

Strasbourg, 23 March 2012

Public
Greco RC-III (2012) 2E

Third Evaluation Round

Compliance Report on "the former Yugoslav Republic of Macedonia"

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 54th Plenary Meeting
(Strasbourg, 20-23 March 2012)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of “the former Yugoslav Republic of Macedonia” to implement the 13 recommendations issued in the Third Round Evaluation Report on “the former Yugoslav Republic of Macedonia” (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 46th Plenary Meeting (22-26 March 2010) and made public on 30 August 2010, following authorisation by “the former Yugoslav Republic of Macedonia” (Greco Eval III Rep (2009) 6E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of “the former Yugoslav Republic of Macedonia” submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 September 2011 and served as a basis for the Compliance Report.
4. GRECO selected Lithuania and Serbia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Elena KONCEVICIUTE, International Relations Officer, Special Investigation Service (Lithuania) and Ms Zorana MARKOVIC, Director, Anti-Corruption Agency (Serbia). 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 7 recommendations to “the former Yugoslav Republic of Macedonia” in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to take the legislative measures necessary to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether within the scope of the official's duties or not.*

8. The authorities of “the former Yugoslav Republic of Macedonia” indicate that amendments to the Criminal Code were adopted in April 2011¹. They introduce a new wording of the provisions concerning bribery (Articles 357 on passive bribery and 358 on active bribery) which eliminates the condition that bribery occurs for the performance of, or omission to perform, an official act within the scope of the official duties². The authorities stress that the new wording of the relevant bribery provisions would cover all acts and omissions in the exercise of the functions of a public official, whether or not within the strict scope of the official’s duties, including those resulting from the misuse of the official position.
9. GRECO welcomes the legislative amendments introduced in the Criminal Code to comply with recommendation i, which should allow, in principle, to cover acts and omissions which are made possible in relation to the public official’s function, whether or not within the scope of the official’s duties.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to reformulate the offence of bribery of foreign public officials contained in Article 357 (6) of the Criminal Code with the relevant provisions pertaining to the bribery of domestic public officials, in accordance with Article 5 of the Criminal Law Convention on Corruption (ETS 173).*
12. The authorities of “the former Yugoslav Republic of Macedonia” indicate that amendments were introduced to Article 357 (6) of the Criminal Code to eliminate the additional element of proof that bribery of foreign officials needs to occur in relation to the acquisition, exercise or taking away of rights defined by law, or for the purposes of acquiring an advantage or causing damage to another person. Therefore, once this additional condition has been suppressed, the formulation of the offence of bribery of domestic public officials and of foreign public officials is identical³.

¹ Official Gazette No. 51/2011.

² Article 357 (1) and (2) CC – passive bribery in the public sector:

- (1) *An official person who directly or indirectly requests or receives a gift or another benefit or receives the promise of a gift or another benefit for him/herself or for another person, in order to perform an official activity which should not be performed, or does not perform an official activity which should be performed, shall be sentenced to imprisonment of four to ten years.*
- (2) *An official person who directly or indirectly requests or receives a gift or another benefit or receives the promise of a gift or another benefit for him/herself or for another person, in order to perform an official activity which must be performed, or does not perform an official activity which s/he would otherwise not have been permitted to perform, shall be sentenced to imprisonment of one to five years.*

Article 358 (1) and (2) CC – active bribery in the public sector:

- (1) *Whosoever, directly or indirectly, gives, promises or offers a gift or another benefit to an official, for him/herself or for anyone else, in order for the official person to perform an official activity, which otherwise should not be performed, or not to perform an official activity which must be performed, or whosoever mediates in such relation, shall be sentenced to imprisonment of one to five years.*
- (2) *Whosoever, directly or indirectly, gives, promises or offers a gift or another benefit to an official, for him/herself or for anyone else, in order for the official person to perform an official activity which otherwise must be performed, or not to perform an official activity which s/he would otherwise not have been permitted to perform, or whosoever mediates in such relation, shall be sentenced to imprisonment of one to three years.*

³ Article 357 (6) CC – bribery foreign public officials:

- (6) *The sentence referred to in paragraphs (1), (2), (3), (4) and (5) of this Article shall also be imposed on a responsible person performing activities of public interest, as well as a foreign official person.*

13. GRECO welcomes the amendments introduced to reformulate the offence of bribery of foreign public officials in similar terms to that of bribery of domestic public officials, notably, by eliminating the additional elements of proof formerly contained in the offence of bribery of foreign officials and, therefore, dispelling any possible misunderstanding as to the constitutive elements of such offences.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to make it clear to practitioners that active and passive bribery of domestic and foreign arbitrators are covered by reference to the concept of public official as construed under Article 122 of the Criminal Code.*
16. The authorities of “the former Yugoslav Republic of Macedonia” report on a broad number of anticorruption training events organised by the Academy for Judges and Public Prosecutors. The authorities indicate that particular attention has been paid in these training courses to the material elements of the bribery offence, the notion of public official and the different categories of persons who fall under its scope, including arbitrators. The authorities add that the topics of active and passive bribery are part of the general programme for continuous training of judges and prosecutors; a vast number of training activities have taken place following the enactment of the latest amendments to the Criminal Code and more are planned in 2012. Finally, the authorities reiterate that domestic and foreign arbitrators are covered by Article 122 CC referring to “persons performing official duties, based on the authorisation given by law or by some other regulation enacted and based on the law”, when interpreted in the light of the provisions of the Law on the Chamber of Commerce (domestic arbitrators) and the Law on International Trade Arbitration (foreign arbitrators).
17. GRECO welcomes the anticorruption training events reported and the attention that is paid in those to the notion of public official and the categories of persons it encompasses, including domestic and foreign arbitrators. GRECO recalls that this was an area where divergent opinions were expressed by the key interlocutors met, including practitioners themselves, at the time of the on-site evaluation visit. GRECO encourages the authorities to pursue their efforts in order to dispel all possible doubt among legal practitioners concerning the law on this subject.
18. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

19. *GRECO recommended to ensure that legislation concerning bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities.*
20. The authorities of “the former Yugoslav Republic of Macedonia” report that bribery in the private sector has, pursuant to the latest amendments of the Criminal Code, been criminalised as an autonomous offence by virtue of Article 253 CC (passive bribery) and 253a CC (active bribery)⁴.

⁴ Article 253 CC – Passive bribery in the private sector:

(1) A person who, in the performance of an economic, financial, commercial, service or other economic activity, directly or indirectly requests or agrees to accept a gift or some other direct or indirect advantage or a promise or an offer for such an advantage, for himself or for another person, in order to ignore the interests of the legal or natural person, when concluding

These provisions apply to any person engaged in economic, financial, commercial or service activities. The offence is formulated to explicitly cover the different material acts/failure to act provided by the Criminal Law Convention on Corruption (ETS 173), the direct/indirect commission of the offence, material/immaterial undue advantages, and third party beneficiaries. The authorities confirm that the notion of breach of duty is to be understood broadly; damage does not always have to occur as a result of breach of duty in order for prosecution of bribery offences in the private sector to take place. Sanctions consist of imprisonment of 1 to 5 years. Bribery instances occurring after the business deal has been performed is punishable by imprisonment of up to 3 years.

21. GRECO takes note of the information provided. It welcomes the fact that, with recent amendments of the Criminal Code, bribery in the private sector is now criminalised as an autonomous offence. GRECO notes that the relevant provisions, i.e. Articles 253 CC (passive bribery in the private sector) and 253a CC (active bribery in the private sector) enlarge the *rationae personae* scope of the offences by referring to any person engaging in an economic activity who acts in breach of his/her duties. This would allow, in principle, to cover anyone directing or working for – in any capacity – private sector entities, in line with recommendation iv.
22. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

23. *GRECO recommended to (i) criminalise active trading in influence as a principal offence; (ii) review the provision on passive trading in influence to unambiguously cover a) the request or the acceptance of the offer or the promise of an undue advantage by the influence peddler; b) the direct and indirect commission of the offence; and c) those instances where the advantage is not intended for the briber him/herself but for a third party.*

or extending a contract or taking another action, or in order to gain undue advantage or cause damage of greater value to the legal or natural person or to a third person, shall be punished with a prison term of one to five years.

(2) A person who requests or agrees to accept an undue gift or other advantage for himself or for a third person, or a promise for an offer of such advantage, in order not to have a contract concluded or extended, or not to take another action in favour of the legal or natural person whose interests s/he represents, shall be punished with the penalty referred to in paragraph 1 of this Article.

(3) If the perpetrator agrees to accept an undue gift or another advantage after the conclusion of the contract or the taking or non-taking of another action, s/he shall be punished with a fine or with a prison term of up to three years.

(4) The accepted gift or other advantage shall be taken away.

Article 253a CC – Active bribery in the private sector:

(1) A person who promises, offers, or gives to a person, directly or indirectly, a gift or another advantage or promise or offer for such an advantage, in the performance of an economic, financial, commercial, service or another economic activity, in order to ignore the interests of the legal or natural person when making a contract or extending a contract or taking another action or in order to gain an undue advantage or to cause damage of greater value to the legal or natural person or to a third person, shall be punished with a prison term of one to five years.

(2) The penalty referred to in paragraph 1 of this Article shall also apply to a person who promises, offers or gives a gift or another advantage or makes a promise for an offer of such an advantage so that in the performance of an economic, financial, commercial, service or another economic activity s/he would gain for himself or for another person undue advantage or would cause damage of greater value by omitting to conclude or extend a contract or omitting to take another action which he was required to take in favour of the legal or natural person whose interests s/he represents.

(3) If the perpetrator referred to in paragraphs 1 and 2 of this Article reports the offence before it is discovered or before s/he learns that it was discovered, s/he may be released from punishment.

(4) The given gift or another advantage shall be taken away.

24. The authorities of “the former Yugoslav Republic of Macedonia” report that the amendments to the Criminal Code have introduced, in Article 358a, the offence of active trading in influence. Accordingly, it is a criminal offence to promise, give or offer, directly or indirectly an undue advantage to anyone who uses his/her real or supposed influence, official or social position or image to request, intervene, motivate or in any other manner influence the performance of an official duty, whether the undue advantage is for himself/herself or for anyone else. Sanctions range from imprisonment of one to five years in cases implying an unlawful official act or omission, and imprisonment of one to three years in cases implying a lawful act or omission⁵.
25. The authorities add that, with respect to the offence of passive trading in influence, amendments have been made to Article 359 to explicitly refer to a) the request or the acceptance of the offer or the promise of an undue advantage by the influence peddler; b) the direct and indirect commission of the offence; and c) those instances where the advantage is not intended for the briber him/herself but for a third party⁶.
26. GRECO welcomes the amendments recently introduced in the Criminal Code providing for an autonomous criminalisation of active trading in influence (Article 358a CC) in terms that closely follow the Criminal Law Convention on Corruption (ETS 173), in particular with respect to the

⁵ Article 358a CC – active trading in influence

(1) *Whoever, directly or indirectly, gives a reward, gift or another benefit or promises or offers such benefit to another, for himself/herself or for another person, in order to use his/her real or supposed influence, official or social position or image to request, intervene, motivate or in any other manner influence the performance of a specific official activity which must be performed, or not to perform an official activity which s/he would otherwise not have been permitted to perform, shall be sentenced to imprisonment of one to three years.*

(2) *Whoever, directly or indirectly, gives to another the reward, gift or another benefit, the promise or offer for such benefit, so that by using his/her real or supposed influence, official or social position or image, s/he requests, intervenes, motivates or in any other manner influences the performance of an official activity that otherwise should not be performed or does not perform an official duty that otherwise must be performed, shall be sentenced to imprisonment of one to five years.*

(3) *If the crime referred to in paragraph (2) of this Article is committed in regard to initiation and conduct of a criminal procedure against a certain person, the offender shall be sentenced to imprisonment of three to five years.*

(4) *Whoever, directly or indirectly, gives to another a reward, gift or another benefit or promises or offers such benefit, for himself/herself or for another person, in order to use his/her real or supposed influence, official or social position or image, to request, intervene, motivate or in another manner influence the responsible person, responsible person in a foreign legal entity performing activity in the Republic of Macedonia, or a person performing activities of public interest, to perform or not to perform an activity contrary to its duty, shall be fined or sentenced to imprisonment of up to three years.*

(5) *If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed upon a request of a person that shall illegally mediate, and the offender has reported it before it has been detected or before it is found out that it is detected, the offender may be acquitted from the sentence.*

(6) *The reward, gift or another benefit shall be taken away.*

⁶ Article 359 CC – passive trading in influence

(1) *Whoever, directly or indirectly, receives a reward, gift or some other benefit or promises or offers such benefit, for himself/herself or for another person, by using his/her real or supposed influence, official or social position and image, to request, intervene, motivate or in any other manner influence the performance of an official activity that must be performed or is not performed and which s/he would otherwise not have been permitted to perform, shall be sentenced to imprisonment of one to three years.*

(2) *The sentence referred to in paragraph (1) of this Article shall be imposed on whosoever by using his/her real or supposed influence, official or social position and image requests, intervenes, motivates or in any other manner influences the performance of an official activity that otherwise should not be performed or not to perform an official duty that must be performed.*

(3) *Whoever by using his/her real or supposed influence, official or other position, and image requests, intervenes motivates or in any other manner influences the responsible person, responsible person in a foreign legal entity performing an activity in the Republic of Macedonia or a person performing activities of public interest for a reward, gift or other benefit, or promise for such benefit, performs or does not perform an activity contrary to his/her duty shall be fined or sentenced to imprisonment of up to one year.*

corrupt acts covered, the tangible and intangible character of the advantage, the direct or indirect commission of the offence, and third party beneficiaries. Likewise, instances of not only real, but also supposed influence, are covered. GRECO is also pleased to note that changes have been made to the formulation of passive trading in influence (Article 359 CC) in order to explicitly cover the request or the acceptance of the offer or the promise of an undue advantage by the influence peddler, the direct and indirect commission of the offence, and third party beneficiaries, in line with the wording of Article 12 of the Convention.

27. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

28. *GRECO recommended to (i) abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad; (ii) establish jurisdiction over offences of bribery and trading in influence committed abroad by domestic public officials and members of domestic public assemblies of “the former Yugoslav Republic of Macedonia” who are not nationals; and (iii) establish jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies, judges or officials of international courts who are, at the same time, nationals of “the former Yugoslav Republic of Macedonia”.*
29. The authorities of “the former Yugoslav Republic of Macedonia” report that amendments have been introduced to Article 117 of the Criminal Code to extend jurisdiction to anyone who commits an act of bribery or trading in influence abroad, irrespective of the offender’s nationality, country of residence or any other relation with “the former Yugoslav Republic of Macedonia” (universal jurisdiction)⁷. Dual criminality is no longer required in such cases.
30. GRECO welcomes the amendments introduced to the Criminal Code in order to extend jurisdiction over corruption offences. Pursuant to the changes made, “the former Yugoslav Republic of Macedonia” is in a position, in principle, to establish jurisdiction over bribery/trading in influence offences in accordance with Article 17 of the Criminal Law Convention on Corruption (ETS 173).
31. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

32. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector who report to law enforcement authorities, and to abolish the mandatory restitution of the bribe to the bribe-giver in such cases.*
33. The authorities of “the former Yugoslav Republic of Macedonia” explain that, the latest amendments to the Criminal Code have abolished the automatic, and mandatorily total, exemption from punishment granted to a person who promises or gives a bribe – after being solicited – if s/he reports the crime before the authorities learn that it has taken place. The

⁷ Article 117 CC – universal jurisdiction

The criminal legislature is applicable to whosoever commits a crime referred to in Article 268 of this Code abroad, if the forgery concerns domestic currency and as referred to in Articles 305 through 326, 357 through 359-a and 403 through 422 of this Code.

aforementioned defence of effective regret now has a discretionary nature: it is for the competent judge to determine whether to exonerate the bribe-giver or not. The mandatory restitution of the bribe to the bribe-giver in such cases has now also become a mere possibility for the judge to decide upon⁸. The authorities argue that this possibility can be of use in facilitating the reporting of corruption and also for bringing justice to individuals who might have given the bribe under extortion.

34. GRECO acknowledges the steps taken by the authorities to revise the defence of effective regret. GRECO is pleased to note that the mandatory total exemption of punishment to the bribe-giver who reports to law enforcement authorities no longer exists. Instead, the applicable provisions now state that the court “may” remit the punishment of the perpetrator of the criminal offence. This part of recommendation vii has been addressed in a constructive manner.
35. GRECO, however, notes that the restitution of the bribe to the bribe-giver, who has declared the offence before it is uncovered, is still possible in law for the offence of active bribery in the public sector. The possibility to return the bribe to the briber is not foreseen for the offence of bribery in the private sector, nor for trading in influence. GRECO has consistently recommended to those countries in which such a possibility existed, that it be completely abolished. GRECO therefore calls on the authorities of “the former Yugoslav Republic of Macedonia” to abolish the possibility given to the courts to restore the seized bribe to the briber.
36. GRECO concludes that recommendation vii has been partly implemented.

Theme II: Transparency of Party Funding

37. It is recalled that GRECO in its evaluation report addressed 6 recommendations to “the former Yugoslav Republic of Macedonia” in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

38. *GRECO recommended (i) to introduce clear provisions determining the commencement of an election campaign in view of the obligation to keep campaign accounts and campaign financial reports; and (ii) to extend the financial reference period applicable to election campaigns so that the financial activity during this period is accurately and comprehensively recorded.*

⁸ Article 358 (3) and (6) CC – active bribery in the public sector, defence of effective regret

(3) *For the crime referred to in paragraphs (1) and (2) of this Article the court may acquit the sentence of the offender who has given or promised a bribe, upon a request of an official person, and reports that before it is found out that the crime has been detected.*

(6) *The given present or property benefit shall be taken away, and in case of paragraph (3) when acquitted from the sentence, it may be returned to the person who gave the bribe.*

Article 358a CC – active trading in influence

(5) *If the crime referred to in paragraphs (1), (2), (3) and (4) of this Article is committed upon a request of a person that shall illegally mediate, and the offender has reported it before it has been detected or before it is found out that it is detected, the offender may be acquitted from the sentence.*

Article 253a - active bribery in the private sector, defence of effective regret

(3) *If the perpetrator referred to in paragraphs 1 and 2 of this Article reports the offence before it is discovered or before s/he learns that it was discovered, s/he may be released from punishment.*

39. The authorities of “the former Yugoslav Republic of Macedonia” indicate that the Electoral Code (hereafter EC) was amended in April 2011 (Official Gazette of the Republic of Macedonia No.54/2011) in order to implement GRECO’s recommendations. Articles 71, 84-b and 85 have clarified the obligations of the organisers of election campaigns as regards reporting periods: they have to submit, on the 11th day from the start of the election campaign, one financial report on the income and expenditure on the election campaign bank account from the day it was opened until the end of the 10th day of the election campaign; one day after the end of the election campaign, another report on the income and expenses on the election campaign bank account for the second half of the campaign; and finally, no later than 15 days after the end of the election campaign, a complete financial report covering the whole of the election campaign. For reference, the election campaign account is to be opened within 48 hours after confirmation of the list of candidates to the election (Article 71 EC) and the election campaign period extends from 20 days to 1 day prior to the election day (Article 69-a EC).
40. GRECO welcomes the fact that the amendments to the EC clarify the concrete obligations of the organisers of election campaigns concerning reporting and reporting periods, as requested by the first part of the recommendation. It is obvious, however, that the financial reference periods have not been extended, as requested by the second part of the recommendation, thus a significant shortcoming remains. It calls upon the authorities of “the former Yugoslav Republic of Macedonia” to make the necessary changes to the EC in this regard, so that the financial reports may convey a full picture of election campaign financing.

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

Recommendation ii.

42. *GRECO recommended to amend the Electoral Code in order to ensure that goods and services granted to election campaign organisers at discounted prices are properly identified and accounted for at their market value, as donations, in order to ensure that the rules on donation ceilings are not circumvented.*
43. The authorities of “the former Yugoslav Republic of Macedonia” report that Articles 83 and 83-a of the EC specify that goods and services sold at a discounted price have to be regarded as donations and that the provider of these goods or services has to inform the campaign organiser of their market price, so that the difference between the paid price and the market price may be accounted for as a donation. The provision of Article 83, paragraph 3 of the EC that provided for an exception to these rules, was deleted.
44. GRECO welcomes the fact that the exception of Article 83, paragraph 3 of the Election Code has been removed in the 2011 amendments to this text, as requested by the recommendation.
45. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

46. *GRECO recommended to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties, or otherwise under their control, and to include, as appropriate, the accounts of such entities in the accounts of political parties.*

47. The authorities of “the former Yugoslav Republic of Macedonia” explain that, according to Article 13 of the Law on Associations and Foundations (Official Gazette of the Republic of Macedonia Nos 52/10 and 135/11), associations may not carry out the activities of a political party, that is, they may not provide direct or indirect funding to a political party and influence the elections, for instance by participating in the election campaign. Associations may receive funding from the state budget or the budgets of the municipalities or the city of Skopje (Article 49, Law on Associations and Foundations), but if they do, they have to submit to the entity that provides such funding a business and financial report on the use of the funds. The relevant bodies of state and local government also publish on their respective websites the list of associations to which they provide such funding, along with the objectives of these associations.
48. GRECO takes note of the information received and of the intention of the authorities of “the former Yugoslav Republic of Macedonia” to address this recommendation by forbidding NGOs – including think-tanks and research institutes established by political parties, the existence of which had been noted in the Evaluation Report (paragraph 92) – from campaigning for political parties. Even though such practices are now forbidden by the law, the authorities agreed that they still appear to occur in practice. GRECO therefore reiterates that, as long as these entities are involved in election campaigns in practice, it must be clearly understood that transparency of political financing requirements also apply to them. It therefore calls upon the authorities to reassess the situation of these entities.
49. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

50. *GRECO recommended to ensure that all political parties are adequately informed and advised (e.g. through the provision of training/guidelines) on the applicable political funding regulations, particularly as regards their accounting aspects.*
51. The authorities of “the former Yugoslav Republic of Macedonia” indicate that the above-mentioned amendments to the LFPP aim at simplifying the reporting obligations of political parties by eliminating their obligations to publish their donations register and their annual financial statements through channels such as daily newspapers and the Official Gazette. These documents now only have to be published on the parties’ websites, thereby inducing financial savings for them. In the same vein, the previous obligation on political parties to submit quarterly reports on donations was replaced by an obligation to submit an annual report on donations, along with their annual financial report. They add that a round table was organised by the Ministry of Justice to inform political parties about their new reporting obligations but that only two of them showed interest and attended the meeting.
52. GRECO takes note of the information provided. While it recognises that some measures have been taken to inform political parties about their reporting obligations, it takes the view that these measures are not sufficient and that more effort needs to be devoted to raising the awareness of political parties about their obligations under applicable political funding regulations. It appears that political parties, especially smaller ones, still largely fail to comply with their existing reporting obligations⁹, which corroborates concerns expressed by GRECO in the Evaluation Report (see

⁹ See the 2011 Progress report on EU accession (12.10.2011) and the Annual Report on Transparency of Political Financing (Transparency Macedonia and Foundation Open Society Macedonia, January 2012), according to which only 11% of registered political parties submitted their 2010 annual financial reports to the State Audit Office and none of them fully complied with the required template.

paragraph 93). In addition, GRECO is concerned that the latest amendments to the LFPP by reducing the reporting obligations of political parties, will not result in greater transparency on the regular financing of political parties, quite the contrary.

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

Recommendation v.

54. *GRECO recommended to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate and adequate powers and resources to carry out a proactive and effective supervision, investigation and enforcement of political financing regulations.*
55. The authorities of “the former Yugoslav Republic of Macedonia” state that the amendments to the Law on the Financing of Political Parties foresee a leading role for the State Audit Office in the supervision of political financing, by giving that body the sole competence to review the financial documents on the regular activity of political parties. The Ministry of Finance no longer retains competences in this field. According to the amendments, if the State Audit Office finds irregularities in the annual financial report of a political party, it is empowered, within 30 days from the day of determining these irregularities, to submit a request for the starting of a misdemeanour procedure or to lodge an application to the competent prosecutor. The authorities also indicate that the budget of the State Audit Office was increased by 8% for the year 2011 and that 3 new auditors were recruited. In addition, monthly co-ordination meetings are organised between the State Audit Office and the State Commission for the Prevention of Corruption.
56. GRECO notes that, pursuant to the amendments to the LFPP, a more prominent role is given on paper to the State Audit Office, which will have the power to take action on the basis of its findings. Subject to a proactive attitude by the State Audit Office in the use of its new powers, this could be seen as a positive development. The fact that the Ministry of Finance no longer has competences in this field also goes in the right direction, as the Evaluation Report (see paragraph 94 and following) highlighted that the multiplicity of the actors of supervision was detrimental to their efficiency. However, GRECO must stress that the implementation of the recommendation calls for much broader changes to the current supervision system. Even if monthly meetings are organised between the State Audit Office and the State Commission for the Prevention of Corruption, it does not appear that these meetings are devoted specifically to the monitoring of political financing. Procedures are still missing to ensure smooth and efficient co-operation between the relevant bodies in uncovering irregularities. Along the same lines, the reported increase in the human and financial resources of the State Audit Office is welcome, but nothing indicates that it will benefit the auditing of political parties. Moreover, in spite of the designation by law of the State Audit Office as the key monitoring institution, provision has apparently not been made for a mandatory audit of political parties’ annual reports. According to its 2011 work programme, the State Audit Office audited only 10 of the 55 political parties registered and in 2012, its work programme does not foresee any political party audit¹⁰. GRECO therefore considers that, in spite of the amendments to the LFPP, the State Audit Office is still not adequately equipped to assume a leading role in the effective supervision, investigation and enforcement of political financing regulations.
57. GRECO concludes that recommendation v has not been implemented.

¹⁰ Annual Report on Transparency of Political Financing, p.37. The authorities indicated, however, that the State Audit Office will audit all financial reports submitted in the framework of the 2011 parliamentary elections.

Recommendation vi.

58. *GRECO recommended (i) to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding works effectively in practice, and (ii) to ensure, in particular, that the sanction of loss of public funding by political parties and election campaign organisers can be applied in practice.*
59. The authorities of “the former Yugoslav Republic of Macedonia” report that the Criminal Code was amended in April 2011 (Official Gazette of the Republic of Macedonia No.51/2011) in order to comply with the recommendation. A new Article 165-c was added, which stipulates that “For the crimes referred to in Articles 158 through 165-a of this Code the court shall impose the offender prohibition to use funds for financing political parties under the conditions referred to in Article 96-c paragraph (1) of this Code¹¹.” A new secondary sanction prohibiting the use of funds from the Budget of the Republic of Macedonia for financing political parties was also added in Article 96-b of the Criminal Code. The authorities also refer to the provision referred to above (see paragraph 55), contained in Article 27 of the LFPP as amended, according to which the State Audit Office is empowered to submit a request for initiating a misdemeanour procedure or to lodge an application to the competent public prosecutor if it finds irregularities in the annual financial report submitted by a political party, within 30 days of them being discovered. Prior to initiating this misdemeanour procedure, a compulsory mediation procedure has been added by Article 30 of the LFPP. Finally, the authorities add that the State Commission for the Prevention of Corruption initiated four misdemeanour procedures against political parties for violation of their obligation to submit interim reports on electoral funding and one misdemeanour procedure for “abuse of funds for financing the electoral campaign”. Two misdemeanour procedures were also initiated by the Commission against media companies for violation of the rules regarding donations. These procedures are currently processed either by the office of the public prosecutor or by the Basic Court in Skopje. One criminal procedure before the Criminal Court in Skopje resulted in the sentencing, in first instance, of one person for misuse of the funds for financing the election campaign.
60. GRECO takes note of the amendments to the Criminal Code and to the LFPP, but considers that they do not provide an adequate response to the requirements of the recommendation, which calls for changes in the procedures and practical arrangements for implementing sanctions. It recalls that the Evaluation Report (see paragraph 99) highlighted that the existing sanctions had never been applied in practice and that no information was available, even to the supervisory authorities, on the outcome of misdemeanour procedures initiated for infringement of the political financing regulations. The Evaluation Report (see paragraph 100) also pointed out that, as a result of the decision of the Constitutional Court to repeal Article 32 of the LFPP, the necessary procedures were also lacking to apply the sanction of loss of public funding pursuant to Article 20 of the LFPP and Article 87 EC. It would seem that no action has yet been taken to remedy these

¹¹ Article 96-c - Execution of the fine

(1) *If the convicted legal entity fails to pay the fine within the time period specified by law, which may not be shorter than 15 days nor longer than 30 days counting from the day of the legal effectiveness of the judgment, the court shall order a forced execution.*

(2) *If the fine can not be executed from the property of the legal entity, because the legal entity does not have such property or has ceased to exist before the execution of the sentence, the sentence shall be executed from the property of the founder or the founders of the legal entity, proportionally with the invested shares, or in the case of a company, from the property of the shareholders or associates, proportionally with their respective shares.*

(3) *The fine for foreign legal entities shall be executed from the property confiscated in the Republic of Macedonia, or with the application of an international agreement, from the property abroad.*

procedural gaps and the reported information about the procedures initiated and the one sanction imposed in first instance do not change the essence of the Evaluation Report's assessment. Even if the amendments to the LFPP add some possibilities for the State Audit Office to initiate misdemeanour procedures, nothing seems to be in place to allow that body to follow up on such action, a gap that was already highlighted in the Evaluation Report. GRECO calls therefore upon the authorities to take more concrete action to ensure that the necessary procedures are in place so that sanctions such as the loss of public funding can actually be applied. Likewise, it is necessary to allow the supervisory authorities, including the State Audit Office and the State Election Commission, to exercise a more active role in the sanction mechanism, for instance by giving them the power to impose administrative penalties, or at the very least by enabling them to follow up on misdemeanour procedures they have initiated.

61. GRECO concludes that recommendation vi has not been implemented.

III. CONCLUSIONS

62. **In view of the above, GRECO concludes that “the former Yugoslav Republic of Macedonia” has implemented satisfactorily seven of the thirteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii, iv, v and vi have been implemented satisfactorily, recommendation iii has been dealt with in a satisfactory manner, recommendation vii has been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation ii has been implemented satisfactorily, recommendations i, iii and iv have been partly implemented and recommendations v and vi have not been implemented.

63. The current criminalisation of corruption offences in “the former Yugoslav Republic of Macedonia” appears to largely meet the requirements of the Criminal Law Convention on Corruption (ETS 173). Further amendments have been made to the Criminal Code in 2011 to address virtually all GRECO's recommendations in this area, including with respect to bribery of foreign officials and of domestic/foreign arbitrators, active trading in influence, bribery in the private sector, the defence of effective regret and jurisdiction issues. Steps are still required to abolish the possibility to return the bribe to the bribe-giver, who has declared the offence before it is uncovered.

64. In so far as transparency of party funding is concerned, the information provided by the authorities of “the former Yugoslav Republic of Macedonia” clearly indicates that, although the Election Code has been amended to take into account some of the recommendations as regards the financing of election campaigns, little progress has been registered as regards regular political party financing, in spite of amendments to the Law on the Financing of Political Parties, the positive impact of which appears limited, and even sometimes questionable. In addition, too limited action has been taken as regards other measures required to inform political parties about their reporting obligations, to provide for a more streamlined and proactive supervision and sanctioning system.

65. In the light of what has been stated in paragraphs 62 to 64, GRECO notes that “the former Yugoslav Republic of Macedonia” has been able to demonstrate that reforms with the potential to achieve an acceptable level of compliance with the pending recommendations, within the next 18 months, are underway and urges the authorities to vigorously pursue their efforts to address these recommendations. In particular, GRECO notes that “the former Yugoslav Republic of Macedonia” has made tangible efforts to comply with the recommendations issued in respect of

Theme I – Incriminations. Very limited steps have been taken to meet the concerns raised in respect of Theme II – Transparency of Party Funding; much more clearly needs to be done in this area. GRECO concludes that the current low level of compliance with the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO’s Rules of Procedure. GRECO invites the Head of the delegation of “the former Yugoslav Republic of Macedonia” to submit additional information regarding the implementation of recommendation vii (Theme I – Incriminations) and recommendations i and iii-vi (Theme II – Transparency of Party Funding) by 30 September 2013 at the latest.

66. Finally, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” 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.