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Third Evaluation Round

Compliance Report on Montenegro

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

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“Transparency of Party Funding”

Adopted by GRECO
at its 58th Plenary Meeting
(Strasbourg, 3-7 December 2012)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Montenegro to implement the 14 recommendations issued in the Third Round Evaluation Report on Montenegro (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 49th Plenary Meeting (29 November - 3 December 2010) and made public on 14 December 2010, following authorisation by Montenegro (Greco Eval III Rep (2010) 7E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Montenegro submitted a Situation Report on measures taken to implement the recommendations. This report was submitted on 2 July 2012 and served as a basis for the Compliance Report.
4. GRECO selected Bosnia and Herzegovina and San Marino to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Eros GASPERONI, First Secretary, Ministry for Foreign Affairs, on behalf of San Marino, and Mr Vjekoslav VUKOVIC, Assistant Minister, Sector for Fight against Terrorism, Organised Crime and Drugs Abuse, Ministry of Security, on behalf of Bosnia and Herzegovina. 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 5 recommendations to Montenegro in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to harmonise the provisions relating to bribery (in the public and private sector) and trading in influence offences with a view to enhancing their consistency and clarity, in particular by unambiguously covering: (a) immaterial/intangible advantages; (b) the indirect commission of the offence; and (c) third party beneficiaries.*

8. The authorities of Montenegro indicate that the Criminal Code (CC) was amended on 22 June 2011 with a view to complying with GRECO recommendations in this area. In particular, the wording of the relevant bribery (Articles 423 and 424 CC on bribery in the public sector and Articles 276a and 276b CC on bribery in the private sector) and trading in influence provisions (Articles 422 and 422a CC) have been reviewed for purposes of their harmonisation. They all now refer to all types of advantages, whether material or immaterial ("*gifts or other types of benefits*"), the direct and indirect commission ("*directly or indirectly*") and third party beneficiaries ("*a person who mediates*").
9. GRECO is pleased to note that the penal provisions relating to bribery and trading in influence have been aligned to unequivocally cover the different elements of corruption offences spelled out in the Criminal Law Convention on Corruption (ETS 173). This harmonisation brings about greater legal certainty of the system to the benefit of not only the practitioners who are to apply the law, but also the public at large.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. GRECO recommended to ensure that the provisions concerning active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of his/her official powers.
12. The authorities of Montenegro stress that the new wording of the relevant bribery provisions in the public sector (Articles 423 and 424 CC) covers all acts and omissions in the exercise of the functions of a public official ("*an official or other act*"), whether or not it is within the strict scope of the official's powers, including those resulting from the misuse of the official position¹.

¹ Article 423 CC, passive bribery:

(1) A public official who directly or indirectly solicits or receives a gift or any other undue advantage, or who accepts a promise of a gift or any undue advantage for himself/herself or for another person for agreeing to perform an official or other act which s/he must not perform, or not to perform an official or other act which s/he must perform shall be punished by a prison term from two to twelve years.

(2) A public official who directly or indirectly solicits or receives a gift or any other undue advantage, or who accepts a promise of gift or any undue advantage for himself/herself or another person for agreeing to perform an official or other act which s/he must perform, or not to perform an official or other act which s/he must not perform shall be punished by a prison term from two to eight years.

(3) A public official who commits the offences under paragraphs 1 or 2 above in relation to detection of a criminal offence, initiating or conducting of criminal proceedings, pronouncing or enforcing of a criminal sanction shall be punished by a prison term from three to fifteen years.

(4) A public official who after performing an official or other act or after refraining from performing an official or other act as envisaged by paragraphs 1, 2 and 3 above, or in conjunction with such acts, solicits or receives a gift or other undue advantage shall be punished by a prison term from three months to three years.

(5) A foreign public official who commits any of the offences under paragraphs 1, 2, 3 and 4 above shall be punished by the punishment prescribed for that offence.

(6) Where a responsible officer or another person in an institution or other non-commercial entity commits any of the offences under paragraph 1, 2 and 4 above shall be punished by the punishment prescribed for that offence.

(7) The gift received or any other undue advantage gained shall be confiscated.

Article 424 CC, active bribery:

(1) Anyone who gives, offers or promises a gift or other undue advantage for himself/herself or for another person to a public official or another person for agreeing to perform and official or other act s/he must not perform or not to perform an official or other act s/he must perform or anyone who intercedes in bribing a public official in the manner described above shall be punished by a prison term from six months to five years.

13. GRECO welcomes the legislative amendments introduced to comply with recommendation ii, which appears to allow in principle the coverage of acts and omissions which are made possible in relation to the public official's function, whether or not it is within the scope of his/her official powers.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to ensure that foreign arbitrators and jurors are explicitly covered by the bribery provisions of the Criminal Code, in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*
16. The authorities of Montenegro explain that the CC, as amended, now contains a revised and broadened definition of the term "foreign official" which covers the functions of foreign arbitrators and jurors ("*persons performing official duties in a foreign country on the basis of and in accordance with laws, contracts or arbitration agreements*", Article 142, paragraph 5a)².
17. GRECO welcomes the changes introduced in the CC to cover bribery of foreign jurors and arbitrators, in line with what is requested by recommendation iii.
18. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

19. *GRECO recommended (i) to provide for a consistent definition of bribery in the private sector; (ii) to cover in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities; (iii) to capture unambiguously all instances implying a breach of duty by the briber/bribed person.*
20. The authorities of Montenegro indicate that the inconsistencies and overlapping of the two different provisions on the criminalisation of bribery in the private sector, as identified in the Third Evaluation Round Report, have now been remedied. Accordingly, bribery in the private sector is criminalised in Articles 276a and 276b CC regarding entities engaged in an economic activity³;

(2) *Anyone who gives, offers or promises a gift or other undue advantage to a public official or other person for agreeing to perform an official or other act s/he must perform or not to perform an official or other act s/he must not perform, or anyone who intercedes in bribing a public official in the manner described above shall be punished by a prison term up to three years.*

(3) *The provisions of paragraphs 1 and 2 above shall also apply where a gift or other undue advantage was given, offered or promised to a foreign public official.*

(4) *The punishment may be remitted where a perpetrator of the offences under paragraphs 1, 2 and 3 above had reported the criminal offence before s/he learned that the crime had been detected.*

(5) *The provisions of paragraphs 1, 2 and 4 above shall also apply when a gift or other undue advantage was given, offered or promised to a responsible officer or other person in an institution or another non-commercial entity.*

² Article 142 CC, definition of public official:

5a) *a person performing in a foreign state legislative, executive, judicial or other public function for a foreign state, a person who performs official duties in a foreign country on the basis of laws, regulations adopted in accordance with a law, contract or arbitration agreement, a person performing official duty in an international public organization and a person performing judicial, prosecutorial or other office in an international tribunal.*

³ Article 276a CC, passive bribery in the business sector:

(1) *A responsible officer or other person who works for or in a business entity or other business enterprise who solicits or accepts, for himself/herself or for another person, directly or indirectly, a gift or other undue advantage, or accepts the*

bribery of responsible persons in non-commercial/non-profit organisations and institutions (e.g. schools, hospitals, trade unions) is covered by Articles 423, paragraph 6 and Article 424, paragraph 4 CC⁴.

21. With particular reference to the range of persons covered by the bribery provisions, “any person” may be the perpetrator of the bribery offence, irrespective of whether they are formally vested with a certain degree of responsibility in the private entity. Likewise, it is no longer required that the act is detrimental to the business organisation; the offence could also be committed to benefit the organisation where the bribe-giver/bribe-taker works (“at the expense or in favour of the company”).
22. GRECO recalls that at the time of adoption of the Third Round Evaluation Report two sets of rules coexisted concerning bribery in organisations and entities performing business activities. This situation has now been remedied: bribery in commercial entities is dealt with in Articles 276a and 276b CC, while bribery in non-commercial/non-profit entities is regulated by Articles 423, paragraph 6 and Article 424, paragraph 4 CC. Moreover, pursuant to the amendments introduced to the CC, it is now possible to cover all persons working in a private sector entity, without necessarily presupposing a certain degree of responsibility in the entity concerned and without requiring that the element of breach of duty entails a detriment to the business organisation. This appears to be in line with what was requested in recommendation iv.
23. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

24. *GRECO recommended (i) to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) to establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, Montenegrin nationals.*

promise of a gift or other undue advantage in return for concluding a contract, or reaching a business agreement or providing a service or refraining from such acts to the detriment or in favor of the business entity for which or in which s/he works or of another person shall be punished by a prison term from six months to five years.

(2) The perpetrator referred to in paragraph 1 above who, after concluding the contract, or reaching the business agreement, or providing the services, or refraining from such acts, solicits or receives for himself/herself or for another person a gift or other undue advantage or accepts the promise of a gift or other undue advantage shall be punished by a prison term up to two years.

(3) The accepted gift and other undue advantage shall be confiscated.

Article 276b CC, active bribery in the business sector:

(1) Anyone who gives, offers or promises a gift or other undue advantage to a responsible officer or other person who works for or in a business entity or other business enterprise in order that s/he, for himself/herself or for another person, concludes a contract or reaches a business agreement or provides a service to the detriment or in favor of the business entity for which or in which s/he works or of other entity or who acts as an intermediary in this kind of active bribery shall be punished by a prison term from three months to three years.

(2) Punishment may be remitted where the perpetrator referred to in paragraph 1 above gave to another person a gift or other undue advantage at the request of the responsible officer or of another person who works for or in a business entity or other business enterprise and who voluntarily reports the offence after commission but before s/he learned it had been detected (effective regret).

(3) The received gift or other undue advantage shall be confiscated.

⁴ See footnotes 1 and 2.

25. The authorities of Montenegro stress that dual criminality is no longer required with respect to the offences of bribery and trading in influence committed abroad (Article 138, paragraph 4 CC)⁵. Likewise, Montenegro retains jurisdiction for all corruption offences committed abroad by foreigners but involving a national of Montenegro (Article 137, paragraph 1 CC)⁶.
26. GRECO welcomes the amendments introduced in the CC allowing Montenegro to establish broad jurisdiction to prosecute acts of corruptions committed abroad by or involving a national of Montenegro.
27. GRECO concludes that recommendation v has been implemented satisfactorily.
28. Finally, with regards to jurisdiction, GRECO recalls its remark as to the coverage of Article 17, paragraph 1, subparagraph b of the Criminal Law Convention on Corruption (ETS 173), which not only establishes jurisdiction for offences committed by nationals abroad, but also extends nationality jurisdiction to public officials and members of domestic public assemblies of member States – i.e. not necessarily nationals. This extension is not fully reflected in the criminal law of Montenegro which generally requires citizenship of Montenegro. Domestic officials and members of domestic public assemblies who are not at the same time citizens of Montenegro would therefore not be covered. In the Third Round Evaluation Report (paragraph 78), GRECO noted that, at present, this does not constitute a problem in the country, since all public officials have to be nationals. GRECO therefore refrained from issuing a recommendation in this respect, but stressed that in the case of future legislative changes to this nationality requirement on public officials, the jurisdictional rules would have to be adjusted accordingly. In particular, adjustments may be needed if Montenegro adheres to the European Union, in which case citizens from other EU countries would be able to serve as officials of Montenegro, or as elected representatives in a municipal assembly of Montenegro. The authorities will have to keep this jurisdiction-related point in mind.

Theme II: Transparency of Party Funding

29. It is recalled that GRECO in its evaluation report addressed 9 recommendations to Montenegro in respect of Theme II. Compliance with these recommendations is dealt with below.
30. A new Law on Financing of Political Parties (LFPP) was adopted in July 2011. Oversight responsibility for party funding rules is shared, since December 2011, by the State Audit Institution (which has responsibility for auditing the accounts of political parties) and the State Election Commission (which continues to have important functions relating to publication of campaign/party finance reports). Secondary legislation giving effect to several provisions of the

⁵ Article 138 CC, special conditions for criminal prosecution:

(4) In the cases referred to in paragraphs 136 and 137 hereof, prosecution shall be instituted only where the criminal offence in question is also punishable under the law of the country where the offence was committed, with the exception of criminal offences referred to in Articles 276a, 276b, 422, 422a, 423 and 424 hereof. In the case referred to in Articles 136 and 137, paragraph 1 hereof, where the criminal offence in question is not punishable under the law of the country where it was committed, prosecution shall be instituted solely upon the approval of the Supreme Public Prosecutor.

⁶ Article 137 CC, applicability of criminal legislation of Montenegro to foreign nationals who commit a criminal offence abroad:
(1) Criminal legislation of Montenegro shall also be applicable to a foreign national who commits outside the territory of Montenegro against Montenegro or its national a criminal offence other than those referred to in Article 135 hereof or who commits a criminal offence referred to in Articles 276a, 276b, 422, 422a, 423 and 424 hereof, in the commission of which a national of Montenegro is involved in any way, provided that he is caught in the territory of Montenegro or gets extradited to Montenegro.

LFPP (e.g. guidelines for accounting in-kind donations, contents and formats of financial reports, etc.) was adopted in February and March 2012.

Recommendation i.

31. *GRECO recommended to seek ways to consolidate the books and accounts of political parties to include, as appropriate, the accounts of entities which are related directly or indirectly to a political party or otherwise under its control.*
32. The authorities of Montenegro indicate that, under the new LFPP, political parties are required to present, in their financial statements and reports on assets, financial information on all legal entities and companies established or owned by them. The State Election Commission is required to publish thereafter this information on its website. All legal entities are subject to the provisions of the Law on Accounting and Auditing which requires them to keep proper books and accounts.
33. GRECO welcomes the fact that rules are now in place to increase transparency of entities related to or under the control of a political party, including by requiring political parties to submit financial information on such entities, which is then available for public scrutiny at the State Election Commission's website. Time and experience will prove whether the rules contained in paper, when applied in practice, are sufficient to ensure transparency of the scope of activity of political parties and to facilitate public monitoring of the lawfulness of such activity.
34. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

35. *GRECO recommended to revise collection/expenditure ceilings, including by considering that the existing formula for private funding be disconnected from the total amount of public funding for election campaigns.*
36. The authorities of Montenegro explain the changes introduced in this area: for regular work, parliamentary political parties receive 20% of the State funding allocated to this activity⁷, the remaining 80% is distributed proportionately to the number of seats won by the respective party (Article 7, LFPP). The total amount from private donations that a parliamentary party may receive cannot exceed 100% of the funds received from the State (Article 8, LFPP). Non-parliamentary parties cannot collect more than 10% of the total amount of the funds designated by the State for the financing of parliamentary parties (Article 8, LFPP). For election campaigns purposes, submitters of election lists receive 20% of the State funding allocated to this aim, while the remaining 80% is distributed proportionately to the number of seats won by the respective party (Article 10, LFPP). Funds from private sources cannot be greater than twenty times the 20% referred above⁸ (Article 13 in reference to Article 10(2), LFPP). The authorities clarify that on this basis there can be no concerns relating to the predictability of the available State funds for both regular and campaign activity, nor to the fairness of the system vis-à-vis non parliamentary parties, since the permissible amounts of private funding – although tied to the levels of public

⁷ Funds from public sources appropriated for regular activities of parliamentary parties are set at 0.5% of the State budget; in 2012, these amounted to 5,000,000 EUR.

⁸ Funds from public sources appropriated for campaign expenses of parliamentary parties are set at 0.25% of the State budget; in 2012, these amounted to 2,500,000 EUR.

funding available for parties entering Parliament – are capped at reasonable levels which are far higher than the private donations collected by parties in practice.

37. GRECO takes note of the steps taken to revise collection/expenditure ceilings. In particular, GRECO notes that the level of private donations that non-parliamentary parties are permitted to receive for financing their regular activities has been increased from 5% to 10% of the total amount of State funding available to parliamentary parties. The cap on private donations that can be collected for campaign purposes from both parliamentary and non-parliamentary parties is set at the same level as in the previous law. Although the formula for private funding is still tied to the available levels of public funding, GRECO accepts the explanations provided by the authorities as to how they have considered the matter with a view to better guaranteeing the fairness and predictability of the funding system for both parliamentary and non-parliamentary parties.
38. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

39. *GRECO recommended to establish precise rules for the identification, accounting and reporting of in-kind donations, including the cancellation of loans, as well as the provision of goods and services (other than voluntary work from non-professionals) below market value.*
40. The authorities of Montenegro state that the Rules on Accounting and Reporting In-Kind Donations, which were adopted in January 2012, lay out a mechanism to account for the value of in-kind donations. Goods or services below market prices, loans given in preferential terms and debt cancellation are to be accounted for as donations. There is now a clear obligation for political parties to report in-kind donations.
41. GRECO is pleased to note that rules are now in place to identify, account for and report in-kind donations, including loans, good and services which deviate from market conditions.
42. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

43. *GRECO recommended to introduce clear rules and guidance concerning the use of public resources for party activity and election campaigns.*
44. The authorities of Montenegro indicate that specific rules have been included in the LFPP concerning the use of public resources for party activities and election campaigns. The LFPP bans donations from public institutions and public companies, from institutions and companies with State capital share, and from companies with public contracts (for a period before, during and after the signature of the relevant contract). The LFPP also bans the use of facilities, financial resources, vehicles, technical equipment, personnel and other State means for the purpose of electoral campaigns.
45. GRECO notes that the new LFPP now contains more precise rules on the use of public resources, some of which were already included in other electoral laws, as already pointed in the Third Evaluation Round Report (paragraph 67). GRECO recalls that, at the time of the aforementioned evaluation, this area was identified as particularly prone to abuse in Montenegro, with persistent irregularities occurring in practice. For that reason, GRECO took the view that

rules needed to be coupled with targeted guidance on their practical implementation. In this connection, GRECO notes the intention of the authorities to issue further guidance in this area and looks forward to receiving additional information on the final product.

46. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

47. *GRECO recommended that (i) any government entity responsible for posting required campaign/party finance records be provided with sufficient financial and personnel capacity to carry out this responsibility in a timely and accurate fashion; and (ii) any such entity also be required to notify the responsible enforcement authority when reports have not been received, when reports are incomplete (after a request for the missing documents has gone unheeded) and for clear violations of any other law or regulations of which they become aware.*
48. The authorities of Montenegro report that the State Election Commission is responsible for posting campaign/party finance records. The LFPP establishes detailed rules as to responsible persons in the State Election Commission for performing that task, deadlines for publication (within 7 days of receiving the relevant reports) and sanctions (in the range of 500 to 2,000 EUR) for failure to publish as required by law. The first testing experience of the new rules took place during the local elections in two municipalities in May 2012: 55 campaign reports were posted on the website of the State Election Commission during those elections. The State Election Commission consists of 11 persons and it is foreseen that additional resources will be allocated to a specific service performing expert and administrative tasks in relation to monitoring of party funding rules. Moreover, a technical assistance IPA 2010 project is to provide support to both the State Election Commission and the State Audit Institution in implementing their responsibilities under the LFPP.
49. With respect to notifications to law enforcement authorities of detected irregularities in reporting, since January 2012, the State Election Commission has filed before the relevant regional misdemeanour bodies 17 reports on the failure of political parties to submit information on membership fees, as required by the LFPP; it also filed 21 reports on the failure of political parties to submit annual reports in due time.
50. GRECO takes note of improvements made in this area. In particular, it is to be welcomed that the LFPP now contains rules concerning responsibilities and deadlines for posting campaign/party finance records. GRECO is also pleased to note the practical measures reported to provide for a timely release of campaign reports in the couple of elections which took place following adoption of the new LFPP, as well as to tighten control over political parties not abiding by their reporting obligations under the law. In this connection, it would appear from the information provided by the authorities that the State Election Commission is now taking a more proactive attitude with respect to reporting irregularities to law enforcement authorities. It will be important that the planned reinforcement of personnel in the State Election Commission is fully effected in practice.
51. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

52. GRECO recommended that (i) an institution, whether new or existing, be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns (both from private and public sources), and (ii) until that occurs, for the existing institutions with current responsibilities to (a) develop a practical working arrangement ensuring effective implementation of party/campaign funding rules; (b) describe that arrangement publicly on the websites of the Ministry of Finance and the State Election Commission (and the local commissions where appropriate), and (c) include clear information to the public regarding how and where to lodge complaints.
53. The authorities of Montenegro indicate that the State Audit Institution (SAI) was entrusted, in December 2011, with the monitoring of the funding of political parties. The SAI is an independent body; the persons performing oversight functions regarding party funding – i.e. 5 State auditors and the SAI Senate, are banned from membership in political parties (Article 36, Law on the State Audit Institution). The SAI can look into the annual/campaign reports of any political party (since all parties have an obligation to report to the SAI pursuant to Articles 23 and 25 of the LFPP). In prioritising its work, the SAI is currently conducting an audit of the 13 political entities/parties in Parliament – the funds of which reportedly amount to 98.5% of the total private/public revenues collected for party financing purposes; the finances of the remaining 8 political parties operating in Montenegro represent 1.5% of the total amounts collected⁹. The authorities report that the SAI looks into both the public and private sources collected/used by the parties it monitors. The SAI has already completed auditing of the financial reports corresponding to the 2011 fiscal year and published the results on its website (www.dri.co.me); on the basis of the findings of the relevant reports, 8 recommendations were made in order to improve the current regime. The SAI is now to start auditing the campaign reports received for the recent elections which took place in October 2012. As already mentioned, a technical assistance IPA 2010 project is to provide support to both the State Election Commission and the State Audit Institution in implementing their responsibilities under the LFPP.
54. With respect to public information on the new institutional framework for monitoring party and campaign finances and for lodging complaints, as appropriate, the authorities refer to the law, i.e. the LFPP (describing the system and providing for applicable rules, including on implementation arrangements) and the Law on Misdemeanours (Article 111 providing that a misdemeanour procedure can be initiated on the basis of the request of an authorised body, an injured party and a defendant).
55. GRECO acknowledges the positive steps taken to tighten control of political finances. GRECO notes that external auditing of party accounts has been exclusively entrusted to the State Audit Institution (SAI); the independent position of the SAI is spelled out in the Law on the State Audit Institution. The authorities have explained how the SAI is performing monitoring in practice, but GRECO regrets that the role and powers of the SAI in this domain have not been more explicitly and clearly described by law/regulation. For example, the LFPP does not specify whether the SAI can look into all types of funds received by a party (whether public or private), or other important practical arrangements, like what powers has the SAI to request evidence from third entities other than political parties (e.g. persons/entities having entered into commercial terms with a political party).

⁹ Total funds (revenues) collected from public and private sources in 2011 amounted to 4,750,968 EUR. Total revenue collected from 8 parties lacking representation in Parliament was 74,977.44 EUR (i.e. 1.5% of total funds collected).

56. Moreover, GRECO is of the view that it is too early to assess how the new system operates in practice. The SAI has just finished its first audit of annual reports of political parties and the first campaign reports received by the SAI will be audited in the coming months. In this connection, GRECO takes note of the remarks made by the election monitoring mission of the Parliamentary Assembly of the Council of Europe (PACE) expressing misgivings concerning party financing¹⁰. Likewise, the latest Progress Report (2012) of the European Commission on Montenegro calls for the reinforcement, and the setting out in legislation, of the mechanisms for checking on the funding of political parties and election campaigns¹¹; EU funding has been allocated to this aim. GRECO considers the effective supervision of party funding a cornerstone for credibility in this subject area; consequently, it looks forward to additional information concerning the implementation of audit requirements in due course once more experience is gathered by the SAI.
57. Finally, GRECO considers that more can be done to inform the public on the new institutional arrangements for monitoring political finances (e.g. via institutional websites) and to clarify the available channels to lodge complaints when spotting irregularities in this area; more determined steps in this respect could certainly assist the task of the SAI in detecting and revealing irregularities in party funding.
58. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

59. *GRECO recommended to considerably strengthen the auditing of political parties, in particular, by (i) assessing the need to adjust the current rules in order to establish consistent and clear auditing obligations for political parties, including a review of the current auditing threshold for campaign accounts (i.e. total amount of funds raised and spent from private sources in an election campaign exceeds 50,000 EUR); (ii) introducing provisions to ensure the independence of auditors who are to audit political finances.*
60. The authorities of Montenegro explain that the new LFPP no longer sets auditing thresholds for campaign accounts; political parties are no longer required to submit their accounts to the verification of a private auditor. The State Audit Institution is now the sole body responsible for auditing party/campaign accounts. The LFPP provides, nevertheless, an obligation for political parties to develop internal control mechanisms in their statutes, including through the appointment of a person responsible for financial dealings (Article 24 LFPP).
61. GRECO notes that the role which private auditors were to play in verifying party accounts is no longer applicable. GRECO has misgivings about such a move. As stated in the Third Evaluation Round Report (paragraph 77), the establishment of a genuine monitoring mechanism of the State to supervise both private and public funding of parties and candidates is an essential element in strengthening control over political finances, but, additionally, the verification performed by external private auditors needs to be properly secured since such verifications, if independently and effectively performed, can serve to facilitate the monitoring task of public authorities further down the line. As experience is gathered by the State Audit Institution in controlling party finances, the authorities may wish to revisit the possibility of resorting to independent private

¹⁰ In particular, the Head of the PACE delegation stated that “the abuse of administrative resources and a lack of transparency in campaign and political party financing are a matter of concern that should be addressed by the authorities”.
<http://assembly.coe.int/ConsultationNews.asp?idNews=8105>

¹¹ http://ec.europa.eu/enlargement/pdf/key_documents/2012/montenegro_spring_report_en.pdf

auditors for monitoring party/campaign accounts. GRECO understands, as already stressed in the Third Evaluation Round Report, that audit requirements need to be combined with flexibility in relation to the different means and needs of the various electoral contestants in order to avoid overly cumbersome procedures.

62. In the same vein, while the LFPP establishes an obligation for political parties to develop internal rules for controlling their operations (including through the appointment of responsible persons for financial dealings), nothing has been reported concerning the implementation of this obligation by political parties in practice. GRECO looks forward to receiving detailed information on the sort of mechanisms developed by political parties to ensure internal control of political accounts and to strengthen financial discipline.
63. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

64. *GRECO recommended (i) to better adjust the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive, including by broadening the scale and range of penalties available; (ii) to cover all possible infringements of the law, as appropriate.*
65. The authorities of Montenegro indicate that the current sanctioning provisions of the LFPP are more comprehensive than they were under the former law in order to cover all possible infringements: a detailed list of possible infringements, possible infringers (legal entity, political party, responsible persons in State Election Commission, donors) and their attached sanction is provided in Articles 32 to 37 of the LFPP. Moreover, sanctions have been increased (doubled) and now range from 200 to 20,000 EUR. Other administrative sanctions may apply, including forfeiture of the assets illegally acquired by the party and withholding of public funds. Out of the 38 misdemeanour proceedings initiated: five were completed (one was discontinued and four punished with fines); 33 are still on-going. The authorities further add that, during the latest parliamentary elections, the State Prosecutor Office received 116 complaints for breaches of Article 18 (rules on advertisement) and Article 21 (ban on employment in State and local self-government bodies during elections).
66. GRECO acknowledges the steps taken by the authorities to upgrade the sanctioning system of party funding rules, including by better defining infringements of the LFPP and by providing for several types of administrative sanctions (i.e. doubling the level of applicable fines, resorting to forfeiture and withholding of public funds). GRECO recalls that a major shortcoming of the party funding system in Montenegro was the lack of enforcement. Since the LFPP has only been recently adopted and therefore not sufficiently tested yet, it is not possible for GRECO to assess the effectiveness of the available penalties through their practical application whenever a breach occurs. In that connection, GRECO refers back to the Third Round Evaluation Report (paragraph 78), which pointed at areas meriting further adjustment including through the introduction of a broader range of sanctions, e.g. loss of public funds, ineligibility, incremental fines and even imprisonment when severe breaches of the law occur. As experience with enforcement of the LFPP evolves, the authorities should also pay attention that the existing sanctions cover all possible infringements of the law's provisions. Already, the Third Round Evaluation Report (paragraph 79) identified two areas where the applicable sanctions could be better spelled out including with respect to donors (the current sanctions only refer to infringements in relation to donation caps, but not to other possible irregularities under the law) and companies with public

contracts which donate to a political party in contravention of the applicable ban. More can be done in this respect. Enforcement of the LFPP is a critical issue which needs to be kept under scrutiny; GRECO looks forward to receiving future updates in this respect.

67. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

68. *GRECO recommended to increase the limitation period for violations of the Law on the Financing of Political Parties and the Law on Funding Election Campaigns for the President of Montenegro, Mayors and Presidents of municipalities.*
69. The authorities of Montenegro report that the limitation period for violations of the LFPP has been doubled as compared to the situation assessed in the Third Evaluation Round Report: prosecution cannot take place if 2 years have elapsed from the day on which the offence was committed (relative statute of limitations); and in any case the limitation of prosecution comes into force 4 years after the commission (absolute statute of limitations)¹².
70. GRECO is pleased to note the action taken by the authorities to increase the limitation period for infringements of the LFPP. GRECO recalls that a factor impinging on the effective application of sanctions in this area was the expiry of the relevant time limit specified in the statute of limitations.
71. GRECO concludes that recommendation ix has been implemented satisfactorily.

III. CONCLUSIONS

72. **In view of the above, GRECO concludes that Montenegro has implemented satisfactorily or dealt with in a satisfactory manner ten of the fourteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, all recommendations (i-v) have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendations i, iii, v and ix have been implemented satisfactorily; recommendation ii has been dealt with in a satisfactory manner; recommendations iv, vi, vii and viii have been partly implemented.
73. Montenegro has made credible efforts to meet the recommendations addressed by GRECO in its Third Round Evaluation Report. In particular, all recommendations concerning Theme I – Incriminations have been complied with. The latest amendments of the Criminal Code provide for greater harmonisation of the key elements of bribery and trading in influence offences and establish broader jurisdictional rules. With respect to Theme II – Transparency of Party Funding, the new Law on the Financing of Political Parties, which was adopted in July 2011, along with its implementing regulations, constitute a positive step to better ensure transparency, control and responsibility in the area of political funding. That said, additional steps can be taken to strengthen internal discipline of political parties, to regulate the use of public facilities during election periods, and to enlarge the coverage of sanctioning provisions. More importantly, it will be decisive to ensure that the oversight responsibilities conferred to the State Audit Institution and the State Election Commission are properly performed in practice. Likewise, the sanctioning

¹² The relative statute of limitation can be stopped by any procedural act or activity of the investigating authority; the absolute statute of limitations represents a definite expiry of the right to prosecute/execute.

regime remains to be tested to assert its proportionality, dissuasiveness and effectiveness. These are all areas that merit further review.

74. In view of the above, GRECO commends Montenegro for the substantial reforms carried out with regard to both themes under evaluation and which show that, already at this stage, Montenegro complies with more than two thirds of the recommendations issued in the Third Round Evaluation Report. It encourages Montenegro to pursue the reforms underway in order to implement the pending recommendations within the next 18 months. GRECO invites the Head of the delegation of Montenegro to submit additional information regarding the implementation of recommendations iv, vi, vii and viii (Theme II – Transparency of Party Funding) by 30 June 2014 at the latest.
75. Finally, GRECO invites the authorities of Montenegro 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.