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Interim Report

Third Evaluation Round

Interim Compliance Report **on Turkey**

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

I. INTRODUCTION

1. The Third Round Evaluation Report was adopted at GRECO's 46th Plenary Meeting (26 March 2010) and made public on 20 April 2010, following authorisation by Turkey (Greco Eval III Rep (2009) 5E, [Theme I](#) and [Theme II](#)). It contained a total of 17 recommendations: eight in respect of Theme I and nine in respect of Theme II.
2. As required by GRECO's Rules of Procedure, the Turkish authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Bulgaria and Norway to appoint Rapporteurs for the compliance procedure.
3. In the [Compliance Report](#), which was adopted by GRECO at its 54th Plenary Meeting (Strasbourg, 23 March 2012) it was concluded that Turkey had not implemented satisfactorily or dealt in a satisfactory manner with any of the 17 recommendations contained in the Third Round Evaluation Report. In view of the fact that in respect of both themes (Theme I – Incriminations, and Theme II – Transparency of Party Funding) substantial reforms were underway and on the understanding that the Turkish authorities would further pursue their efforts, GRECO did not categorise the overall response to the recommendations as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure but invited the Head of the Turkish delegation to submit additional information regarding the implementation of pending recommendations by 30 September 2013.
4. The [Second Compliance Report](#) was adopted by GRECO at its 63rd Plenary Meeting on 28 March 2014. With respect to Theme I – Incriminations, recommendations i, ii, iii and vi had been qualified as implemented satisfactorily and recommendations iv, v, vii and viii as partly implemented. However, since no tangible progress had been made in respect of Theme II – Transparency of Party Funding, GRECO had assessed the overall situation as “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and asked the Head of Delegation of Turkey to provide a report on the progress made in implementing recommendations iv, v, vii and viii (Theme I – Incriminations) and recommendations i to ix (Theme II – Transparency of Party Funding) by 30 September 2014. The requested information was submitted on 1 October 2014.
5. The [current Interim Compliance Report](#), drawn up by Mr Jens-Oscar NERGÅRD (Norway) and Mr Georgi RUPCHEV (Bulgaria), assisted by the GRECO Secretariat, assesses the further implementation of the pending recommendations since the adoption of the Second Compliance Report, and performs an overall appraisal of the level of compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

Recommendation iv.

6. *GRECO recommended to ensure that active and passive bribery – within or outside of the context of international commercial activities – of foreign jurors and arbitrators are criminalised unambiguously, in accordance with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), and to sign and ratify this instrument as soon as possible.*

7. It is recalled that, in the Second Compliance Report, this recommendation had been assessed as partly implemented. Article 252 TPC had been amended to explicitly refer to foreign arbitrators, as well as “jurors working for [...] foreign courts” as possible subjects of active and passive bribery offences and the Additional Protocol to the Criminal Law Convention on Corruption had been signed but not yet ratified.
8. The authorities of Turkey now report that on 7 May 2014, Parliament adopted Law no. 6539 “on the Approval of the Ratification of the Additional Protocol to the Criminal Law Convention on Corruption”.¹ On this basis, the Government decided on 16 June 2014 to ratify the Additional Protocol and this decision was published in the Official Gazette of 8 July 2014. On 5 November 2014, the Permanent Representation of Turkey to the Council of Europe sent a letter to the Head of Legal Advice Department and Treaty Office of the Council of Europe announcing that Turkey had ratified the Additional Protocol. Depositing of the instruments of ratification at the Council of Europe was scheduled on 16 December 2014. The Additional Protocol will enter into force in respect of Turkey on 1 April 2015.
9. GRECO commends Turkey for the ratification of the Additional Protocol to the Criminal Convention on Corruption and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

10. *GRECO recommended to criminalise active and passive bribery in the private sector – applicable to any persons who direct or work for, in any capacity, any private sector entities – in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
11. It is recalled that according to the Second Compliance Report, the provision on private sector bribery had been amended (revised article 252, paragraph 8 TPC). While the amendments had taken into account several elements of the recommendation, GRECO was concerned that the list of entities covered by the above provision was still restricted to a limited number of entities with public participation or acting in the public interest. For this reason, the recommendation was only partly implemented.
12. The authorities now state that no progress has been achieved on this matter since the adoption of the Second Compliance Report.
13. GRECO takes note of the information provided and concludes that recommendation v remains partly implemented.

Recommendation vii.

14. *GRECO recommended (i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of “effective regret”, and to abolish the restitution of the bribe to the bribe-giver in such cases; and (ii) to make it clear to everyone, including the practitioners who are to apply the law, that exemption from punishment is not granted in cases where “effective regret” is invoked after the start of preliminary investigations.*

¹ The law was published in the Official Gazette no. 29003 of 17 May 2014.

15. It is recalled that the recommendation was considered as partly implemented in the Second Compliance Report. The provisions on effective regret had been amended to abolish the restitution of the bribe to the bribe-giver and to ensure that this defence cannot be invoked in any situations where the bribery act has already come to the knowledge of official authorities (thus making it clear that no exemption from punishment can be granted in cases where effective regret is invoked after the start of preliminary investigations). However, no changes had been made to the automatic – and mandatorily total – nature of this defence, as the relevant working group established under the Ministry of Justice considered the defence in its present form as an effective tool for fighting corruption. GRECO remained significantly concerned about the risks of abuse inherent in the automatic nature of this defence as described in the Evaluation Report and urged the authorities to continue active consideration of this matter and to provide for additional safeguards, as recommended.
16. The authorities now indicate that Turkey maintains its position expressed in the Second Compliance Report with respect to the automatic – and mandatorily total – nature of the effective regret defence.
17. GRECO takes note of the information provided and concludes that recommendation vii remains partly implemented.

Recommendation viii.

18. *GRECO recommended (i) to abolish the condition that the prosecution of acts of corruption committed abroad by non-citizens, but involving Turkish public officials or members of Turkish public assemblies who are at the same time Turkish citizens, must be preceded by a request by the Minister of Justice (section 12, paragraph 1 of the Turkish Penal Code); and (ii) to establish jurisdiction over acts of corruption committed abroad by non-citizens, but involving officials of international organisations, members of international parliamentary assemblies, judges or officials of international courts who are, at the same time, Turkish citizens.*
19. It is recalled that a new paragraph 10 of article 252 TPC had been adopted which contained specific jurisdictional rules applicable to acts of bribery of foreign and international officials. The new rules fulfilled certain requirements of the recommendation, in that 1) the requirement of a request by the Minister of Justice before prosecuting such acts of bribery committed abroad by foreigners but involving Turkish citizens was abolished (first part of the recommendation) and 2) jurisdiction was established over such acts of bribery involving foreign or international officials who are, at the same time, Turkish citizens (second part of the recommendation). However, the new provision was limited to offences of bribery of foreign and international officials and therefore does not fully meet the requirements of the first part of the recommendation. Consequently, the recommendation was categorised as partly implemented in the Second Compliance Report.
20. The authorities now report that the jurisdictional rules regarding criminal offences committed abroad by non-citizens under article 12 TPC were amended by Law no. 6545 which was adopted by Parliament on 18 June 2014 and entered into force on 28 June 2014. The new paragraph 5 of this article revokes the condition requiring a request by the Minister of Justice prior to any prosecution of non-citizens for bribery and trading in influence acts involving Turkish public officials and members of domestic/national public assemblies, committed abroad. The new provision thus introduces the possibility of initiating *ex-officio* investigations and prosecutions against non-citizens. Article 12 TPC as amended reads as follows.

Article 12 TPC: Offences Committed by Non-Citizens

(1) Where a non-citizen commits an offence (other than the one defined in Article 13), to the detriment of Turkey, in a foreign country, that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than 1 year,² and s/he is present in Turkey, s/he shall be subject to penalty under Turkish law. Criminal proceedings shall only be brought upon request by the Minister of Justice.

(...)

(5) In the cases where paragraph one is applicable, bringing criminal proceedings for the offences of bribery and trading in influence is not dependent upon the request of the Minister of Justice.

21. GRECO takes note of the information provided, according to which the jurisdictional rules applicable to acts committed abroad by non-citizens and involving Turkish nationals – including those who are at the same time Turkish public officials or members of Turkish public assemblies – have been amended in order to ensure that a request by the Minister of Justice before prosecuting such acts is no longer required in the case of bribery and trading in influence. GRECO notes that the amended rules (under article 12 TPC) complement the specific jurisdictional rules for acts of bribery (under article 252, paragraph 10 TPC) and are not – in contrast to the latter rules – limited to offences of bribery of foreign and international officials. Consequently, the requirements of the first part of the recommendation have now been fulfilled.
22. GRECO concludes that recommendation viii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

Recommendations i to ix.

23. *GRECO recommended:*

- to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control (recommendation i);

- to take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body (recommendation ii);

- to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law (recommendation iii);

- to regulate transparency in the financing of parliamentary, presidential and local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties (recommendation iv);

² This requirement is fulfilled with respect to all bribery and trading in influence offences, see articles 252 and 255 TPC.

- to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period (recommendation v);

- to introduce independent auditing of party accounts by certified experts (recommendation vi);

- that the supervision of the party accounts be complemented by specific monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections (recommendation vii);

- (i) to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities; and (ii) to increase the financial and personnel resources dedicated to the control of political financing (recommendation viii); and

- to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates (recommendation ix).

24. It is recalled that in the Second Compliance Report, in respect of recommendations i, iii to vii and ix reference was made to the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, which envisaged amendments to Law no. 2820 on Political Parties (hereafter “the LPP”) and Law no. 298 on Basic Provisions on Elections and Voter Registers. The draft bill had been prepared by a working group established under the Ministry of Justice and had been adopted by the “Executive Committee for Enhancing Transparency and Reinforcing the Fight against Corruption”. On 14 January 2014, the Commission tasked with the implementation of the “Strategy for Enhancing Transparency and Reinforcing the Fight against Corruption” of 1 February 2010 agreed to submit the draft bill to the Prime Minister. It was expected that the draft bill would then be forwarded to the cabinet and to Parliament.
25. The authorities now report that due to Turkey’s busy political agenda – in the meantime, local elections took place on 30 March 2014 and presidential elections on 10 August 2014, the Prime Minister of the 61st Government was elected as the 12th President and consequently a new Government was formed – the draft bill, after its submission to the Prime Ministry, could not be forwarded to the Council of Ministers (the Government) and to Parliament. However, according to the programme of the 62nd Government, corruption will continue to be a political priority and it is therefore expected that the draft bill will soon be discussed by the Council of Ministers and subsequently be forwarded to Parliament.
26. The authorities furthermore indicate, with respect to recommendation ii, that the works on the “Draft Guidebook to Financial Audit of Political Parties” which had been prepared by the Court of Accounts, are still on-going. Auditors of the Court of Accounts have informed political parties verbally and in writing about the application principles of the guidebook. It would appear that the feedback received from the political parties has been favourable.
27. Finally, with respect to recommendation viii, the authorities recall that the Court of Accounts had established a special unit – the “24th Group Presidency” – in order to carry out the financial audit of political parties. They now indicate that the estimated expenditure of the 24th Group Presidency

has been further increased in order to ensure a more efficient financial audit of political parties: 498 368 TRY (approximately €185 000) for 2014, as compared to 409 368 TRY (approximately €150 000) for 2013. Moreover, the procedure for the functioning of the 24th Group Presidency has been established and the relevant procedure chart and stakeholder analysis forms have been prepared.

28. GRECO takes note of the information provided. GRECO regrets that the draft legislation referred to in the Second Compliance Report with respect to seven of the nine recommendations has not yet even been presented to the Government in view of its submission to Parliament. Regarding the other two recommendations (ii and viii), GRECO notes that the works regarding the preparation and checks of party accounts (directed at the provision of guidance to political parties and at the strengthening of the monitoring system) are on-going but not yet completed. GRECO urges the authorities to pursue swiftly with the reform process and to make every effort to achieve concrete results as soon as possible.
29. In the absence of any tangible progress, GRECO concludes that recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.

III. CONCLUSIONS

30. **In light of the above, GRECO concludes that Turkey has made only moderate progress by implementing two of the thirteen recommendations found to be not or partly implemented in the Second Compliance Report.** Out of a total of seventeen recommendations, six recommendations can now be categorised as implemented. Seven recommendations remain partly implemented and four not implemented.
31. With respect to Theme I – Incriminations, recommendations i, ii, iii, iv, vi and viii have now been implemented satisfactorily and recommendations v and vii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.
32. In relation to Theme I (Incriminations), the reform process which led to the adoption of a new legal framework for the criminalisation of corruption offences – and which GRECO had already welcomed in the Second Compliance Report – has been complemented by further amendments to the jurisdictional rules. Moreover, the ratification by Turkey of the Additional Protocol to the Criminal Law Convention on Corruption, which criminalises bribery of jurors and arbitrators, is a commendable achievement. Nevertheless, GRECO regrets that several shortcomings remain in the corruption-related provisions of the Turkish Penal Code, as compared with the standards established by the Criminal Law Convention on Corruption, in particular, with regard to the provisions on private sector bribery and the special defence of effective regret.
33. In so far as Theme II (Transparency of Party Funding) is concerned, no tangible progress has been achieved since the adoption of the Second Compliance Report. GRECO is concerned that the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, which is aimed at addressing GRECO’s recommendations, has still not been approved by the Government nor submitted to Parliament, and no precise information on the content of the draft bill has been provided. GRECO once more urges the authorities to speed up their efforts, to carry through the reforms initiated and to pay particular attention to the effectiveness of measures planned.

34. In view of the above, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
35. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii) a), that the President of GRECO will send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Turkey, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
36. Pursuant to paragraph 2(i) of Rule 32 of the Rules of Procedure, GRECO requests the Head of Delegation of Turkey to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations v and vii regarding Theme I and recommendations i to ix regarding Theme II) by 30 September 2015.
37. Finally, GRECO invites the authorities of Turkey 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.