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Interim Report

Third Evaluation Round

Interim **Compliance Report** **on Malta**

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

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"Transparency of Party Funding"

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

I. INTRODUCTION

1. This Interim to the Second Compliance Report assesses further measures taken by the authorities of Malta since the adoption of the Second Compliance Report, in respect of the seven recommendations issued by GRECO in its Third Round Evaluation Report on Malta (see paragraph 2) and found as partly or not implemented in the Second Compliance Report.
2. 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); and
 - **Theme II – Transparency of political 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).
3. The Third Round Evaluation Report on Malta was adopted at GRECO's 44th Plenary Meeting (8 October 2009) and made public on 10 November 2009, following authorisation by the Maltese authorities (Greco Eval III Rep (2009) 2E, [Theme I](#) and [Theme II](#)). It contained a total of nine recommendations: three in respect of Theme I and six – in respect of Theme II.
4. The Compliance Report ([Greco RC-III \(2011\) 11E](#)) was adopted at GRECO's 52nd Plenary Meeting (17-21 October 2011) and made public on 2 January 2012, following authorisation by the authorities of Malta. It concluded that Malta had been able to demonstrate that substantial reforms were underway in respect of both themes; therefore the low level of compliance was not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. The Head of Delegation of Malta was invited to submit additional information regarding the implementation of all nine recommendations (Theme I and II) by 30 April 2013.
5. The Second Compliance Report ([Greco RC-III \(2013\) 22E](#)) was adopted at GRECO's 62nd Plenary Meeting (2-6 December 2013) and made public on 25 March 2014, following authorisation by the authorities of Malta. With respect to Theme I – Incriminations, recommendations ii and iii had been qualified as implemented satisfactorily and recommendation i as partly implemented. However, since no tangible progress had been made in respect of Theme II – Transparency of Party Funding, GRECO had assessed the overall situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and asked the Head of Delegation of Malta to submit the Situation Report by 30 June 2014.
6. The authorities presented their Interim Situation Report with additional information regarding actions taken to implement the seven pending recommendations on 30 June 2014. It served as a basis for this Interim Compliance Report.
7. GRECO selected Cyprus and the Slovak Republic to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS, Counsel at the Office of the Attorney General of the Republic (Cyprus) and Ms Alexandra KAPIŠOVSKÁ, Legal Adviser, Ministry of Justice (Slovak Republic). They were assisted by GRECO's Secretariat in drawing up this Addendum to the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

Recommendation i.

8. *GRECO recommended to amend the Criminal Code to include the offences of bribery of domestic and foreign arbitrators as well as foreign jurors and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*
9. It is recalled that, in the Second Compliance Report, this recommendation had been assessed as partly implemented due to the lack of progress on its second part, i.e. the swift ratification of the Additional Protocol to the Criminal Law Convention on Corruption.
10. The authorities of Malta now confirm that the ratification process was completed on 17 June 2014 at national level, and that the instruments of ratification were transmitted to the Council of Europe on 1 July 2014. The Additional Protocol will enter into force in respect of Malta on 1 November 2014.
11. GRECO commends the ratification by Malta of the Additional Protocol to the Criminal Convention on Corruption and concludes that this part of the recommendation has been implemented satisfactorily. Moreover, it recalls that the criminalisation of corruption offences committed by domestic and foreign arbitrators and foreign jurors, as required by part one of this recommendation (and by the Criminal Law Convention on Corruption and its Additional Protocol), had already been implemented by Malta as part of the revision of its Criminal Code in 2012.¹
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Theme II: Transparency of Party Funding

13. It is recalled that in the Second Compliance Report, in respect of all recommendations under review, reference was made to the draft Financing of Political Parties Act (the 2013 Bill). Since this bill had only been discussed but not adopted by parliament, all six recommendations had been assessed by GRECO as partly implemented.
14. Now the authorities report that, subsequent to the March 2013 election of the new Government, a re-evaluation of laws process had been launched and, in its frame, in February 2014, a White Paper on Party Financing had been published with a view to triggering consultation with stakeholders on the 2013 Bill (which was initially a private initiative of several MPs). Following these consultations the revised bill (the Revised 2014 Bill) was presented to the parliament by the Minister of Justice and published in the Government Gazette and on the government web site (justiceservices.gov.mt) on 27 June 2014. The revised bill applies to general, local and European elections and, as stems from its Article 2, purports to regulate not only the financing of political parties but also of independent election candidates. The Revised 2014 Bill has now reached the second reading stage², its entry into force is expected by the end of 2014.

¹ See GRECO's Second Compliance Report on Malta.

² The legislative process in Malta encompasses the following stages: the first reading (where the motion is put to the vote without any debate), the second reading (where only the principle of a bill is discussed), the committee stage (where each clause of the bill is examined separately and in detail) and the third reading.

Recommendation i.

15. GRECO recommended (i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate.
16. It is recalled that, in so far as part (i) of the recommendation was concerned, the 2013 Bill foresaw that all donations made to political parties in excess of EUR 300 were to be *recorded* in the books; however, only donations above EUR 7 000 were to be *reported* by the parties' treasurers to the Electoral Commission and subsequently *disclosed* to the public. GRECO had found the disclosure threshold to be very high and suggested that it be decreased to an appropriate level. As concerns election campaigns, the requirement for parties to report weekly to the Commission on donations in excess of EUR 300 and to supply donors' names had been assessed as being in line with Recommendation Rec(2003)4. The increase in spending limits in respect of election candidates from EUR 1 400 to EUR 10 000 had also been noted. This part of the recommendation had been assessed as partly implemented due to the high disclosure threshold.
17. In respect of part (ii) of the recommendation, GRECO had observed that contributions from donors whose identity was not known to a party were not prohibited; nevertheless, in the 2013 Bill, disclosure thresholds had been reduced to EUR 300.³ While welcoming the substantial reduction in the value of anonymous donations, GRECO had stressed that the problem of anonymity lay with the absence of registration and was not compliant with Recommendation Rec(2003)4. Considering that this issue demanded further determined steps, this part of the recommendation had been qualified as not implemented.
18. In so far as part (i) of the recommendation is concerned, the authorities of Malta now refer to Articles 38, 39 and 40 of the Revised 2014 Bill and thresholds of EUR 500 and EUR 7 000 established, respectively, for the *recording* and *disclosure* of donations. These may be further re-considered once the Act is in force. Reference is also made to the powers of the Electoral Commission to make inquiries and demand any information from a political party or any person, including on the source of a donation, except for the so-called confidential (but not anonymous) donations in respect of which the Commission is to prove it has reasonable grounds to believe that the amount donated actually exceeds the EUR 500 threshold. With regard to part (ii) of the recommendation, reference is made to Article 35(c), under which anonymous donations above EUR 50 are prohibited.
19. In relation to part (i) of the recommendation, GRECO notes that the *disclosure* threshold of EUR 7 000 applicable to donations received by a political party from a single source has not been reduced and remains critically high. Moreover, the requirement for donations above EUR 300 received by parties in time of elections to be reported weekly to the Electoral Commission has been dropped; instead, parties are to prepare quarterly donation reports – with the disclosure threshold as described above – which are to be presented within 30 days of the end of the calendar year, the exact time and format of their *publication* to be determined via a regulation of the Minister of Justice (Article 44). The disclosure rules applicable to independent election

³ The thresholds included in the 2011 Bill were 10 000 EUR per annum for anonymous donations and 2 000 EUR per annum for donations from unidentified sources.

candidates have not been set forth under the pretext of very limited budgetary means being available to such candidates, although a further increase in the spending limits (from EUR 10 000 to EUR 20 000) has been provided for in their regard. Noting the lack of progress in terms of transparency (the very high disclosure threshold and the lack of disclosure rules for election candidates), GRECO concludes that this part of the recommendation remains partly implemented.

20. As concerns part (ii) of the recommendation, GRECO wishes to stress that anonymous donations below EUR 50 and the so-called “confidential” donations below EUR 500 (i.e. where a donor is known to a political party but his/her identity is not revealed to anyone, including the Electoral Commission) can still be received but are *not to be registered* by parties, which contradicts Article 12 of Recommendation Rec(2003)4. It is also noteworthy that, in comparison with the 2013 Bill, the latter threshold has been augmented from EUR 300 to EUR 500. Moreover, there is no evidence that the aforementioned rules are applicable to election candidates who are not members of parties. For these reasons, GRECO concludes that this part of the recommendation remains not implemented. Furthermore, GRECO is of the opinion that certain related provisions of the Revised 2014 Bill would benefit additional clarifications. For example, it can be argued that Article 38(1) imposes the obligation on parties to only record donations above EUR 500 and below EUR 7 000 from the same source. With the cap on donations from a single source being set at EUR 40 000 per year, the aforementioned provision may be interpreted as *not* requiring the *recording* of donations between EUR 7 000 and EUR 40 000 (despite a clear requirement for parties to *report* all donations/their aggregate amount above EUR 7 000 from the same source to the Electoral Commission). Ensuring consistency between these two provisions would therefore be desirable.
21. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

22. *GRECO recommended (i) to introduce rules for political parties to keep proper books and accounts (including in connection with election campaigns); (ii) to ensure that income and expenditure, assets and debts are accounted for in a comprehensive and coherent manner and reported on at appropriate intervals; and (iii) to seek ways to consolidate the accounts to include entities which are related directly or indirectly to a political party or otherwise under its control.*
23. It is recalled that, in the Second Compliance Report, GRECO had taken note of Articles 25-27 of the 2013 Bill, by virtue of which the treasurer of a political party was bound to keep accounting records disclosing the financial position of the party at any time with reasonable accuracy (income, expenditure, assets and liabilities, including election campaign expenses) and to prepare annual statements of accounts at regular intervals. The draft had also prescribed that the accounting records of entities related directly or indirectly to a political party or otherwise under its control were to become an integral piece of the party's accounts. GRECO had concluded that, since the 2013 Bill was yet to be endorsed by the parliament, the recommendation had only been partly implemented.
24. The authorities of Malta now indicate that the aforementioned provisions have been retained in the revised 2014 Bill (Part III entitled “Accounting requirements”, Articles 23-33).
25. GRECO acknowledges, as before, that the aforementioned provisions appear to provide for a sufficiently comprehensive framework for political parties to keep full and transparent books and

accounts, in line with the recommendation. At this stage, however, the recommendation cannot be considered as fully implemented given that the Revised 2014 Bill remains to be adopted by the parliament.

26. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

27. *GRECO recommended to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.*
28. It is recalled that, in the Second Compliance Report, reference was made to several articles of the 2013 Bill. Concerning the level of detail of an annual statement of accounts to be submitted by a political party to the Electoral Commission, GRECO had concluded that, although the bill imposed the duty on parties to keep accounting records covering income, expenditure, assets and liabilities, it only required the inclusion in the annual statements of information on income, expenditure, the financial position as at the financial year end and cash flows. Additionally, GRECO had found the five-month time limit for the accounts' publication to be excessive and deserving of further revision, which was reportedly considered by the authorities. As concerns election campaigns, the requirement for parties to report weekly to the Commission on donations in excess of EUR 300 and to supply donors' names had been assessed as being in line with Recommendation Rec(2003)4. There was no mention, however, of how precisely these reports, as well as the annual statements, were to be presented to the public. In view of the foregoing, GRECO concluded that the proposed legal framework had only partly met the requirements of the recommendation.
29. The authorities of Malta now refer to Articles 23-30 of the Revised 2014 Bill, which are meant to cater for the concerns underlying this recommendation (e.g. transparency and full access to accounting records), and to Article 44, which allows for public scrutiny of donation reports to be kept on record by the Electoral Commission and made accessible to the public as may be established by regulation from time to time.
30. GRECO reiterates its earlier position, namely that, although some elements of the Revised 2014 Bill respond to the recommendation, it is still necessary to further clarify (in law or in regulations) the level of detail of the annual statements⁴ to be submitted to the Electoral Commission by political parties, of reports on income and expenses pertaining to election campaigns by parties and independent election candidates as well as the format in which these are to be presented to the public. It also recalls the importance of a consistent format for the proper understanding of political party accounts⁵ in order to allow for their comparability over time and between different parties. From this perspective, the possibility for parties e.g. to determine themselves the start and closure of a financial year⁶ (and hence the moment of submission of annual statements) would seem to be running counter to this comparability goal, which is highly valued within GRECO. Furthermore, the original (five-month) time limit for the publication of annual statements

⁴ GRECO acknowledges that a possibility for such a regulation to be adopted by the Minister of Justice has been explicitly provided for in the Revised 2014 Bill – see e.g. Article 25 (2) of the Revised 2014 Bill.

⁵ For example, the sources of party funding are diverse and may include membership fees, revenue-generating activities (party press, public relations agencies, etc.), donations in kind, revenues from the organisation of events, etc.

⁶ See Article 25 (1) of the Revised 2014 Bill.

by parties⁷ has not been reduced. GRECO concludes that the Revised 2014 Bill continues to fall short of the requirements imposed by the recommendation and calls upon the authorities to step up their efforts in order to ensure full compliance.

31. GRECO concludes that the recommendation iii remains partly implemented.

Recommendation iv.

32. *GRECO recommended to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts.*
33. It is recalled that, in the Second Compliance Report, GRECO had acknowledged that Article 28 of the 2013 Bill contained elements rectifying the deficiencies underlying this recommendation. In particular, it stipulated that the accounts of a political party shall be audited each year by an accountant. Since the adoption of the bill was still pending, the recommendation had been considered as only partly implemented.
34. The authorities of Malta now refer to Article 27 of the Revised 2014 Bill, which has maintained the aforementioned requirement.
35. GRECO reiterates its earlier position, namely that the Revised 2014 Bill, once adopted, would meet the demands of the recommendation. It furthermore notes that in case of failure to comply, the Electoral Commission, as a designated oversight body, may decide to appoint an auditor of its choice to audit the accounts of the political party concerned. GRECO urges the authorities to speedily adopt the Revised 2014 Bill, in default of which the recommendation remains partly implemented.
36. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

37. *GRECO recommended to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.*
38. It is recalled that, in the Second Compliance Report, GRECO had welcomed the inclusion - in the 2013 Bill - of references to certain supervisory competences of the Electoral Commission. Nonetheless, GRECO had reiterated its earlier position, namely that the Commission's mandate and powers in respect of monitoring of political financing needed to be more clearly defined and the Commission's effectiveness ensured. The independence of the Commission – as the responsible monitoring body – had not been disputed in the previous compliance reports.
39. The authorities of Malta now refer to Article 23 of the Revised 2014 Bill, which circumscribes the concrete powers attributed to the Electoral Commission in terms of monitoring the financing of political parties, including in time of elections, and which are replicated from the previous draft. Moreover, throughout the text of the Revised Bill ample reference is now made to various powers

⁷ Pursuant to Articles 29 (1) and 30 of the Revised 2014 Bill, within four months of the end of the respective financial year, the treasurer of a political party is to submit to the Electoral Commission the audited annual statements of accounts, and within one month of receiving such statements of accounts, the Commission is to make them available for public scrutiny.

of the Commission in this domain, and more specifically, in Parts III (Accounting requirements) and IV (Control of donations to registered parties).

40. GRECO observes that references to the specific powers of the Electoral Commission continue to be scattered throughout the text of the Revised 2014 Bill, rather than being brought together under one or several articles/chapters. It accepts nevertheless that the Commission's powers are now defined with higher precision in respect of political parties (e.g. supervision over the acquisition and disposal of funds - Article 23 (1), scrutiny of annual statements of accounts and accompanying audit reports and the subsequent publication of such statements and donation reports - Articles 29, 30, 40 and 44, demanding explanations or revisions of annual statements - Article 33, making inquiries - Articles 23(1) and 38 (4), appointing an auditor in case of failure by a party to do so - Article 27 (2), giving written directions to ensure an auditor's access to a party's financial records/information – Article 28(2), imposing administrative sanctions – e.g. Articles 23(2), 25(3), 28(3-4), 31, 32, 41). However, the Commission's supervisory powers in respect of election candidates who are *not* members of political parties have not been denoted in a consistent manner throughout the text (also given that elements relevant to duties of independent election candidates feature in the part of the bill entitled "Control of donations to registered parties"). Furthermore, as concerns the Commission's effectiveness, GRECO notes that Article 46 provides for the employment/contract of one or more auditors to assist the Commission in the exercise of its duties. However, even if the possibility of expert reinforcement is now explicitly foreseen in the draft, it is premature at this stage – bearing in mind the need for the bill to be adopted by the parliament – to draw a conclusion on the effectiveness or otherwise of the monitoring system. For this reason, GRECO qualifies this recommendation as only partly implemented.
41. GRECO concludes that the recommendation v remains partly implemented.

Recommendation vi.

42. *GRECO recommended that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive.*
43. It is recalled that, in the Second Compliance Report, the progress in rendering the sanctioning regime under the 2013 Bill more systematic (i.e. flexible administrative penalties introduced alongside criminal sanctions, the Electoral Commission empowered to apply certain sanctions directly, legal obligations associated with concrete sanctions and made applicable to all persons/entities in respect of whom such obligations were established by law) had been expressly acknowledged by GRECO. Nonetheless, given the prevalence of criminal over administrative sanctions, achieving further balance between the two was considered desirable.
44. The authorities of Malta now refer *inter alia* to Articles 25, 28, 31, 32, 33, 40, 41, 42 and 43 of the Revised 2014 Bill. These represent a revision, in light of GRECO's encouragements, of the previous sanctioning regime and ensure, in particular, that the administrative penalties prevail over criminal sanctions, the latter only being reserved for those acts that carry the elements of criminal offences in terms of the Criminal Code of Malta.⁸

⁸ I.e. Article 188 of the Criminal Code – the provision of false information as part of the annual statement of accounts of a political party (Article 24 (3)) and evading restrictions on donations by registered political parties (Article 43).

45. GRECO notes that the Revised 2014 Bill places a clear emphasis on administrative (e.g. “mere exposure and adverse comment being made public”, fines ranging between EUR 100 and EUR 20 000 and suspension from holding an office in a political party) rather than criminal sanctions for irregularities and violations of rules on the financing of political parties, including in time of elections. Supplementary administrative sanctions may be established, within certain limits, by the Minister of Justice, following consultation with the Electoral Commission (Article 45(1)(b)). The imposition of administrative sanctions may be contested by political parties and other interested persons within 30 days before the First Hall Civil Court (civil proceedings). In certain instances, such proceedings may be instituted by the Commission itself (e.g. in case of failure by a party treasurer to prepare a revised annual statement of accounts). While qualifying the revised sanctioning regime in respect of political parties as being overall more balanced, proportionate and dissuasive, the range of sanctions applicable to independent election candidates is clearly in need of further revision in view of those duties and responsibilities which are yet to be established in their regard (e.g. the reporting and disclosure of elections-related income and expenditure). In the absence of such clarifications and pending the adoption of the Revised 2014 Bill by the parliament, GRECO concludes that the recommendation continues to be partly implemented.
46. GRECO concludes that recommendation vi remains partly implemented.

III. CONCLUSIONS

47. **In light of the above, GRECO concludes that only moderate progress has been achieved by Malta as regards the recommendations found not to have been implemented or partly implemented in the Second Compliance Report. Out of the seven recommendations pending, only one has been implemented satisfactorily and the rest remain partly implemented.**
48. With respect to Theme I – Incriminations, recommendation i has been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendations i-vi remain partly implemented.
49. As regards incriminations, the ratification by Malta of the Additional Protocol to the Criminal Law Convention on Corruption, which criminalises bribery of domestic and foreign jurors and arbitrators, is a commendable achievement and solidifies further the national legal framework, which was already subject to important reforms (revision of the Criminal Code) in 2012.
50. As for transparency of political funding, the adoption of the Financing of the Political Parties Act will represent a decisive step in the setting up – for the first time in Malta – of a national legal framework regulating political financing. The new legislation, when adopted, will introduce a requirement for political parties to keep proper books and accounts, including in connection with election campaigns, to have such accounts audited and monitored – at regular intervals – by the Electoral Commission, and will subject political parties to a range of administrative, as well as criminal, sanctions in cases of non-compliance. It will also further increase the expenditure limits in respect of election candidates. The draft legislation however remains to be aligned with Recommendation Rec(2003)4 in a number of critical areas, namely by providing for the registration of all donations received, prohibiting anonymous donations, substantially reducing the threshold for donations’ disclosure, developing rules on the presentation and publication of annual statements of accounts and of information on elections-related income and expenditure, and introducing more consistent and clear rules on the financing of, reporting by and control over income and expenditure of independent election candidates.

51. In conclusion, moderate progress has been achieved by Malta in respect of Theme II – Transparency of Party Funding, as compared to the situation assessed in the Second Compliance Report. In particular, the 2013 bill – the private initiative of several MPs – has been replaced by the new 2014 bill developed and fully supported by the Ministry of Justice and made subject to broad public debate. Nonetheless, since the Financing of Political Parties Act has still not been enacted, none of the six recommendations addressed to the country in the aforementioned area has been implemented satisfactorily or dealt with in a satisfactory manner. Under these circumstances, GRECO can only conclude that the current level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply again Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report. It furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii), that the President of GRECO will send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Malta, drawing his attention to non-compliance with the relevant recommendations and the need to take determined action with a view to achieving decisive change as soon as possible. GRECO also asks the Head of the Delegation of Malta to provide a report on the progress made in implementing recommendations i-vi (Theme II – Transparency of Party Funding), as soon as possible; however – at the latest – by 31 July 2015, pursuant to paragraph 2(i) of that Rule.
52. Finally, GRECO invites the authorities of Malta 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.