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## **Third Evaluation Round**

### **Addendum to the Second Compliance Report on Poland**

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

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 65<sup>th</sup> Plenary Meeting  
(Strasbourg, 6-10 October 2014)

## **I. INTRODUCTION**

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Poland since the adoption of the First and Second Compliance Reports, in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Poland. 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 40<sup>th</sup> Plenary Meeting (1-5 December 2008) and made public on 17 February 2009, following authorisation by Poland (Greco Eval III Rep (2008) 2E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 49<sup>th</sup> Plenary meeting (29 November – 3 December 2010) and was made public on 21 January 2011, following authorisation by Poland ([Greco RC-III \(2010\) 7E](#)). The Second Compliance Report ([Greco RC-III \(2012\) 19E](#)) was adopted at GRECO's 58<sup>th</sup> Plenary Meeting (3-7 December 2012) and made public on 17 December 2012, following authorisation by the Polish authorities.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO's Second Round Compliance Report invited the Head of the Polish delegation to submit additional information regarding the implementation of the six recommendations that had been partly implemented. The information was provided on 2 October 2013 and on 27 June 2014 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Malta and Azerbaijan to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Peter GRECH, Attorney General, on behalf of Malta, and Mr Vusal HUSEYNOV, Executive Secretary of the Commission on Combating Corruption, on behalf of Azerbaijan. They were assisted by GRECO's Secretariat in drawing up the Addendum.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that GRECO addressed five recommendations to Poland in respect of Theme I in its Evaluation Report. The Second Compliance Report concluded that recommendations ii and iii had been implemented satisfactorily and recommendations iv and v had been dealt with in a satisfactory manner. The remaining recommendation is dealt with below.

#### **Recommendation i.**

6. *GRECO recommended to ensure that foreign arbitrators are fully covered by the bribery provisions of the Penal Code and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*

7. GRECO recalls that this recommendation was considered as partly implemented in the Second Compliance Report, as according to the Commission for the Codification of Criminal Law, foreign arbitrators are fully covered by the bribery provisions of the Penal Code. This opinion had been published on the website of the Ministry of Justice. Moreover, the Additional Protocol to the Criminal Law Convention had been signed by Poland and work was on-going to enable its ratification.
8. The authorities of Poland now report that the Additional Protocol was ratified on 30 April 2014 and that it has entered into force on 1 August 2014.
9. GRECO welcomes the ratification by Poland of the Additional Protocol to the Criminal Law Convention, which completes the necessary measures towards implementation of the recommendation.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

## **Theme II: Transparency of Party Funding**

11. It is recalled that GRECO in its evaluation report addressed eight recommendations to Poland in respect of Theme II. The Second Compliance Report concluded that recommendations i and ii had been implemented satisfactorily, recommendation iv had been dealt with in a satisfactory manner and recommendations iii, v, vi, vii and viii had been partly implemented. Compliance with these recommendations is dealt with below.

### **Recommendation iii.**

12. *GRECO recommended to take appropriate measures to ensure that loans granted to political parties for statutory purposes and to election committees of voters are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted.*
13. It is recalled that this recommendation had been assessed by GRECO as partly implemented in the Second Compliance Report, as rules applicable among others to loans had been introduced in the Electoral Code and in the Law on Political Parties. However, some further steps were still necessary in order to comply fully with the recommendation, notably concerning the reimbursement of loans after the dissolution of election committees.
14. The Polish authorities indicate that, after the adoption of the Second Compliance Report, the Ministry of Justice sent a letter to the Speaker of the Sejm (Parliament), suggesting legal amendments to fully implement GRECO recommendations. These proposals are currently under scrutiny by the Office of Sejm Analysis.
15. GRECO welcomes the intention of the government to address the issue of reimbursement of loans after the dissolution of election committees and to remove thereby the remaining gap in the implementation of the recommendation. However, this intention has not yet lead to tangible results.
16. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation v.**

17. *GRECO recommended to take appropriate measures to ensure that the financial reports of political parties and election committees are made public in a coherent and comprehensible manner and thus make the data on political financing more accessible.*
18. It is recalled that this recommendation had been assessed by GRECO as partly implemented in the Second Compliance Report, as publication on the internet of financial information on political parties and election campaigns had become a rule rather than a practice, further to the adoption of the Election Code and amendments to the Law on Political Parties. However, the different reports submitted by the same political parties still appear to be published separately and there is still no single document giving an overview of a given political party's financial situation, in a clear and complete manner.
19. The authorities of Poland refer to the letter sent by the Ministry of Justice to the Speaker of the Sejm and to three draft laws, which are currently under discussion in the Sejm. The draft laws envisage different models regarding political financing and corresponding parties' reporting obligations. One draft foresees the end of all public funding to political parties and election campaigns, another draft a reduction of public funding and the creation of a register of parties' expenditure, to be published on internet. Several of the draft laws intend to eliminate the obligation of the political parties to submit a separate yearly report on subventions. Instead of having to submit two financial reports, namely one on subventions and the other on other resources and expenditure, political parties would only have to submit one yearly financial report on their routine activities.
20. GRECO notes that concurrent draft laws are currently under discussion in the Sejm. Given the variety of the models proposed, it is too early to assess whether the legislative reform will lead to more transparency of the data on political financing.
21. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

22. *GRECO recommended to require more frequent declarations on donations received by political parties and election committees as well as their publication, at regular intervals to be defined by law.*
23. GRECO recalls that this recommendation had been assessed as partly implemented, taking into account that legislative arrangements had been taken to ensure that declarations and publication of information on donations received by election committees within the context of most election campaigns are made on a more frequent basis. However, these arrangements did not apply to political parties, outside the context of election campaigns.
24. The Polish authorities refer to the information submitted under paragraph 19, according to which the letter of the Ministry of Justice to the Speaker of the Sejm calls for publication of the registers of political parties on their websites and their regular updating. The Ministry's proposals are currently under scrutiny by the Office for Sejm Analysis.

25. GRECO welcomes the intention of the government to ensure regular updating of the political parties' register and their publication, which would respond to the aims of the recommendation. This intention has not yet lead to tangible results.
26. GRECO concludes that recommendation vi remains partly implemented.

#### **Recommendation vii.**

27. *GRECO recommended to increase the financial and personnel resources dedicated to the National Electoral Commission's unit responsible for the control of political financing.*
28. GRECO recalls that an increase in the resources of the National Electoral Commission had been proposed in the rectified budget for 2012 and the draft budget for 2013, but both laws were still pending before the Sejm at the time of adoption of the Second Compliance Report. Moreover, the time-limit for the examination of financial reports by the Commission had been extended from three to six months, thereby also responding indirectly to the concerns which had led to the recommendation. GRECO had thus assessed this recommendation as partly implemented.
29. The Polish authorities now explain that in the state budget for 2013, the personnel of the Department of the National Electoral Commission dealing with the monitoring of political financing has been increased by 50%. This level of personnel has been maintained in the 2014 budget.
30. GRECO welcomes the reported increase in the personnel of the Department of the National Electoral Commission dealing with the monitoring of political financing, which appears to respond to the recommendation.
31. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

32. *GRECO recommended (i) to ensure more substantial and pro-active auditing and monitoring of political parties' and election committees' financial reports, including a material verification of the information submitted as well as investigation of financing irregularities and (ii) to take adequate measures to enhance the cooperation between the authorities responsible for the enforcement of political financing legislation.*
33. GRECO recalls that this recommendation had been assessed as partly implemented in the Second Compliance Report. As regards the first part of the recommendation, the authorities had explained that the division of powers between the different bodies involved in the supervision of political financing prevented the granting of investigative powers to the National Electoral Commission. This body is competent, namely, to supervise matters included in the financial reports, while actions related to activities beyond such matters involving the infringement of criminal provisions included in the Law on Political Parties and the Electoral Code, are assigned to law enforcement authorities and courts. As regards the second part of the recommendation, provisions of the Electoral Code providing for better cooperation between the National Electoral Commission and public administration bodies, had entered into force. GRECO underlined, however, that no measures had been reported regarding an enhancement of the co-operation with law enforcement bodies, which was crucial in the model of division of responsibilities chosen by Poland.

34. As regards the first part of the recommendation, the Polish authorities report that a training session was organised on 9-10 June 2014 for all persons involved in the supervision of political parties' financial reports. It gathered 120 participants, among whom electoral commissioners, directors of regional branches of the Electoral Commission, members of the National Electoral Commission and officials of the National Electoral Bureau. The session dealt with the financial reports' control methods, with a particular focus on criminal liability for infringements of the Electoral Law and reporting suspected infringements to law enforcement authorities. A general conclusion of the session was that there is a need to increase the activity of bodies engaged in the analysis of financial reports and to enhance co-operation with law enforcement authorities. Materials prepared for the session, as well as conclusions and recommendations, will be published soon on the website of the National Electoral Commission, in order to serve as guidelines for officials involved in supervision and to contribute to more efficient co-operation with law enforcement authorities.
35. As regards the second part of the recommendation, the authorities indicate that the number of cases referred by the National Electoral Commission to law enforcement authorities has increased in recent years: in 2010, year during which self-governmental bodies elections were organised, 623 cases of failure to submit or late submission of financial reports, 650 cases of infringement of the rules of financial management by electoral committees and four cases of other infringements were referred to the authorities; in 2012, three cases of spending the financial resources of the election fund for purposes not related to elections, three cases of illegal accounting and one case of financial resources from illegal sources were transmitted to the law enforcement authorities.
36. The authorities also explain that according to articles 305 § 4 and 306 § 1 of the Code of Criminal Procedure, law enforcement authorities are under an obligation to inform persons or bodies who notified them of an offence, in case they decide not to institute or to discontinue an investigation. The person or body concerned then may submit an interlocutory appeal to the superior prosecuting authority. The National Electoral Commission confirms that this obligation is fulfilled by law enforcement authorities in each case. It adds that in other cases that it has not referred to the law enforcement authorities, the latter inform the Commission about on-going proceedings during which important findings concerning political financing are discovered. Such cases are not frequent, however.
37. As regards the first part of the recommendation, GRECO reiterates its previously expressed doubts over the efficiency of the model of supervision chosen by Poland and specifically about the fact that the National Election Commission does not have the power to investigate possible infringements of the law. The Polish authorities have tried to address the concerns of the recommendation by providing guidance and training to the officials in charge of the supervision of financial reports, in order to ensure a more in-depth monitoring and a swifter transmission of cases to law enforcement authorities.
38. Insofar as the second part of the recommendation is concerned, GRECO notes that the figures provided by the authorities seem to indicate a certain increase in cases transmitted to law enforcement authorities. The information provided also seems to indicate better exchanges of information between the authorities responsible for the enforcement of political financing legislation and in particular, better feedback from the law enforcement authorities to the National Electoral Commission about criminal proceedings in the field of political financing.
39. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

### III. CONCLUSIONS

40. **With the adoption of this Addendum to the Second Compliance Report, GRECO concludes that Poland has now implemented satisfactorily or dealt with in a satisfactory manner in total ten of the thirteen recommendations contained in the Third Round Evaluation Report. The remaining three recommendations have been partly implemented.**
41. With respect to Theme I – Incriminations, recommendations i, ii and iii have been implemented satisfactorily and recommendations iv and v have been dealt with in a satisfactory manner. With respect to Theme II – Transparency of Party Funding, recommendations i, ii and vii have been implemented satisfactorily, recommendations iv and viii have been dealt with in a satisfactory manner and recommendations iii, v and vi have been partly implemented.
42. As regards incriminations, GRECO welcomes the legislative reform process carried out by Poland, as well as the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption. Thanks to these efforts, all recommendations have been implemented satisfactorily or dealt with in a satisfactory manner. The provisions of the Penal Code on bribery in the private sector were amended and several issues were clarified, such as jurisdiction over offences of bribery and trading in influence committed abroad by Polish public officials and members of domestic public assemblies who are not Polish citizens, the active side of trading in influence, as well as the conditions for invoking the special defence of effective regret.
43. Insofar as transparency of party funding is concerned, significant steps have been taken including the adoption of the Election Code, in which the various provisions on election financing, previously contained in different laws, are harmonised. Other positive measures include the publication of more information regarding political funding on the internet, a more frequent declaration of donations received in the context of election campaigns, assistance provided by the National Electoral Commission for political parties and election committees to observe political parties financing regulations, and an increase in the staff resources of the National Electoral Commission. Reform plans are still on-going regarding other issues, however. Such is the case of the transparency of political parties' routine activities, for which there is still no single document that provides an overview of a given political party's financial situation. The issue of reimbursement of loans contracted by election committees after their dissolution also remains open. Finally, GRECO regrets that the National Electoral Commission has not been granted investigative powers, which is detrimental to the efficiency of supervision, even if some steps were taken to enhance the effectiveness of its activities. These areas are important for the credibility of the financing of political life and GRECO strongly encourages the Polish authorities not to abandon their reform endeavours but to pursue these matters further.
44. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Poland.
45. GRECO invites the authorities of Poland 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.