

Adoption: 6 December 2013  
Publication: 26 February 2014

**Public**  
**Greco RC-III (2013) 14E**

## **Third Evaluation Round**

### **Compliance Report on Ukraine**

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

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

Adopted by GRECO  
at its 62<sup>nd</sup> Plenary Meeting  
(Strasbourg, 2-6 December 2013)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the authorities of Ukraine to implement the 16 recommendations issued in the Third Round Evaluation Report on Ukraine (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 52<sup>nd</sup> Plenary Meeting (17-21 October 2011) and made public on 30 November 2011, following authorisation by Ukraine (Greco Eval III Rep (2011) 1E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, Ukraine authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 20 May 2013 and served as a basis for the Compliance Report.
4. GRECO selected Azerbaijan and Finland to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Elnur MUSAYEV on behalf of Azerbaijan, and Mr Juha KERÄNEN on behalf of Finland. 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 Ukraine in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The authorities of Ukraine report that on 18 April 2013, Parliament adopted Law No. 2082 "on Amendment of Certain Legislative Acts of Ukraine as regards the Aligning of the National Legislation with the Standards of the Criminal Law Convention on Corruption". The law entered into force as Law No. 221-VII on 18 May 2013. In response to the recommendations contained in the Evaluation Report (Theme I), the authorities submitted the relevant amendments to the Criminal Code (CC) contained in Law No. 221-VII. The amended corruption provisions read as follows.

**Article 368 CC: Acceptance of an offer, a promise or receipt of an illegal benefit by an official**

*(1) Acceptance by an official of an offer or a promise to provide an illegal benefit to such official or a third person for performance or non-performance by such official of any action, using his/her authority or official position, in the interests of the person who offers or promises an illegal benefit or in the interests of a third person,*

*is punishable by a fine in the amount of seven hundred and fifty to one thousand tax-exempt minimum incomes of citizens<sup>1</sup> or by correctional labour for a term of one to two years.*

*(2) Receipt by an official of an illegal benefit for him/herself or a third person for performance or non-performance of any action, using his/her authority or official position, in the interests of the person providing the illegal benefit or in the interests of a third person,*

*is punishable by a fine in the amount of one thousand to one thousand and five hundred tax-exempt minimum incomes of citizens or by an arrest for a term of three to six months, or by imprisonment for a term of two to four years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.*

*(3) An action provided for by paragraph two of this article, the subject of which was an illegal benefit in a substantial amount,*

*is punishable by a fine in the amount of one thousand five hundred to two thousand tax-exempt minimum incomes of citizens, or by imprisonment for a term of three to six years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years.*

*(4) An action provided for in paragraph two or three of this article, the subject of which was an illegal benefit in a large amount, or committed by an official in a responsible position, or upon prior conspiracy by a group of persons, or repeated, or with extortion of an illegal benefit,*

*is punishable by imprisonment for a term of five to ten years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with confiscation of property.*

*(5) An action provided for in paragraph two, three or four of this article, the subject of which was an illegal benefit in an especially large amount, or committed by an official in a position of special responsibility,*

*is punishable by imprisonment for a term of eight to twelve years, with deprivation of the right to hold certain positions or engage in certain activities for a term of up to three years and with forfeiture of property.*

**Notes:**

*1. An "illegal benefit in a substantial amount" shall mean a benefit that exceeds by one hundred and more times the tax-exempt minimum income of citizens; "in a large amount", such that exceeds by two hundred and more times the tax-exempt minimum income of citizens; and "in an especially large amount", such that exceeds by five hundred and more times the tax-exempt minimum income of citizens.*

*2. Officials in a responsible position in articles 368, 369 and 382 of this Code shall mean persons referred to in note no. 1 to article 364, whose positions according to section 25 of the Law "on Civil Service" are included in the third, fourth, fifth and sixth categories, as well as judges, public prosecutors and investigation officers, heads and deputy heads of the bodies of State authority and management, of local government bodies, and of structural subdivisions and units thereof. Officials in a position of special responsibility in articles 368, 369 and 382 of this Code shall mean persons referred to in section 9, paragraph 1 of the Law "on Civil Service", and persons whose positions according to section 25 of this law are included in the first and second categories.*

<sup>1</sup> As of January 2013, the amount of the relevant tax-exempt minimum income of citizens was 17 UAH/approximately 1.6 €.

**Article 369 CC: An offer or provision of an illegal benefit to an official**

*(1) An offer to an official to provide such official or a third party with an illegal benefit for the performance or non-performance by the official of any action, using his/her authority or official position, in the interests of the person who offers or promises the illegal benefit or in the interests of a third party,*

*is punishable by a fine in the amount of two hundred and fifty to five hundred tax-exempt minimum incomes of citizens or by community service for a term of one hundred and sixty to two hundred and forty hours, or by restriction of liberty for a term of up to two years.*

*(2) Provision to an official or to a third party of an illegal benefit for performance or non-performance by an official of any action, using his/her authority or official position, in the interests of the person providing the illegal benefit or in the interests of a third party,*

*is punishable by a fine in the amount of five hundred to seven hundred and fifty tax-exempt minimum incomes of citizens or by restriction of liberty for a term of two to four years, or by imprisonment for the same term.*

*(3) An action stipulated by paragraph two of this article, if committed repeatedly,*

*is punishable by imprisonment for a term of three to six years with a fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens, with or without forfeiture of property.*

*(4) An action stipulated by paragraph two or three of this article, if the illegal benefit was provided to an official in a responsible position or was committed upon prior conspiracy by a group of persons,*

*is punishable by imprisonment for a term of four to eight years, with or without forfeiture of property.*

*(5) An action stipulated by paragraph two, three or four of this article, if the illegal benefit was provided to an official in a position of special responsibility or was committed upon prior conspiracy by an organised group of persons or one of its members,*

*is punishable by imprisonment for a term of five to ten years with or without forfeiture of property.*

*(6) A person who offered, promised or provided an illegal benefit shall be discharged from criminal liability if s/he was subject to extortion of the illegal benefit and after the offer, promise or provision of the illegal benefit the person voluntarily reported on the occurrence, prior to having been notified of the suspicion on the commission of the crime, to a body, the official of which according to the law has the authority to notify of the suspicion.*

**Article 368.3 CC: Bribery of an official of a legal entity of private law, regardless of its organisational and legal form**

*(1) An offer to an official of a legal entity of private law, regardless of its organisational and legal form, to provide her/him or a third party with an illegal benefit, as well as the provision of such a benefit, for the performance or non-performance of actions by the said official with the use of entrusted authority, in the interests of the person who offers, promises or provides such benefit or in the interests of a third party,*

*is punishable by a fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens.*

*(2) The same actions, if committed repeatedly or upon prior conspiracy by a group of persons or by an organised group,*

are punishable by a fine in the amount of three to five thousand tax-exempt minimum incomes of citizens.

(3) Acceptance by an official of a legal entity of private law, regardless of its organisational and legal form, of an illegal benefit for himself/herself or a third party, for the performance or non-performance of actions with the use of entrusted authority, in the interests of the person who offers, promises or provides such benefit or in the interests of a third party,

is punishable by a fine in the amount of five to eight thousand tax-exempt minimum incomes of citizens with deprivation of the right to occupy certain positions or engage in certain activities for up to two years.

(4) The actions prescribed in paragraph three of this section, if repeated, or if committed upon prior conspiracy by a group of persons, or if accompanied by extortion of an illegal benefit,

are punishable by a fine in the amount of ten to fifteen thousand tax-exempt minimum incomes of citizens with deprivation of the right to occupy certain positions or engage in certain activities for up to three years and with forfeiture of property.

(5) A person who offered or provided illegal benefit shall be discharged from criminal liability if s/he was subject to extortion of the illegal benefit and after the offer or provision of the illegal benefit the person voluntarily reported on the occurrence, prior to having been notified of the suspicion on the commission of the crime, to a body, the official of which according to the law has the authority to inform of the suspicion.

#### **Article 368.4 CC: Bribery of a person who provides public services**

(1) An offer to an auditor, notary, appraiser or other person who is not a civil servant or an official of local government, but performs professional activities involving the provision of public services, including services of expert, arbitration manager, independent broker, member of labor arbitration tribunal or arbitrator (during the performance of these functions), to provide him/her or a third party with an illegal benefit, as well as the provision of such a benefit, for the performance or non-performance of actions by the person who provides public services with the use of entrusted authority, in the interests of the person who offers or provides such benefit or in the interests of a third party,

is punishable by a fine in the amount of five hundred to one thousand tax-exempt minimum incomes of citizens.

(2) The same actions, if repeated, or if committed upon prior conspiracy by a group of persons or by an organised group,

are punishable by a fine in the amount of three to five thousand tax-exempt minimum incomes of citizens.

(3) Acceptance by an auditor, notary, expert, appraiser, arbitrator or other person who engages in professional activities involving the provision of public services, as well as by an independent broker or arbitrator in deliberations on collective labor disputes, of an illegal benefit for himself/herself or a third party, for the performance or non-performance of actions with the use of entrusted authority, in the interests of the person who provides such benefit or in the interests of a third party,

is punishable by a fine in the amount of five to ten thousand tax-exempt minimum incomes of citizens with deprivation of the right to occupy certain positions or engage in certain activities for up to three years.

(4) The actions prescribed in paragraph three of this section, if repeated, or if committed upon prior conspiracy by a group of persons, or if accompanied by extortion of an illegal benefit,

are punishable by a fine in the amount of twelve to eighteen thousand tax-exempt minimum incomes of citizens with deprivation of the right to occupy certain positions or engage in certain activities for up to three years and with forfeiture of property.

(5) A person who offered or provided an illegal benefit shall be discharged from criminal liability if s/he was subject to extortion of the illegal benefit and after the offer or provision of the illegal benefit the person voluntarily reported on the occurrence, prior to having been notified of the suspicion on the commission of the crime, to a body, the official of which according to the law has the authority to notify of the suspicion.

#### **Article 369.2 CC: Trading in influence**

(1) An offer or provision of an illegal benefit to a person who, in return for such a benefit, proposes or promises (agrees) to influence the decision-making by a person authorised to perform functions of State, or provision of such a benefit to a third party,

is punishable by a fine from two hundred to five hundred tax-exempt minimum incomes of citizens or by restriction of liberty for a term of two to five years.

(2) Acceptance of an illegal benefit, for oneself or for a third party, in return for influencing the decision-making of a person authorised to perform functions of State, or proposition to exercise influence for such a benefit,

is punishable by a fine from seven hundred fifty to one thousand five hundred tax-exempt minimum incomes of citizens or by restriction of liberty for a term of two to five years.

(3) Acceptance of an illegal benefit, for oneself or for a third party, in return for influencing the decision-making of a person authorised to perform functions of State in connection with such a benefit,

is punishable by restriction of liberty for a term of three to eight years with forfeiture of property.

#### Note:

Persons authorised to perform functions of State shall mean persons defined in section 4, part 1, paragraphs 1-3 of the Law "on the Principles of Preventing and Combating Corruption".

8. The authorities furthermore indicate that in September 2013, the Government approved the Draft Law No. 3312 "On Amendments to Some Legislative Acts of Ukraine concerning Realisation of European Commission Recommendations in the Sphere of State Anticorruption Policy", which includes further changes to the corruption provisions and to the jurisdictional rules. The draft law was submitted to Parliament on 23 September 2013 and the authorities expect that it could be adopted shortly.<sup>2</sup>

#### **Recommendation i.**

9. GRECO recommended to amend current criminal legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, any private sector entity as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).

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<sup>2</sup> The authorities add that an alternative Draft Law No. 3522 "On Amendments to Some Legislative Acts of Ukraine (concerning the Strengthening of the Effectiveness of the State Anticorruption Policy)" was submitted by five MPs from different political parties to Parliament on 31 October 2013 which in some points differs from the above Government Draft Law.

10. The authorities indicate that Law No. 221-VII introduced several amendments to article 368.3 of the Criminal Code (CC) on “commercial bribery of an official of a legal entity of private law, regardless of its organisational and legal form” and to article 368.4 CC on “bribery of a person who provides public services” (which covers certain categories of persons who are not public officials, such as auditors, notaries, arbitrators, etc.). However, the range of possible perpetrators of such offences remains unchanged. In particular, the concept of “official” in article 368.3 CC still refers to the unaltered definition in article 18 CC,<sup>3</sup> which is limited to persons who work for entities with legal personality and who perform organisational, managerial, administrative or executive functions on the basis of special authority mandated “by a duly authorised body or person of an enterprise, institution or organisation”.
11. The authorities add that Law No. 221-VII also amended article 354 CC on “bribery of an employee of a State enterprise, institution or organisation” to cover active bribery (before the reform, this provision only criminalised *passive* bribery) of employees of State enterprises, institutions or organisations (who are not categorised as public officials). Furthermore, the authorities state that several further amendments to this article are underway. In particular, the Draft Law “On Amendments to Some Legislative Acts of Ukraine concerning Realisation of European Commission Recommendations in the Sphere of State Anticorruption Policy – which is pending before Parliament – prescribes to remove the word “State” from article 354 CC thereby also covering employees of *private* entities and reading as follows.

**Draft article 354 CC: Bribery of an employee of an enterprise, an institution or an organisation**

*(1) An offer or a promise given to an employee of an enterprise, an institution or an organisation, who is not an official, to provide him/her or a third person with an illegal benefit, as well as the provision of such a benefit, for performance or non-performance by the employee of any actions using the position s/he occupies, in the interests of the person who offers, promises or provides such a benefit, or in the interests of a third person,*

*is punishable by a fine in the amount of one hundred to two hundred and fifty tax-exempt minimum incomes of citizens or by community service for a term of up to one hundred hours, or by correctional labour for a term of up to one year, or by restriction of liberty for a term of up to two years, or by imprisonment for the same term.*

*(2) The same actions, if committed repeatedly or upon prior conspiracy by a group of persons,*

*are punishable by a fine in the amount of two hundred and fifty to five hundred tax-exempt minimum incomes of citizens or by community service for a term of one hundred to two hundred hours, or by correctional labour for a term of up to two years, or by restriction of liberty for a term of up to three years, or by imprisonment for the same term.*

*(3) Acceptance of an offer or a promise or receipt by an employee of an enterprise, an institution or an organisation, who is not an official, of an illegal benefit for him/herself or a third person, for performance or non-performance of any actions using the position s/he occupies at the enterprise, institution or organisation, in the interests of the person who offers, promises or provides such a benefit, or in the interests of a third person,*

*is punishable by a fine in the amount of two hundred and fifty to five hundred tax-exempt minimum incomes of citizens or by community service for a term of one hundred to two hundred hours, or by correctional labour for a term of up to two years, or by restriction of liberty for a term*

<sup>3</sup> The same definition is also included in note no. 1 to article 364 CC.

*of up to two years, or by imprisonment for the same term.*

*(4) An action provided for in paragraph three of this article, if committed repeatedly or upon prior conspiracy by a group of persons, or with extortion of an illegal benefit,*

*is punishable by a fine in the amount of five hundred to seven hundred and fifty tax-exempt minimum incomes of citizens or by community service for a term of one hundred and sixty to two hundred and forty hours, or by correctional labour for a term of one to two years, or by restriction of liberty for a term of up to three years, or by imprisonment for the same term.*

*(5) A person who offered, promised or provided an illegal benefit shall be discharged from criminal liability if s/he was subject to extortion of the illegal benefit and after the offer, promise or provision of the illegal benefit the person voluntarily reported on the occurrence, prior to having been notified of the suspicion on the commission of the crime, to a body, the official of which according to the law has the authority to notify of the suspicion.*

Notes:

1. In this article an “illegal benefit” shall mean money or other property, benefits, privileges or services, that exceed 0.5 of the tax-exempt minimum income of citizens,<sup>4</sup> or non-material assets which are offered, promised, given or received without legal grounds.

2. In articles 354, 368, 368<sup>3</sup>, 368<sup>4</sup> and 369 of this Code a crime shall be found to be repeated if committed by a person who had previously committed any of the crimes provided for by the said articles.

3. In articles 354, 368, 368<sup>3</sup> and 368<sup>4</sup> of this Code “extortion” of an illegal benefit shall mean a request to provide an illegal benefit accompanied by a threat to perform or refrain from actions, using one’s position, authority, power or official position in relation to the person who provides an illegal benefit, or the wilful creation of conditions in which a person is compelled to provide an illegal benefit in order to prevent harmful consequences with respect to his/her rights and lawful interests.

12. GRECO takes note of the information provided with regard to the on-going reform of the provisions on private sector bribery. GRECO regrets that the amendments implemented so far have not widened the scope of application of the provisions on private sector bribery so as to ensure that they cover the full range of persons who direct or work for, in any capacity, any private sector entity. GRECO reiterates the concerns expressed in the Evaluation Report that the relevant provisions of article 368.3 CC only cover persons performing specific functions in private entities with legal personality. Against this background, GRECO welcomes the further reforms underway which would widen the scope of article 354 CC on “bribery of an employee of a State enterprise, institution or organisation” to criminalise bribery of employees of both public and private sector entities. It would appear that this article in its amended form reflects the main elements contained in Articles 7 and 8 of the Criminal Law Convention on Corruption, in particular, the a) offer, promise or provision of b) an illegal benefit (both material and non-material) to c) an employee of a public or private entity or to a third person, as well as d) the acceptance by such an employee of an offer or a promise and the receipt of an illegal benefit. Some of the main concerns underlying the recommendation – which were related to the fact that before the reform, only persons performing organisational, managerial, administrative or executive functions on the basis of special authority mandated “by a duly authorised body or person of an enterprise, institution or organisation” were captured by the private sector bribery offences – would thus at least be partly addressed. That said, GRECO wishes to recall that Articles 7 and 8 of the Convention do not only apply to employees of a private sector entity, but to

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<sup>4</sup> As of January 2013, the amount of the relevant tax-exempt minimum income of citizens – which is fixed yearly – was 573.5 UAH/approximately 54 €.



“any persons who direct or work for, in any capacity, private sector entities” – including persons such as consultants or commercial agents working for the private entity without having the status of employee – without any restrictions as to legal status of the entity concerned – including entities with no legal personality and even individuals.<sup>5</sup> There is no indication that all such persons without the status of an employee (e.g. consultants, commercial agents or individual businessmen) are covered by article 368.4 CC on “bribery of a person who provides public services”, to which the authorities also refer in this connection.

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

**Recommendation ii.**

14. *GRECO recommended to introduce the concepts of “promising” and “requesting” an advantage and “accepting an offer or a promise” in the provisions of the Criminal Code on active and passive bribery in the public and private sectors and trading in influence.*
15. The authorities state that Law No. 221-VII introduced the concept of “accepting an offer or a promise” into the provisions on passive bribery in the public sector (article 368 CC, see paragraph 7 above).
16. By contrast, the concept of “accepting an offer or a promise” remains absent from the provisions on private sector bribery (articles 368.3 and 368.4 CC) and trading in influence (article 369.2 CC). Furthermore, the concepts of “requesting” (which is mentioned only in the meaning of extortion, as an aggravating circumstance but not as stand-alone conduct) and “promising”<sup>6</sup> an advantage remain absent from the provisions on active and passive bribery in the public and private sectors and trading in influence. The authorities recall their position reflected in the Evaluation Report that such acts are punishable under articles 14 or 15 CC in conjunction with the corruption provisions as preparation of a crime or as attempt, and they refer to recent court decisions whereby significant sanctions had been imposed on public officials who had requested a bribe.<sup>7</sup> They add that Law No. 221-VII also amended article 354 CC on “bribery of an employee of a State enterprise, institution or organisation” (which concerns persons who are not categorised as public officials), *inter alia*, by including the active side of this offence, which may be committed by offering, promising or providing an illegal benefit.
17. The authorities furthermore refer to the Draft Law “On Amendments to Some Legislative Acts of Ukraine concerning Realisation of European Commission Recommendations in the Sphere of State Anticorruption Policy”. According to the draft, the corruption provisions would be amended so as to include the concept of “accepting an offer or a promise” in the provisions on private sector bribery (articles 368.3 and 368.4 CC) and trading in influence (article 369.2 CC) as well as the concept of “promising” an advantage in the provisions on active bribery in the public sector (article 369 CC), active bribery in the private sector and trading in influence. By contrast, the

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<sup>5</sup> See paragraph 54 of the Explanatory Report on the Criminal Law Convention on Corruption.

<sup>6</sup> In this connection, the authorities draw attention to the fact that article 369, paragraph 1 CC at a specific point uses the term “promising”: “... in the interests of the person who offers or promises the illegal benefit ...”. However, it is to be noted that in the same provision, only the “offer” of an illegal benefit is referred to as corrupt behaviour: “An offer to an official ... is punishable by ...” In contrast, draft article 369, paragraph 1 CC as contained in the new draft law (see paragraph 17 above) explicitly refers to “an offer or a promise to an official ...”

<sup>7</sup> E.g. they refer to a case in which two representatives of the militia, convicted of attempt at aggravated bribery (article 15, paragraph 2 CC in conjunction with article 368, paragraph 3 CC) were sentenced to five years’ imprisonment with discharge on probation for three years and with the prohibition to hold positions in the militia for three years and with revocation of a special title (court decision of 12 June 2013).

concept of “requesting” would still remain absent from the provisions on passive bribery in the public and private sectors and trading in influence.

18. GRECO notes that the concepts of “requesting” and “promising” an advantage have not been included in the corruption provisions of the CC and that the concept of “accepting an offer or a promise” has been introduced only in the provisions on public sector bribery but not in those on private sector bribery and trading in influence. It would appear that the recent reform has thus even added yet more incongruity to the terminology used in the corruption-related provisions. This is also true with respect to the concept of “promising” an advantage which has only been included in article 354 CC concerning bribery of State employees of enterprises, institutions or organisations who are not public officials. Although the authorities state that the above-mentioned forms of corrupt behaviour are punishable as preparation of a crime or as attempt, GRECO recalls the statement it had made in the Evaluation Report that under Articles 2, 3, 7, 8 and 12 of the Criminal Law Convention on Corruption, corruption offences are to be considered completed once any of the above-mentioned unilateral acts is carried out by the bribe-giver or the bribe-taker. GRECO reiterates its view that the promise, the request and the acceptance of an offer or promise need to be explicitly criminalised in order to clearly stigmatise such acts, submit them to the same rules as the giving, offering and receiving of a bribe and avoid loopholes in the legal framework (which may otherwise arise, for example, in cases where the perpetrator of an uncompleted crime voluntarily abandons the performance of his/her acts). GRECO furthermore reiterates its misgivings about the considerable reduction of penalties if the provisions on preparation of a crime or attempts were to apply in such cases of basic types of corrupt conduct.<sup>8</sup> Against this background, GRECO welcomes the further reforms underway which would at least address some of the above-mentioned concerns. GRECO invites the authorities to further amend the draft legislation so as to introduce the concept of “requesting” an advantage in the CC provisions on passive bribery in the public and private sectors and trading in influence and to have the draft legislation adopted as soon as possible.

19. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

20. *GRECO recommended to take the legislative measures necessary to ensure that the provisions of the Criminal Code on active and passive bribery in the public sector cover clearly any form of (undue) advantage (in the meaning of the Criminal Law Convention on Corruption, ETS 173), including material and non-material advantages – whether they have an identifiable market value or not – and advantages of low value.*

21. The authorities report that Law No. 221-VII replaced the concept of “bribe” in the provisions on active and passive bribery in the public sector, i.e. articles 368 and 369 CC, by the concept of “illegal benefit” (see paragraph 7 above), which had already been employed in the provisions on bribery in the private sector, trading in influence and in the provisions of the Law “on the Principles of Preventing and Combating Corruption”. The concept of “illegal benefit” is defined in the note to article 364.1 CC as “money or other property, benefits, privileges, services, non-material assets which are promised, offered, given or received without legal grounds”.

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<sup>8</sup> Under the provisions of section 68 CC, punishment for crime preparation or for criminal attempt may not exceed half of the maximum limit or two thirds of the maximum limit of the severest kind of punishment prescribed for the completed offence respectively.

22. The authorities add that Law No. 221-VII removed article 172.2 on “breach of legal restrictions concerning the use of an official position” and article 172.3 on “offering or giving an illegal benefit” (which was applicable to active bribery involving illegal benefits the value of which did not exceed a specified amount) from the Code of Administrative Offences (CAO), in order to ensure that corruption offences – independent of the value of the illegal benefit – are dealt with exclusively under the CC.
23. GRECO notes that articles 368 and 369 CC on active and passive bribery in the public sector now use the concept of “illegal benefit”, which appears to cover any material and non-material advantages, whether such benefits have an identifiable market value or not. GRECO furthermore welcomes the fact that following the amendments to the CAO – in particular the deletion of article 172.3 on “offering or giving an illegal benefit” – it now appears to be clear that the above bribery offences of the CC cover any advantages irrespective of their value. While strictly speaking, the requirements of the recommendation have thus been fulfilled, GRECO regrets that the note to article 354 CC uses a slightly different definition of an “illegal benefit”, since material advantages are covered only if they exceed 0.5 of the tax-exempt minimum income of citizens.<sup>9</sup> This article criminalises bribery of State employees of enterprises, institutions or organisations who are not public officials and according to the draft legislation pending before Parliament, it would criminalise private sector bribery as well<sup>10</sup> (see under recommendation i above). The authorities are invited to adapt the definition in the note to article 354 CC to the one in the note to article 364.1 CC in the current reform process, in order to ensure that all corruption provisions cover clearly any form of (undue) advantage, including advantages of low value.
24. GRECO concludes that recommendation iii has been implemented satisfactorily.

#### **Recommendation iv.**

25. *GRECO recommended to ensure that the criminal offences of active and passive bribery in the public and private sectors and trading in influence are construed in such a way as to cover, unambiguously, instances where the advantage is not intended for the official him/herself but for a third person, whether natural or legal.*
26. The authorities indicate that Law No. 221-VII introduced the concept of third party beneficiaries into all the corruption provisions, namely articles 368, 368.3, 368.4 CC, 369 and 369.2 CC (see paragraph 7 above).
27. GRECO takes note of the information provided and concludes that recommendation iv has been implemented satisfactorily.

#### **Recommendation v.**

28. *GRECO recommended to increase in a consistent manner the criminal sanctions available for basic offences of active and passive bribery in the public and private sectors and to ensure full compliance with Article 19, paragraph 1 of the Criminal Law Convention on Corruption (ETS 173).*
29. The authorities report that following the amendments to the bribery provisions of the CC introduced by Law No. 221-VII (see paragraph 7 above), the maximum sanctions available for

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<sup>9</sup> As of January 2013, the amount of the relevant tax-exempt minimum income of citizens – which is fixed yearly – was 573.5 UAH/approximately 54 €.

<sup>10</sup> Currently, article 354 CC only criminalises bribery of employees of *State* enterprises, institutions and organisations.

basic bribery offences (i.e. without aggravating circumstances) committed in the public sector were increased to

- imprisonment for a term of two to four years in the case of passive bribery in the public sector, for receipt of an illegal benefit (before the reform, it was six months' arrest), whereas the acceptance of an offer or a promise is punishable by a fine or correctional labour;<sup>11</sup>

- imprisonment for a term of two to four years in the case of active bribery in the public sector, for giving an illegal benefit (before the reform, it was five years' restriction of liberty), whereas the maximum sanction available for the offer of an illegal benefit is restriction of liberty for a term of up to two years.<sup>12</sup>

30. In contrast, the sanctions available for bribery offences in the private sector were reduced. Following the amendments to articles 368.3 and 368.4 CC introduced by a specific law – Law No. 4025-VI “on Amendments to Particular Laws of Ukraine as regards Humanisation of Responsibility for Offences in the Sphere of Economic Activity” of 15 November 2011, which entered into force on 18 January 2012 – such offences are punishable by fines and, in the case of passive bribery, deprivation of the right to occupy certain positions or engage in certain activities for up to three years and, in aggravated cases, forfeiture of property (before the reform, the maximum sanction for basic passive bribery offences was three years' imprisonment and for basic active bribery offences, two years' restriction of liberty). The authorities add that according to the general rules of article 53 CC, in case of failure to pay a fine of more than 3,000 tax-exempt minimum incomes of citizens, the court may substitute the fine by deprivation of liberty.

31. The authorities furthermore refer to the Draft Law “On Amendments to Some Legislative Acts of Ukraine concerning Realisation of European Commission Recommendations in the Sphere of State Anticorruption Policy”. According to the draft, the corruption provisions would be amended so as to, *inter alia*, increase the maximum sanctions available for

- passive bribery in the public sector: to imprisonment for a term of up to three years, in the case of the acceptance of an offer or a promise;

- active bribery in the public sector: imprisonment for a term of up to two years, in the case of the offer or promise of an illegal benefit;

- passive bribery in the private sector: to imprisonment for a term of up to three years;

- active bribery in the private sector: imprisonment for a term of up to two years.

32. GRECO notes that the maximum sanctions available for basic bribery offences in the public sector were increased. That said, GRECO reiterates the misgivings it expressed in the Evaluation Report about the fact that the “offering” of an illegal benefit is subject to less severe sanctions than the “giving” and that an increase in the level of sanctions in aggravated cases is only provided for the “giving” of an illegal benefit, and it is concerned that the same differentiation has now been introduced for passive bribery offences (“receiving” an illegal benefit on the one hand, and “accepting an offer or a promise” on the other). Such different treatment of basic forms of corrupt behaviour is not in line with the standards established by the Convention which calls for effective, proportionate and dissuasive sanctions for all corruption acts. Moreover, the sanctions available for offering an illegal benefit and for accepting an offer or a promise do not allow for

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<sup>11</sup> See article 368, paragraphs 1 and 2 CC.

<sup>12</sup> See article 369, paragraphs 1 and 2 CC.

extradition,<sup>13</sup> contrary to the requirements of Article 19, paragraph 1 of the Convention. The same is true for bribery offences in the private sector, given that the sanctions available for such offences have recently been reduced significantly and no longer include imprisonment. Against this background, GRECO welcomes the fact that new draft legislation is underway which would increase again the sanctions available for bribery offences in the private sector and certain types of bribery offences in the public sector (i.e. offences implying the offer or promise of an illegal benefit or the acceptance of an offer or a promise). If the draft legislation was adopted, the sanctions available for all the bribery offences would allow for extradition. That said, GRECO is concerned that the draft maintains a differentiation in the sanctions depending on the forms of corrupt behaviour. GRECO therefore invites the authorities to further harmonise the sanctions and to adopt the draft legislation as soon as possible.

33. GRECO concludes that recommendation v has been partly implemented.

**Recommendation vi.**

34. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery who report to law enforcement authorities.*
35. The authorities indicate that Law No. 221-VII amended the CC provisions on effective regret applicable to active bribery offences in such a way that the bribe-giver shall be discharged from criminal liability if s/he was subject to extortion of an illegal benefit and voluntarily reported to the competent authorities – in contrast to the situation before the legal reform, where only one of those two conditions had to be fulfilled.<sup>14</sup> Extortion in the meaning of the effective regret provisions is defined in the note to article 354 CC as “a request to provide an illegal benefit accompanied by a threat to perform or refrain from actions, using one’s position, authority, power or official position in relation to the person who provides an illegal benefit, or the wilful creation of conditions in which a person is compelled to provide an illegal benefit in order to prevent harmful consequences with respect to his/her rights and lawful interests.” The authorities add that the decision to exempt the bribe-giver from punishment is taken by the court.
36. GRECO takes note of the information provided with regard to legal amendments, according to which bribe-givers who report to law enforcement authorities can invoke the special defence of effective regret only if they have been subject to extortion by the bribe-taker. Although in such cases the exemption from punishment is still automatic and total, GRECO takes the view that the amendments address the main concerns underlying the recommendation – in particular, the fact that before the reform the effective regret provisions applied in respect of the bribe-giver, whether or not the initiative for committing the offence came from him/herself, and that they could be misused by the bribe-giver, for example, as a means of exerting pressure on the bribe-taker to obtain further advantages.
37. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

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<sup>13</sup> See article 573 of the Criminal Procedure Code, according to which extradition is granted only for offences which are punishable by imprisonment for a maximum period of not less than one year or by a more severe penalty.

<sup>14</sup> See paragraph 5 of articles 368.3, 368.4 and 369 CC.

## **Recommendation vii.**

38. *GRECO recommended to ensure that Ukraine has jurisdiction over all bribery and trading in influence offences committed abroad by non-citizens, involving Ukrainian public officials, members of Ukrainian public assemblies, Ukrainian officials of international organisations, Ukrainian members of international parliamentary assemblies and Ukrainian judges or officials of international courts.*
39. The authorities refer to the Draft Law “On Amendments to Some Legislative Acts of Ukraine concerning Realisation of European Commission Recommendations in the Sphere of State Anticorruption Policy”. According to the draft, article 8 CC would be amended so as to explicitly establish jurisdiction, *inter alia*, over “any of the crimes provided for in articles 368, 368.3, 368.4, 369, 369.2 CC”<sup>15</sup> committed abroad, by foreigners or stateless persons not residing permanently in Ukraine, in complicity with an official who is a citizen of Ukraine.
40. GRECO takes note of the information provided, according to which draft legislation amending the jurisdictional rules is pending before Parliament. GRECO notes that draft article 8 CC would establish jurisdiction over bribery and trading in influence offences committed abroad by non-citizens, involving Ukrainian public officials, members of Ukrainian public assemblies, Ukrainian officials of international organisations, Ukrainian members of international parliamentary assemblies and Ukrainian judges or officials of international courts (as was explained in the Evaluation Report, all the above-mentioned categories of persons are covered by the term “official” which is employed in the corruption provisions),<sup>16</sup> upon the condition that the perpetrator (i.e. the non-citizen) commits the offence “in complicity” with the Ukrainian official. GRECO wishes to stress that such a condition – which would e.g. exclude situations where the perpetrator offers a bribe to a Ukrainian official and the latter refuses the offer – is absent from Article 17, paragraph 1.c of the Criminal Law Convention on Corruption. GRECO therefore invites the authorities to further amend the draft legislation and to have it adopted as soon as possible.
41. GRECO concludes that recommendation vii has been partly implemented.

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

42. It is recalled that GRECO in its Evaluation Report addressed 9 recommendations to Ukraine in respect of Theme II. Compliance with these recommendations is dealt with below.
43. The authorities report that a reform process has been initiated which addresses both issues of election campaign funding and general party funding. They state, in particular, that Law No. 3396 “on Amendments to Particular Laws of Ukraine as regards Improvement of Law on Issues of Holding Elections”, which was adopted on 21 November 2013, is relevant to several recommendations concerning transparency of election campaign funding. Regarding transparency of general party funding, in addition to the information contained in the Situation Report, the authorities refer to the Draft Law “on Amendments to Some Legislative Acts of Ukraine on Financing of the Operation of Political Parties” which was submitted to Parliament on 29 November 2013 by one MP and which is directed at implementing the recommendations made by GRECO in this area. While this initiative is generally to be welcomed as a step in the right

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<sup>15</sup> Those provisions criminalise offences of active and passive bribery committed in the private and public sectors as well as active and passive trading in influence offences.

<sup>16</sup> Cf. GRECO's Third Round Evaluation Report on Ukraine, document Greco Eval III Rep (2011) 1E Ukraine 173, paragraph 58.

direction, GRECO is not in a position to assess the draft legislation – which was presented at a very late stage – in the present report. It was agreed that the authorities would keep GRECO informed about the reform process in the on-going compliance procedure.

#### **Recommendation i.**

44. *GRECO recommended to harmonise the provisions on campaign financing contained in the Law on Parliamentary Elections, the Law on Presidential Elections and the Law on Local Elections.*
45. The authorities state that the Ministry of Justice is currently looking at examples of political party and campaign financing regulation from around the world. They add that the issue of harmonising the election legislation was considered at a Round Table discussion on remarks and recommendations by the Council of Europe's Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) concerning the codification of election legislation of Ukraine, which was held by the Ministry of Justice on 11 September 2013 with the participation of international experts of the Venice Commission, OSCE/ODIHR, the EU Mission in Ukraine, the Council of Europe Office in Ukraine, the IFES Mission in Ukraine, other international missions and organisations, MPs, scientists as well as national and international experts in the sphere of election law.
46. GRECO takes note of the information provided. In the absence of any concrete progress, GRECO concludes that recommendation i has not been implemented.

#### **Recommendation ii.**

47. *GRECO recommended to find ways to ensure that transparency regulations of the election laws are not circumvented by indirect contributions to election funds, via parties' or candidates' "own funds", or by contributions which do not pass through the election funds, including funding by third parties and donations in kind.*
48. The authorities report that in order to implement the "Action Plan of Urgent Measures for Improving the Legislation on Elections", approved by the Cabinet of Ministers on 4 March 2013, Parliament adopted Law No. 3396 "on Amendments to Particular Laws of Ukraine as regards Improvement of Law on Issues of Holding Elections" on 21 November 2013. Law No. 3396 had been prepared by the Ministry of Justice and had been initiated by three MPs. On 5 April 2013, before its submission to Parliament, the bill had been sent to the Council of Europe's Venice Commission and to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and it had then been amended on the basis of the Joint Opinion of the Venice Commission and the OSCE/ODIHR (CDL-AD(2013)016). Law No. 3396 will enter into force on 1 January 2014 if it is signed by the President.
49. Law No. 3396 suggests, *inter alia*, amending section 48 of the 2011 Law "on Election of the People's Deputies of Ukraine"<sup>17</sup> (i.e. the law on parliamentary elections, hereafter LParIE) so as to limit the maximum amount of the election fund of a political party whose candidates are registered in a nationwide multi-mandate election district to 90,000 times the minimum salary (i.e. currently approximately 103 million UAH/ 9.7 million €), and the maximum amount of the election fund of a candidate for Parliament in a single-mandate election district to 4,000 times the minimum salary (i.e. currently approximately 4.6 million UAH/approximately 430,000 €). The

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<sup>17</sup> The Law "on Election of the People's Deputies of Ukraine" was adopted on 17 November 2011 and entered into force on 10 December 2011.

authorities also mention that Law No. 3396 suggests amending section 71 LParIE so that the election campaign in any of the mass media, financed from the election funds of political parties – whose candidates are registered in the nationwide constituency – or of candidates for Parliament in single-mandate constituencies may only start after proper payment of print space or air time from the respective election fund accounts.

50. Furthermore, Law No. 3396 suggests that the requirement on banking institutions to notify the Central Election Commission (CEC) of the opening of election fund accounts of political parties and of their details, no later than on the next business day following the day of opening of the account, be extended to election fund accounts of candidates for Parliament in single-mandate election districts (in addition, the banking institution would also have to notify the relevant district election commission). Moreover, control over the receipt, accounting and use of the resources of election funds would be exercised not only by the CEC but also by the respective district election commissions and the banking institutions in which election fund accounts are opened. The banking institutions would have to provide the district election commissions concerned with information on the receipt and use of the election funds (amendments to section 50 LParIE).
51. GRECO acknowledges the adoption of legislation according to which, *inter alia*, the maximum amount of election funds of political parties/candidates for Parliament would be limited to approximately 9.7 million €/430,000 € respectively, if Law No. 3396 is signed by the President and enters into force. That said, GRECO considers that more needs to be done in order to effectively prevent the circumvention of the transparency regulations on election funds by indirect contributions to the funds, via parties' or candidates' "own funds". GRECO furthermore acknowledges that Law No. 3396 suggests some changes to the control over election funds, but it considers that additional measures need to be taken to prevent the circumvention of transparency rules by contributions which do not pass through the election funds. Finally, GRECO notes that Law No. 3396 only concerns parliamentary elections, whereas the recommendation was aimed at all elections, including presidential and local elections. The authorities are urged to step up their efforts to implement this important recommendation.
52. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

53. *GRECO recommended (i) to require that in all elections the complete campaign accounts are made easily accessible to the public, within timeframes specified by law; and (ii) to explore ways of sharing campaign finance information with the public prior to the election (e.g. through interim reports).*
54. The authorities state that Law No. 3396 suggests, *inter alia*, amending section 49 of the 2011 LParIE (see above under recommendation ii) so that within twenty days before the voting date the manager of the accumulation account of the election fund of a political party must submit to the CEC an interim financial report on the receipt and use of the election fund, which is to be immediately made public on the official website of the CEC. Furthermore, according to Law No. 3396, no later than on the fifteenth day after the voting date the above-mentioned manager must submit to the CEC a financial report on the receipt and use of the election fund, which is to be immediately made public on the CEC website. Law No. 3396 provides for similar rules applicable to election funds of individual candidates for Parliament in single-mandate election districts. The authorities add that the forms for the consolidated financial reports are to be approved by the



CEC no later than eighty days prior to the day of voting, that such forms have been established by CEC Resolution No. 123 of 25 July 2012.

55. GRECO welcomes the fact that if Law No. 3396 is signed by the President and enters into force, the relevant provisions of the recent LParIE will be amended so as to ensure that in parliamentary elections campaign financial reports – interim reports, prior to the voting date, as well as consolidated reports after the elections – must be immediately made public on the CEC website. That said, GRECO very much regrets that the disclosure obligation would not apply to the complete campaign accounts. It would appear that the financial reports to be made public would only contain aggregate figures and that they would not provide detailed and individualised information on donations, other sources of income and expenditure. Moreover, GRECO notes that further significant concerns underlying the recommendation have not been addressed, namely the fact that in presidential elections, only very general information is published and in a manner that does not guarantee easy access by the public, and that no campaign finance information is made public prior to presidential or local elections.

56. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

57. *GRECO recommended to adopt a comprehensive and consistent legal framework for general party funding that would be in line with the transparency standards set by the election laws – promoting in particular recourse to the banking system in order to make party income more traceable.*

58. The authorities state that a Round Table discussion was held by the Ministry of Justice on 14 November 2013 which included issues such as possible ways of raising transparency in political parties and electoral campaign financing (accountability, monitoring, independent audit, use of the banking system. International experts of the Venice Commission, OSCE/ODIHR, the EU Mission in Ukraine, the IFES Mission in Ukraine, other international missions and organisations, non-governmental organisations, MPs and representatives of central executive bodies and scientists participated in this Round Table.

59. GRECO takes note of the information provided. In the absence of any concrete progress, GRECO concludes that recommendation iv has not been implemented.

#### **Recommendation v.**

60. *GRECO recommended to clearly define and regulate donations – including indirect contributions such as donations in kind, to be evaluated at their market value –, loans and other permitted sources of political party funding and to ensure that membership fees are not used to circumvent the rules on donations.*

61. The authorities report that on 22 March 2012, Parliament adopted a new Law “on Civil Associations”, which abrogated the previous law of 16 June 1992 with the same title. In contrast to the previous law, the law of 22 March 2012 does not apply to political parties, whose financing is now exclusively regulated by the Law on Political Parties (LPP). The authorities state that regulation on party activities has thus been simplified. The concept of donations, which was used – but not defined – by the Law “on Civil Associations”, is no longer employed with respect to party funding, given that the LPP does not refer to such a concept.

62. The authorities furthermore refer to section 15 LPP – which contains a list of prohibited sources of political party funding, as well as an obligation on banking institutions to report to competent authorities the receipt of such prohibited funds on party accounts - and to section 17 LPP which requires parties to annually publish financial reports.
63. GRECO takes note of the information which indicates that following the recent adoption of a new Law “on Civil Associations”, political party funding is now solely regulated by the LPP and the concept of donations is no longer used in this context. While GRECO in principle welcomes the reduction of laws regulating party funding, it cannot see that the recent reform has contributed to implementing the recommendation, which called for clear definitions and regulation of permitted funding sources. The LPP provisions referred to by the authorities were already in place at the time of adoption of the Evaluation Report and do not address these important matters.
64. GRECO concludes that recommendation v has not been implemented.

#### **Recommendation vi.**

65. *GRECO recommended to (i) clearly define the content and form of annual accounts of political parties, following a uniform format and accompanied by adequate source documents; (ii) ensure that income (specifying, in particular, individual donations above a certain value together with the identity of the donor), expenditure, debts and assets are accounted for in a comprehensive manner; (iii) consolidate the accounts to include local party branches as well as other entities which are related directly or indirectly to the political party or under its control; and (iv) require that the annual accounts are subject to the scrutiny of an independent monitoring mechanism and made easily accessible to the public, within timeframes specified by law.*
66. The authorities state that the Ministry of Justice is currently looking at examples of political party and campaign financing regulation from around the world. They add that the Round Table discussion held by the Ministry of Justice on 14 November 2013 (see under recommendation iv above) included the issue of accountability of political parties.
67. GRECO takes note of the information provided. In the absence of any concrete progress, GRECO concludes that recommendation vi has not been implemented.

#### **Recommendation vii.**

68. *GRECO recommended to introduce independent auditing of party and election campaign accounts by certified auditors.*
69. The authorities state that the Ministry of Justice is currently looking at examples of political party and campaign financing regulation from around the world. They add that the Round Table discussion held by the Ministry of Justice on 14 November 2013 (see under recommendation iv above) included the issue of independent auditing of party and election campaign accounts.
70. GRECO takes note of the information provided. In the absence of any concrete progress, GRECO concludes that recommendation vii has not been implemented.

### **Recommendation viii.**

71. *GRECO recommended to ensure that an independent mechanism is in place for well-coordinated monitoring of the funding of political parties and election campaigns which is given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.*
72. In relation to the funding of election campaigns, the authorities report that the 2011 LParE makes it clear that the financial reports on the receipt and use of the resources of election funds are to be analysed by the CEC, see section 49, paragraph 7 LParE. If the analysis of the financial reports reveals any signs of violations of the LParE, the CEC must inform competent law-enforcement authorities which in turn have to hold an inquiry and react in accordance with the law. The authorities also refer to section 50, paragraph 9 LParE, according to which control over the receipt, accounting and use of election funds is carried out on a selective basis by the CEC under the procedure established by the CEC, jointly with the National Bank of Ukraine and the specially empowered central executive power body in the sphere of communications, not later than 83 days prior to voting date. The authorities add that according to the Draft Law No. 3396 “on Amendments to Particular Laws of Ukraine as regards Improvement of Law on Issues of Holding Elections” (see above under recommendation ii), such control would also be carried out by district election commissions (with respect to election funds of individual candidates for Parliament in single-mandate election districts) and by the banking institutions in which election fund accounts were opened. Furthermore, the control would no longer be performed on a “selective basis” but systematically.
73. Regarding general party funding, the authorities refer to section 15, paragraph 2 LPP, according to which the relevant banking institutions have to submit information on the receipt of funds prohibited by the LPP on party accounts to the central executive power body implementing the State policy in the sphere of State registration (legalisation) of citizens’ associations and other civil society formations. This body is the State Registration Service, i.e. a central executive body that was created in the framework of the administrative reform at the end of 2010. The authorities add that the Round Table discussion held by the Ministry of Justice on 14 November 2013 (see under recommendation iv above) included the issue of monitoring of party financing.
74. GRECO notes that the provisions of the recent LParE have given the CEC the mandate to analyse the financial reports on the receipt and use of the resources of election funds and to report to law enforcement authorities any signs of violations of the LParE. While this is clearly a step in the right direction, GRECO wishes to stress that much more needs to be done in order to address the concerns underlying the recommendation. GRECO regrets that no measures have been taken to ensure effective and pro-active supervision of election campaign funding, such as the provision of adequate financial and personnel resources to the monitoring mechanism. Moreover, GRECO has serious misgivings about the fact that with respect to general party funding, the situation remains unchanged. As was the case at the time of adoption of the Evaluation Report, there is still no monitoring body with a clear mandate and the necessary resources – including personnel specialised in party financing – to comprehensively check party accounts and parties’ compliance with transparency regulations. GRECO urges the authorities to step up their efforts in implementing the recommendation which is of key importance.
75. GRECO concludes that recommendation viii has been partly implemented.

### **Recommendation ix.**

76. *GRECO recommended to ensure that (i) all infringements of the existing and yet to be established rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; (ii) any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules; and (iii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities to effectively supervise and investigate political funding.*
77. The authorities refer to the criminal and administrative offences concerning unlawful provision or use of financial support to the election campaign (article 159.1 CC and article 212.15 CAO) and to the provisions on the statutes of limitation applicable to such offences (article 49 CC and article 38 CAO). They add that the Round Table discussion held by the Ministry of Justice on 14 November 2013 (see under recommendation iv above) included the issue of the establishment of a system of effective sanctions for violation of the rules on political party and election campaign financing.
78. GRECO takes note of the information provided. The CC and CAO provisions mentioned by the authorities in the context of election campaign funding were already in place at the time of adoption of the Evaluation Report. Likewise, no progress has been achieved with respect to the sanctioning regime in the area of general party funding.
79. GRECO concludes that recommendation ix has not been implemented.

### **III. CONCLUSIONS**

80. **In view of the above, GRECO concludes that Ukraine has implemented satisfactorily or dealt with in a satisfactory manner only three of the sixteen recommendations contained in the Third Round Evaluation Report.** Moreover, of the remaining recommendations seven have been partly implemented and six have not been implemented. With respect to Theme I – Incriminations, recommendations iii and iv have been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner and recommendations i, ii, v and vii have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations ii, iii and viii have been partly implemented and recommendations i, iv, v, vi, vii and ix have not been implemented.
81. Concerning incriminations, Ukraine has implemented a reform of the corruption provisions which addresses part of GRECO's recommendations. In particular, the bribery provisions now cover both material and immaterial advantages, it has been made clear that bribery and trading in influence offences cover instances where the advantage is not intended for the official him/herself but for a third person and the provisions on the special defence of effective regret have been amended in such a way that the bribe-giver is released from punishment only if s/he was subject to extortion *and* voluntarily reports to law enforcement authorities. That said, GRECO very much regrets that the legal reform is incomplete and partly inconsistent. In particular, the "promise" and the "request" of an advantage have not been included in the corruption provisions and the "acceptance of an offer or a promise" has only been included in the provisions on passive bribery in the public sector but not in those on passive bribery in the private sector and trading in influence. Moreover, the sanctions available for private sector bribery offences have been reduced significantly – contrary to GRECO's recommendation – and the increase in the sanctions available for public sector bribery offences and the jurisdictional rules applicable to corruption

offences committed abroad are still not fully in line with the requirements of the Criminal Law Convention on Corruption (ETS 173). Against this background, GRECO notes with interest that new draft legislation is pending before Parliament, which would address several of the above-mentioned concerns. Ukraine is urged to continue the reform process and to establish a consistent legal framework, in keeping with the Convention.

82. Insofar as the transparency of political funding is concerned, Ukraine has initiated a reform process which is still on-going. In 2011, Parliament adopted a new law on parliamentary elections – the Law “on Election of the People’s Deputies of Ukraine” – which to some extent increases transparency in campaign funding. In particular, campaign accounts are to be made public on the internet now and are subject to an analysis by the Central Election Commission. However, the measures taken so far are insufficient to address GRECO’s recommendations. Regarding general party funding, the only tangible progress achieved is the simplification of the legal framework, which is now mainly provided by the regulations of the Law on Political Parties, whereas the 2012 Law “on Civil Associations” is not applicable to political parties (in contrast with the previous law with the same title). That said, draft legislation aimed at implementing GRECO’s recommendations concerning general party funding has recently been submitted to Parliament by one MP. To conclude, much more needs to be done in order to fulfil the requirements of the recommendations. Ukraine is urged to step up its efforts to significantly increase transparency in the funding of political parties and election campaigns and it is encouraged to pursue the reforms already initiated.
83. In the light of what has been stated in paragraphs 80-82, GRECO notes that Ukraine has been able to demonstrate that reforms with the potential of achieving 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 all recommendations. GRECO therefore 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 delegation of Ukraine to submit additional information regarding the implementation of recommendations i, ii, v and vii (Theme I – Incriminations) and recommendations i to ix (Theme II – Transparency of Party Funding) by 30 June 2015.
84. Finally, GRECO invites the authorities of Ukraine 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.