (in case of unlawful donations). The Political Parties Act Committee will thus be able to impose sanctions for all violations of the provisions on party funding of the Political Parties Act. In addition, the Ministry of Government Administration, Reform and Church Affairs has considered the possibility of introducing further criminal sanctions (in addition to criminal sanctions for accounting offences, fraud etc. committed in the context of party funding): the draft amendments to the Political Parties Act include the possibility of imposing (criminal) fines or up to four months' imprisonment for serious or repeated violations of the Political Parties Act.
42. GRECO takes note of the information provided, which indicates that progress has been made towards the introduction of more flexible sanctions for a wider range of violations of the Political Parties Act.
43. GRECO concludes that recommendation vi has been partly implemented.

III. CONCLUSIONS

44. **In view of the above, GRECO concludes that Norway has implemented satisfactorily four of the eight recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation i and ii have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendations ii and iii have been implemented satisfactorily, recommendations i, iv, v and vi have been partly implemented.
45. As regards incriminations, GRECO acknowledges that the introduction of a provision on 'gross' trading in influence has been considered, as was required by recommendation i. It furthermore acknowledges that the issue of adjudication of 'gross' corruption by a panel of laymen in appeal cases continues to be examined. As regards transparency of party funding, GRECO welcomes the steps that have been taken towards implementation of its recommendations with the elaboration of a consultation document, containing draft amendments to the Political Parties Act and a comprehensive explanatory memorandum, which are currently subject to a consultation process. If adopted as foreseen, the amendments will create a legal basis for *inter alia* monitoring the finances of political parties, in line with Article 14 of Recommendation Rec(2003)4, a more flexible sanctioning regime and additional disclosure requirements as regards expenditure, assets and debts as well as certain donations received in the context of an election campaign. GRECO

commends the Norwegian authorities for the initiatives underway, which have the potential of suitably addressing GRECO's recommendations.

46. In the light of what has been stated in paragraphs 44 and 45, GRECO notes that Norway has been able to demonstrate that substantial reforms, with the potential of achieving an acceptable level of compliance with the pending recommendations within the next 18 months, are underway. GRECO invites the Head of the delegation of Norway to submit additional information regarding the implementation of recommendations i, iv, v and vi (Theme II – Transparency of Party Funding) by 31 October 2012 at the latest.
47. Finally, GRECO invites the authorities of Norway to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.