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## Third Evaluation Round

### ***Second Interim Compliance Report on Malta***

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

Adopted by GRECO  
at its 69<sup>th</sup> Plenary Meeting  
(Strasbourg, 12-16 October 2015)

## **I. INTRODUCTION**

1. The Third Round Evaluation Report on Malta was adopted at GRECO's 44<sup>th</sup> 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 (Incriminations) and six – in respect of Theme II (Transparency of Party Funding). GRECO selected Cyprus and the Slovak Republic to appoint Rapporteurs for the compliance procedure.
2. The First Compliance Report ([Greco RC-III \(2011\) 11E](#)) was adopted at GRECO's 52<sup>nd</sup> Plenary Meeting (21 October 2011) and made public on 2 January 2012. It concluded that Malta had been able to demonstrate a potential for substantial reforms 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.
3. In the Second Compliance Report ([Greco RC-III \(2013\) 22E](#)) adopted at GRECO's 62<sup>nd</sup> Plenary Meeting (6 December 2013) and made public on 25 March 2014, GRECO concluded that with respect to Theme I, recommendations ii and iii had been implemented satisfactorily and recommendation i had been partly implemented. However, since no tangible progress had been demonstrated in respect of Theme II, the overall situation had been assessed as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules and GRECO decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the evaluation report.
4. In the Interim Compliance Report ([Greco RC-III \(2014\) 21E](#)) adopted at GRECO's 65<sup>th</sup> Plenary Meeting (10 October 2014) and made public on 24 June 2015, it was concluded that, with respect to Theme I, recommendation i had been implemented satisfactorily, while in respect of Theme II, only moderate progress had been achieved; therefore, the level of compliance remained "globally unsatisfactory". In accordance with Rule 32, paragraph 2, sub-paragraph (ii.a), GRECO instructed its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of the Maltese delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to attaining tangible progress as soon as possible<sup>1</sup>. The authorities submitted new information on 30 July 2015.
5. The current Second Interim Compliance Report was drawn up by Ms Alexandra KAPIŠOVSKÁ, Legal Adviser, Ministry of Justice (Slovak Republic), with assistance from the GRECO Secretariat. It assesses further progress in implementing the pending recommendations under Theme II.

## **II. ANALYSIS**

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

6. It is recalled that in the Interim Compliance Report, GRECO had analysed the draft Financing of Political Parties Act (2014 Bill). By that time, the bill had been the subject of broad public debate and presented to and debated within parliament. In view of its status as a draft legal act, none of the six pending recommendations could be assessed by GRECO as implemented satisfactorily.

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<sup>1</sup> The letter was sent on 16 October 2014.

7. The authorities of Malta now report that the Financing of Political Parties Act (FPPA), which regulates the financing of political parties and independent election candidates and applies to local, general and European elections, has been adopted by the parliament and published in the Government Gazette on 28 July 2015<sup>2</sup>. It will enter into force on 1 January 2016. The authorities also refer to Chapter 102, Electoral (Polling) Ordinance, last amended in 2007, which regulates certain aspects of involvement of independent candidates in national elections.

**Recommendation i.**

8. 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.
9. This recommendation had been qualified as partly implemented in the Interim Compliance Report. In relation to part (i) of the recommendation, the disclosure threshold of EUR 7 000 applicable to donations received by a political party from a single source, including in times of elections, had not been reduced and remained critically high. Also, no disclosure rules had been established for independent election candidates. GRECO had nevertheless concluded that this part of the recommendation had been partly implemented due to an increase in the spending limits of independent candidates to EUR 20 000. As concerns part (ii) of the recommendation, anonymous donations below EUR 50 and the so-called "confidential" donations (i.e. where a donor is known to a party but his/her identity is not revealed, including to the Electoral Commission) below EUR 500 could still be received by political parties without being registered. Similar rules applied to election candidates but only if they were members of political parties. GRECO had therefore concluded that this part of the recommendation remained not implemented.
10. The authorities of Malta now inform that the following rules, which are identical for parties and independent election candidates, are included in the FPPA. All anonymous donations are forbidden. The source of a donation below EUR 50 may remain unrecorded if the donation is collected at a fund-raising event, in which case only a global amount is registered. "Confidential" donations (see above) from a single source may not exceed EUR 500 per year and are to be reported to the Electoral Commission; their confidentiality is to be respected unless the Commission has a reasonable suspicion of a violation. Moreover, the cap on donations to a political party from a single source has been lowered from EUR 40 000 to EUR 25 000, and a regulation (Legal Notice) is currently being prepared which will establish the format for the reporting of donations by parties and independent election candidates.
11. With respect to part (i) of the recommendation, GRECO observes that only donations exceeding EUR 7 000 to political parties are to be disclosed with reference being made to their source<sup>3</sup>, which means that the very high disclosure threshold has not been reduced since GRECO's previous assessment. As for independent candidates, two sets of rules seem to apply. First, pursuant to Articles 38(6) and 39(1) FPPA, within 60 days from the date of an election, such candidates are to submit a donations report to the Electoral Commission and no provision is made for this report or parts thereof to be made accessible to the public. Second, according to

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<sup>2</sup> ACT No. XXIV 2015

<sup>3</sup> Article 38 FPPA.

Article 51 of Chapter 102, Electoral (Polling Ordinance) and Article 50 (1) of the Seventh Schedule, within thirty-one days of the date of the publication of the results of an election, independent candidates are to submit to the Commission a report on election expenses which is to include *inter alia* the information on donors and donations – unless legal persons are concerned - and the reports are to be made available for public scrutiny at a fee at the Commission's premises. GRECO finds such a framework somewhat confusing, particularly, since the latter rules do not establish the obligation to report information on donations from legal persons nor on those donors. It is therefore unclear whether the information on them is to be published or not. Hence, it would be desirable for the provisions of the two legal acts to be further aligned. As concerns the second element of this part of the recommendation, GRECO acknowledges that, fully in line with its requirements and as envisaged by the 2014 Bill, the spending limits in respect of candidates have augmented and now stand at EUR 20 000,<sup>4</sup> which is a welcome development. GRECO concludes that this part of the recommendation remains partly implemented due to the high disclosure threshold which still applies to parties and to the inconsistent disclosure rules established for independent candidates.

12. As concerns part (ii) of the recommendation, GRECO observes that the acceptance of anonymous donations by political parties is prohibited as a matter of principle<sup>5</sup>, which is a step forward compared to the 2014 Bill. Nonetheless, by virtue of Article 37 (1) FPPA, a donation below EUR 50 collected at an event organised by a party may be accepted without being recorded. While the latter rule is expressly applicable to independent election candidates, there is no evidence that the blanket prohibition on anonymous donations established for parties has been extended to independent candidates<sup>6</sup>. Even more disconcerting is that only donations above EUR 500 from the same source are to be registered by parties and independent candidates, whereas so-called "confidential" donations (below EUR 500) can still be received and there is no obligation for them to be either recorded or the identity of their donors revealed to the Electoral Commission, unless the latter has a reasonable suspicion of a violation<sup>7</sup>. Also, it is only in respect of donations above EUR 500 that a party or a candidate are to carry out due diligence<sup>8</sup>. Consequently, the positive effects of a prohibition on political parties accepting anonymous donations are impaired by the absence of an obligation on parties to register donations below EUR 500. As for independent election candidates, only two rules seem to apply in their regard: one that permits the acceptance of small donations at fund-raising events that do not need to be recorded and the obligation to register donations above EUR 500. GRECO takes the view that the regime introduced by the FPPA remains incoherent and may be interpreted as condoning the acceptance of donations from donors whose identity is not known to a political party or an independent candidate precisely due to the absence of a requirement to register the donations. This part of the recommendation therefore is considered as partly implemented.

13. GRECO concludes that recommendation i remains partly implemented.

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<sup>4</sup> Article 49 FPPA.

<sup>5</sup> Article 34(c) FPPA.

<sup>6</sup> At the same time, GRECO observes that, pursuant to Article 40 FPPA, while filing donation reports with the Electoral Commission, independent election candidates are to declare with respect to all donations recorded that they are from permissible donors. See also paragraph 36 below.

<sup>7</sup> According to Article 37(4) FPPA, political parties and independent election candidates are not obliged to reveal to the Commission the source of donations given confidentially "unless the Commission provides proof that there are reasonable grounds to believe that the amount actually donated confidentially in a period of one year from the same source exceeds the sum of five hundred euro (500 Euro)".

<sup>8</sup> Article 41 (1) FPPA.

### **Recommendation ii.**

14. 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.
15. This recommendation had been considered partly implemented in the Interim Compliance Report. GRECO had acknowledged that Articles 23-33 of the 2014 Bill would provide a sufficiently comprehensive framework for political parties to keep full and transparent books and accounts and responded to other concerns underlying this recommendation. However, since the bill had not yet been endorsed by the parliament, full compliance had not been attained.
16. The authorities of Malta now refer to the FPPA that will enter into force on 1 January 2016.
17. GRECO notes that Articles 22-32 FPPA (Part III entitled “Accounting requirements”) reiterate the contents of the previously analysed 2014 Bill. Thus, political parties are to keep their books in accordance with the principles and accounting practices and the generally accepted audit standards, and in such a manner that they can disclose at any time and with reasonable accuracy the financial position of a party, including, in particular, all sources of income, all expenses, a record of assets and liabilities. Annual statements of accounts are to be prepared by parties in respect of each financial year and to be submitted to the Electoral Commission within a specific deadline. Such statements are to incorporate the accounts related to election campaigns<sup>9</sup>, as well as the details of entities, including commercial enterprises, which are related directly or indirectly to a political party or otherwise under its effective management or control<sup>10</sup>. The financial statements of such entities are made available to the public via the on-line register of the Registrar of Companies. GRECO is satisfied with the above regulatory framework and concludes that all the elements of the recommendation have been duly complied with.
18. GRECO concludes that recommendation ii has been implemented satisfactorily.

### **Recommendation iii.**

19. 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.
20. This recommendation had been assessed as partly implemented in the Interim Compliance Report. Although some elements of the 2014 Bill had responded to the recommendation’s concerns, it was still necessary to further clarify (in law or in regulations) the level of detail of the annual statements to be submitted to the Electoral Commission by political parties, of reports on income and expenses pertaining to election campaigns by parties and independent candidates as well as the format in which these were to be presented to the public. Furthermore, the possibility for parties to determine themselves when to open and close a financial year (and hence the moment of submission of annual statements) had been considered as going against the comparability goal highly valued within GRECO. Finally, the five-month time limit (from the

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<sup>9</sup> Article 28 (1) FPPA.

<sup>10</sup> Article 23(3) (c) FPPA.

moment of submission) for the publication of annual statements by political parties had not been reduced.

21. The authorities of Malta now report that, pursuant to Article 29 FPPA, in order to allow for public scrutiny of political parties' statements of accounts, the Electoral Commission is bound to publish them on its web site within one month of their receipt. The exact format of the statement is currently being developed. As for independent candidates, as mentioned previously (cf. paragraph 11), their reports on election-related expenses, which also comprise the information on donors and donations are to be made available for public consultation at a fee at the Commission's premises shortly after submission, i.e. thirty-one days following the date of the publication of the results of an election.
22. GRECO is satisfied with the introduction of a requirement on the Electoral Commission to publish on its web site political parties' annual financial statements, including information on their involvement in election campaigns. Pursuant to Article 24 (2) FPPA, the format and contents of an annual statement are to be determined by the Minister of Justice, based on the Commission's advice. Since this format is still under preparation, it is premature to determine whether or not it would meet the requirements of the recommendation. Furthermore, a co-ordinated approach to the publication of political financing accounts pre-supposes that the financial statements of parties are to be published simultaneously and made broadly comparable. This objective cannot be attained as long as parties are allowed to determine themselves the dates on which to open and close a financial year, on which the dates for submission and publication of annual statements are in turn predicated. GRECO also notes that the time limit for the publication of parties' annual statements (five months from the end of the respective financial year<sup>11</sup>) has not been reduced, as suggested previously. As for independent candidates, GRECO notes that subsequent to an election they are bound to file a report on election-related income and expenses with the Electoral Commission and that such information is open for consultation at a fee at the Commission's premises<sup>12</sup>. However, the wording of Article 50 (1) of the Seventh Schedule does not seem to cover the income/donations emanating from legal persons<sup>13</sup>. In light of these persistent concerns, GRECO concludes that this recommendation remains partly implemented.

23. GRECO concludes that recommendation iii remains partly implemented.

#### **Recommendation iv.**

24. *GRECO recommended to ensure independent auditing, as appropriate, in respect of political parties obliged (or yet-to-be obliged) to keep books and accounts.*
25. It is recalled that this recommendation had been qualified as partly implemented in the Interim Compliance Report. Although GRECO had acknowledged that Article 27 of the 2014 Bill provided that the accounts of a political party would be audited each year by an accountant, the bill had not been formally adopted by the parliament.

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<sup>11</sup> Pursuant to Articles 28(1) and 29 FPPA, statements of accounts are to be submitted by political parties to the Electoral Commission within four months of the end of a financial year and are to be published by the Commission within one month of receipt.

<sup>12</sup> Article 38(6) FFPA.

<sup>13</sup> Article 50 (1) (1): "Under the head of receipts there shall be shown the name and description of every person (including the candidate), club, society or association from whom any money, security, or equivalent of money was received..."

26. The authorities of Malta now refer to Article 26 FPPA, which stipulates that the accounts of a political party shall be subject to annual audit, in line with the generally accepted auditing standards. Failure to submit audited accounts to the designated oversight body (i.e. the Electoral Commission) may lead to the appointment of an auditor of that body's choice to carry out an annual audit of the accounts of the political party concerned (this procedure is regulated in detail by Article 27 FPPA).
27. GRECO welcomes the introduction of an obligation for political parties to submit their accounts to an annual audit, according to the general auditing standards, and concludes that the concerns underlying this recommendation have been duly addressed.
28. GRECO concludes that recommendation iv has been implemented satisfactorily.

#### **Recommendation v.**

29. *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.*
30. It is recalled that this recommendation had been qualified as partly implemented in the Interim Compliance Report. While noting that, in respect of political parties, the oversight powers of the Electoral Commission were circumscribed with higher precision<sup>14</sup>, the Commission's competence over election candidates who are *not* members of political parties remained ill-defined. Also, given the status of the 2014 Bill as a draft legal act, it had been premature to draw a conclusion on the effectiveness or otherwise of the monitoring system, in particular, in terms of sufficiency of the Commission's expert resources.
31. The authorities of Malta now refer to the oversight powers of the Commission as established by the FPPA, in particular, in terms of supervision and sanctioning of independent election candidates, and to amendments introduced to Article 55 of the Constitution and to Article 50 of the Fourteenth Schedule to the General Elections Act. Article 55 allows for the removal of successfully elected candidates and making their seats vacant by decision of the Constitutional Court where it is found that they have provided false information in their declarations of election expenses or have incurred such expenses in an amount exceeding the amount permissible by law. Article 50 obliges the successfully elected candidates to transmit their declarations of election expenses to the Commissioners who are supposed to act on the Commission's behalf. Furthermore, the provisions of the 2014 Bill, which envisaged the employment by the Commission of one or more auditors, have been retained in the FPPA.
32. GRECO welcomes the extension of the Electoral Commission's supervisory duties over the funding of independent election candidates. These comprise *inter alia* the power to make inquiries in connection with any donations received (Article 37(4)), to collect and scrutinise donations reports to be filed after an election (Articles 38(6) and 39), to impose administrative fines and/or order forfeiture of an illegal donation. That being said, the Commission's oversight,

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<sup>14</sup> For example, supervision over the acquisition and disposal of funds - Article 23 (1) of the 2014 bill, 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.

as provided for specifically by the FPPA, remains fairly limited since it does not cover candidates' election-related expenditure or income other than donations, and although the reporting of such information by candidates has been provided for by the previously mentioned Chapter 102, supervisory powers in this field have not been vested in the Commission which only has the power to make the reports accessible to the public at a fee at its premises. Furthermore, although Article 45 FPPA provides for the appointment of one or more auditors to assist the Commission with its monitoring function, the effectiveness of the Commission cannot be assessed while the law has still not entered into force and the system has not become fully operational. GRECO concludes that the recommendation remains partly implemented and invites the authorities to secure effective supervision in practice of the funding of political parties and election campaigns.

33. GRECO concludes that recommendation v remains partly implemented.

#### **Recommendation vi.**

34. *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.*
35. This recommendation had been considered partly implemented in the Interim Compliance Report. The new sanctioning regime introduced in respect of political parties had ensured the prevalence of administrative penalties over criminal sanctions, the latter being reserved only for those acts that carried the elements of criminal offences in terms of the Criminal Code of Malta. While this new regime had been qualified by GRECO as overall more balanced, proportionate and dissuasive, the range of sanctions applicable to independent election candidates were in need of further revision in view of those duties and responsibilities which were yet to be established in their regard (e.g. the reporting and disclosure of election-related income and expenditure).
36. The authorities of Malta now point out that the new FPPA clearly regulates the reporting duty of independent election candidates and that the sanctions applicable to them have been made identical to those that are to be imposed for similar offences on political parties.
37. GRECO notes that administrative and criminal law sanctions may be imposed on independent election candidates for violations of political funding rules. In comparison with the 2014 Bill, the FPPA has set forth some additional duties and responsibilities in respect of such candidates (for example, compulsory registration of donations above EUR 500 (Article 37(1)), the submission of a donations report to the Electoral Commission within a specific deadline, accompanied by a declaration on the legal provenance of all donations received (Articles 38(6) and 39(1)). Violations carry an administrative fine ranging between EUR 5 000 and EUR 20 000 and a forfeiture in favour of the state of an amount equal to the value of an illegal donation. Although these are positive steps, GRECO remains concerned that in certain cases a clear link between an obligation and a sanction may still be missing. There is no indication of the applicability to independent election candidates of Article 34 FPPA, which establishes the list of prohibited donations specifically for political parties. Nevertheless, in accordance with Article 40 FPPA, while submitting a donations report to the Electoral Commission, independent candidates are bound to declare in respect of all donations recorded that they are from permissible donors. This inconsistency has to be eliminated. Also, Article 44 (2) FPPA, which regulates the appeal proceedings, only empowers political parties and other interested persons, but not independent election candidates, to contest the finding of any breach of the FPPA and the infliction of administrative fines and sanctions by the Electoral Commission before the First Hall, Civil Court.

Consequently, it would appear that appeal proceedings specifically in respect of independent election candidates have not been established. Finally, the vast majority of other applicable sanctions (established by virtue of Chapter 102) are criminal law penalties and it does not seem that these have been revised in line with the recommendation the objective of which is *inter alia* to provide for more flexible sanctions in respect of less serious violations of the political financing rules which do not necessarily require a criminal court procedure. The lack of statistics on any convictions or exoneration from conviction (an extensive list of grounds for exoneration applies) only confirms the advisability of such a revision. Consequently, GRECO can only conclude that the recommendation remains partly implemented.

38. GRECO concludes that recommendation vi has been partly implemented.

### **III. CONCLUSIONS**

39. **In view of the above, GRECO concludes that Malta has now implemented satisfactorily or dealt with in a satisfactory manner in total five of the nine recommendations contained in the Third Round Evaluation Report.**
40. Overall, with regard to Theme I – Incriminations, all three recommendations have been implemented satisfactorily. In respect to Theme II – Transparency of Party Funding, two recommendations (ii and iv) have been implemented satisfactorily and four recommendations (i, iii, v and vi) have been partly implemented.
41. The adoption of the Financing of the Political Parties Act (FPPA) is commendable. It constitutes an important milestone by introducing a regulatory framework which brings greater transparency in the sphere of political funding in Malta. The provisions of the FPPA establish obligations in respect of political parties and independent election candidates and apply to local, general and European elections. In so far as political parties are concerned, the FPPA introduces many requirements which are in line with the Recommendation (2003)<sup>4</sup>, for example, to keep proper books and accounts and to have such accounts audited and monitored – at regular intervals – by an independent oversight body, the Electoral Commission, which has the power to subject parties to mostly flexible administrative sanctions in cases of non-compliance and to publish parties' annual financial statements and donations reports on its official web site. Regulation of the finances of independent election candidates has been strengthened as well, in particular, by vesting the Commission with the power to exercise oversight over candidates' donations reports.
42. Those positive aspects aside, a number of critical concerns still persist. With regard to political parties' accounts, GRECO regrets that the threshold for the disclosure of individual donations has not been decreased. Single formats for the submission of annual statements by parties and of donations reports by parties and independent election candidates remain to be defined. Also, the Commission's monitoring powers in respect of the latter remain rather limited as they do not embrace controls of sources of income other than donations. Moreover, further clarification of the practical modalities of supervision of election expenses is needed. GRECO urges the authorities to eliminate the remaining gaps, where appropriate, via further legislative changes, and thus help secure a higher level of public trust in the political institutions and political parties of Malta.
43. GRECO concludes that the current level of compliance with the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. It therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

44. In view of the fact that still four out of nine recommendations concerning transparency of party funding are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure requests the Head of the delegation of Malta to submit additional information, namely information regarding the implementation of recommendations i, iii, v and vi (Theme II – Transparency of Party Funding) by 31 July 2016.
45. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.