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Third Evaluation Round

Second Compliance Report on Ukraine

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 70th Plenary Meeting
(Strasbourg, 30 November - 4 December 2015)

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Ukraine since the adoption of the Compliance Report in respect of the recommendations issued by GRECO 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 52nd Plenary Meeting (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). The subsequent Compliance Report was adopted at GRECO's 62nd Plenary Meeting (6 December 2015) and was made public on 26 February 2014.

3. As required by GRECO's Rules of Procedure, the Ukrainian authorities submitted a Second Situation Report on measures taken to implement the recommendations. This report was received on 19 July 2015 and further information was submitted on 16 November 2015; it 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 Jouko HUHTAMÄKI on behalf of Finland. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 7 recommendations to Ukraine in respect of Theme I. In the Compliance Report, recommendations iii, iv and vi had been implemented satisfactorily or dealt with in a satisfactory manner. The remaining recommendations are dealt with below.

6. The authorities of Ukraine report that Law # 1261-VII on Amending Certain Legislative Acts of Ukraine on National Anti-corruption Policy as regards the Implementation of the Action Plan on EU Visa Liberalization for Ukraine came into effect on 4 June 2014. Aiming at securing implementation of recommendations of the European Commission and GRECO on improving anti-corruption legislation that were submitted within the framework of EU-Ukraine visa dialogue, the Law # 1261-VII strengthens the available measures for preventing and combatting corruption, *inter alia,* by introducing amendments to Articles 354, 368, 368^3, 368^4, 369, 369^2 of the Criminal Code (CC).

Recommendation i.

7. *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).*

8. It is recalled that this recommendation was partly implemented in the Compliance Report as the Ukrainian provisions on private sector bribery did not cover the full range of persons who direct or work for, in any capacity, any private sector entity.

9. The authorities now refer to Articles 354, 368^3 and 368^4 of the Criminal Code (CC) which establish criminal liability for bribery in the private sector. Article 368^3 CC, covers officials of a legal entity of private law, regardless of its organisational and legal form, who can be perpetrators of passive bribery. Furthermore, the authorities explain that perpetrators of passive bribery specified in article 368^4 CC include auditors, notaries, appraisers and other persons who are not civil servants or officials of local self-government, but who perform professional activities involving the provision of public services. Above all, following the legal amendments referred to in paragraph 6, Article 354 CC establishes criminal liability for bribery of all other perpetrators in the private sector, *including any employee of an enterprise, institution or organisation who is not an official or a person working for the benefit of an enterprise, institution or organisation*. A "person working for an enterprise, institution or organisation" means a person completing works or providing services pursuant to an agreement with such enterprise, institution or organisation (item 1 of notes to article 354 CC).

10. GRECO takes note of the information provided which indicates that Article 354 CC, which is the central provision criminalising private sector bribery (active as well as passive), now provides for a broader notion of persons that could be subject to this offence, namely *any employee or a person working for the benefit of an enterprise, institution or organisation*. This wording, although not identical to the one in Articles 7 and 8 of the Criminal Law Convention, does not appear to be more limited as it covers *"employees"* as well as any *"other person working for the benefit of the organisation",* which would appear to include those "who direct or work for in any capacity" as provided for in the Convention. However, the wording "*enterprise, institution or organisation"* in Article 354 CC is, according to the authorities, limited only to legal persons; it does not cover any other form of private business. This is more limited than foreseen in the Criminal Law Convention, according to which business activities with or without legal personality are to be covered by these offences[1]. Moreover, GRECO notes that the specific situation, where officials work for a private entity are also covered as well as private subjects carrying out public or semi-public activities as foreseen in 368^3 and 368^4 CC**.**

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

Recommendation ii.

12. *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.*

[1] ETS 173, Explanatory Report, paragraph 54

13. It is recalled that this recommendation was partly implemented in the Compliance Report as the elements "requesting" and "promising" an advantage had not been included in respect of the offences requested, while the element "accepting an offer or a promise" had been introduced only in the provisions on public sector bribery but not in respect of private sector bribery and trading in influence.

14. The authorities of Ukraine now report that, following the amended legislation referred to in paragraph 6, active bribery in the public or private sector (parts one and two of articles 354, 368^3, 368^4 and article 369 CC) may take the form of an *offer* or a *promise* of an illegal benefit or the *provision* of an illegal benefit. As far as passive bribery in the public or private sector is concerned (parts three and four of articles 354, article 368, parts three and four of articles 368^3 and 368^4 CC), it may take the form of the *acceptance* of an offer or a promise of an illegal benefit, *receipt* of an illegal benefit, *request* to provide an illegal benefit or the use of *extortion* to obtain an illegal benefit. Trading in influence (article 369^2 CC) can now be committed in the form of an *offer*, a *promise* or *provision* of an illegal benefit (active) and *acceptance* of an offer or a promise, *receipt* or *extortion* to receive an illegal benefit, as well as in the form of an *offer* or a *promise* to influence decision-making for an illegal benefit (passive).

15. GRECO welcomes the aforementioned legal amendments. The amended legislation in respect of all forms of active bribery now includes the elements "promising", "offering" and "giving" any undue advantage as required by Articles 2 and 7 of the Criminal Law Convention. All forms of passive bribery include the elements of *request*, *receipt* and *accept* an offer or an undue advantage as required in Articles 3 and 8 of the Convention. Moreover, following the amendments, these elements also appear in the pertinent provisions of trading in influence as required by Article 12 of the Criminal Law Convention on Corruption.

16. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation v.

17. *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).*

18. It is recalled that this recommendation was partly implemented as sanctions for aggravated corruption offences had been increased whereas basic bribery offences where aggravated circumstances appear were still not sanctioned severely enough in order to lead to extradition. Moreover, certain forms of offences, such as the "offering" of an illegal benefit was subject to less severe sanctions than the "giving" and aggravated circumstances provided for more severe sanctions in respect of "giving" an illegal benefit etc. It was stressed in the Compliance Report that such different treatment of basic forms of corrupt behaviour was not in line with the standards established by the Convention which calls for effective, proportionate and dissuasive sanctions for all corruption acts.

19. The authorities now submit that in order to enable international cooperation and mutual legal assistance as stipulated by the Criminal Law Convention on Corruption, the amended law referred to in paragraph 6 has established that all corruption offences are punishable by imprisonment in respect of the provisions that did not provide for this before. As a consequence, the basic corruption offences contained in Articles 354, 368, 368^3, 368^4, 369 and 369^2 CC currently establish imprisonment as one of the possible sanctions.

20. GRECO takes note of the sanctions contained in Articles 354, 368, 368^3, 368^4, 369 and 369^2 CC. These provisions provide, *inter alia*, that active and passive bribery in the private sector is punishable by imprisonment for a term of up to two years (parts one and three of article 354 CC). Aggravated crime entails imprisonment for a term of up to three years. Punishment by imprisonment for a term of up to two years is also established for active bribery of an official of a legal entity of private law (part two of Article $368^{3)}$ and the aggravated form is punishable by imprisonment for a term of two to four years. The passive form of such bribery is sanctioned by imprisonment for a term of up to three years (part three of article 368^3 CC) and, if aggravated, by imprisonment for a term of three to seven years. The same term of imprisonment is established for active bribery of a person who provides public services (parts one and two of article 368^4 CC). Passive bribery of a person who provides public services is punishable by imprisonment for a term of two to five years, and aggravated by imprisonment for a term of four to eight years. Active bribery in the public sector is punishable by imprisonment for a term of two to four years (part one of article 369 CC). Aggravated and extremely aggravated crimes are punishable by imprisonment for up to ten years. Passive bribery in the public sector is punishable by imprisonment for a term of two to four years (part one of article 368 CC). If aggravated, it is punishable by imprisonment for up to twelve years. GRECO notes that the new levels of sanctions for all corruption offences, up to two years of imprisonment for the "basic" offences as well as the more severe sanctions for aggravated offences are in line with the Criminal Law Convention as being effective, proportionate and dissuasive and all these offences can give rise to extradition. Consequently, the amended legislation is in compliance with Article 19, paragraph 1 of the Criminal Law Convention on Corruption.

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

Recommendation vii.

22. *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.*

23. It is recalled that this recommendation was partly implemented in the Compliance Report as draft amendments to Article 8 CC were underway, which 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 upon the condition that the perpetrator commits the offence "in complicity" with the Ukrainian official. GRECO stressed, however, 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 more limited than what follows from Article 17, paragraph 1.c of the Criminal Law Convention on Corruption. GRECO therefore invited the authorities to further amend the draft legislation and to have it adopted as soon as possible.

24. The Ukrainian authorities now report that the above mentioned draft legislation has been adopted with some additional amendments. In order to secure the implementation of the obligations undertaken by Ukraine pursuant to the Criminal Law Convention on Corruption, Law # 1261-VII (adopted on 13 May 2014) establishes jurisdiction over corruption offences committed abroad by foreigners or stateless persons not permanently residing in Ukraine when they are committed

abroad in respect of any of the crimes stipulated by articles 368, 368^3, 368^4, 369 or 369^2 CC in complicity with officials who are citizens of Ukraine, or if they offered, promised or provided an illegal benefit to such officials, or if they accepted an offer, a promise or received such benefit (part 2 of article 8 CC).

25. GRECO takes note of the new legislation adopted, which widens the jurisdictional scope of Ukraine in respect of corruption offences as compared with the situation described in the Compliance Report. Ukrainian jurisdiction now covers the types of offences requested by the recommendation and the amended legislation appears to comply with Article 17, paragraph 1.c of the Criminal Law Convention, as it provides for jurisdiction in respect of corruption offences when carried out abroad involving officials who are citizens of Ukraine, which was the concern of this recommendation.

26. GRECO concludes that recommendation vii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

27. It is recalled that GRECO addressed nine recommendations to Ukraine in respect of Theme II. Compliance with these recommendations is dealt with below.

28. The authorities report that on 19 June 2015, the draft Law of Ukraine on Amending Certain Legislative Acts of Ukraine as regards Prevention and Countering Political Corruption (registration # 2123a) was registered in the Verkhovna Rada (Parliament). This draft law provided for amendments to the laws on party and election campaign funding. This draft law was introduced by members of parliament representing the parties of the Parliamentary Coalition. The Cabinet of Ministers of Ukraine (through the Ministry of Justice) and civic experts, including experts of non-government initiative Reanimation Package of Reforms and Transparency International Ukraine, contributed to the development of the draft law. On 8 October 2015, the draft law № 2123a was adopted as Law (hereinafter referred to as Law № 731-VIII).

Recommendation i.

29. *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.*

30. It is recalled that this recommendation was not implemented in the Compliance Report; no concrete progress was reported at the time.

31. The authorities now submit that according to Article 70 of the Law of Ukraine # 4061-VI on Parliamentary Elections (hereinafter – Law # 4061-VI), candidates in parliamentary elections (registered by a party) may start their election campaign on the day after the election commission adopts a decision on the registration of the MP candidates. Furthermore, Article 57 of the Law of Ukraine # 474-XIV on Presidential Elections (hereinafter – Law # 474-XIV) establishes that a candidate for president may start his/her election campaign on the day after s/he is registered by the Central Election Commission. Furthermore, Article 47 of the Law of Ukraine # 2487-VI on Local Elections (hereinafter – Law # 2487-VI) also provides local party organisations, candidates to membership on councils etc. to start their election campaign on the day following decision of the respective territorial election commission on the registration of candidates. Moreover, each law establishes the same legislative provisions for the end of election campaigns – by 24h00 of the last Friday before the voting day.

32. As far as election funds are concerned, the authorities state that according to part one of Article 48 of Law # 4061-VI, a party whose MP candidates were registered in the nationwide election district, as well as an MP candidate in a single-mandate election district, is to open an election fund account no later than on the tenth day following the registration of such a candidate by the Central Election Commission. In Law # 474-XIV on Presidential Election, there is no deadline for establishing election funds or opening the accounts of such funds (part three of Article 37 of the Law # 474-XIV). The Law # 2487-VI does not specify any regulations on the deadline for establishing election funds during local elections or opening the accounts of such funds.

33. In order to harmonise the provisions on campaign financing, Law № 731-VIII amended the Law on Presidential Elections (Articles 42 and 43) and the Law on Parliamentary Elections (Articles 49 and 50). These amendments concern the regulation of financial reporting of an election fund manager, and of the procedure for raising and using an election fund. The amendments unify the procedure for submitting interim and final financial reports on the use of the respective accounts of election funds and making them public. Law № 731-VIII obliges a manager of an account of an election fund to submit an interim financial report on the receipt and use of this account five days before the voting day. A final financial report is to be submitted no later than on the fifteenth day after the voting day. Reports are to be submitted to the respective party, the Central Election Commission and the National Agency for Prevention of Corruption (NAPC) (parts four and five of Article 42 of the Law on Presidential Elections, parts five and six of Article 49 of the Law on Parliamentary Elections, as worded by the Law № 731-VIII). Moreover, interim and final financial reports on the receipt and use of election funds are to be made public in full at the official web-sites of the party, the Central Election Commission and the National Agency for Prevention of Corruption (part five of Article 42 of the Law on Presidential Elections, part six of Article 49 of the Law on Parliamentary Elections).

34. In addition, Law № 731-VIII harmonises the electoral provisions regulating presidential and parliamentary elections on fund raising, in particular in terms of voluntary contributions to the accounts of an election fund. The amended law limits the maximum amount of a voluntary contribution to the election fund by eight hundred minimum wages (around EUR 40,000) for legal entities and by four hundred minimum wages (around EUR 20 000) for private persons (Article 15 of the Law on Political Parties, part two of Article 43 of the Law on Presidential Elections, part two of Article 50 of the Law on Parliamentary Elections, as worded by the Law № 731-VIII). The amended law also specifies persons not eligible to make contributions to parties (Article 15 of the Law of Ukraine on Political Parties in Ukraine, part three of Article 43 of the Law on Presidential Elections, part three of Article 50 of the Law on Parliamentary Elections, as worded by the Law № 731-VIII).

35. The authorities also point out that, on 14 July 2015, the Law on Local Elections (hereinafter – Law № 595-VIII) was adopted by parliament. It obliges a manager of the savings account of an election fund of a local party organisation to submit an interim financial report to the respective territorial election commission five days before the voting day and to submit the final financial report no later than on the seventh day after the voting day (parts four and five of Article 71 of the Law № 595-VIII). The same deadlines are set for the manager of an account of an election fund of a candidate in local elections (part six of Article 71 of the Law № 595-VIII). Information from the interim and final financial reports are to be published by the territorial election commission within two days from the reception in the local mass media outlets or by other means (part ten of Article 71 of the Law № 595-VIII).

36. GRECO takes note of the legislative measures taken to harmonise provisions in respect of campaign financing in Ukraine. It notes in particular, that the start and the end of the election campaign periods, whether in respect of parliamentary, presidential or local elections, follow the same principles. Financial reporting (submission of interim and final statements) in respect of parliamentary, presidential and local elections have been put in place and there are also obligations in place as far as the publication and the verification of such reports is concerned. As far as the timing for the establishment of election funds is concerned, GRECO notes that, contrary to what applies in respect of parliamentary elections, there is no specific timing requirement in respect of presidential elections and it would appear that no such regulations exist in respect of local elections. GRECO concludes that several measures have been taken to harmonise legislation; however, more precise details are needed to fully assess compliance with the current recommendation. Ukraine is therefore urged to submit fuller information having regard to the "discrepancies" listed in the Evaluation Report (paragraph 76).

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

Recommendation ii.

38. *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.*

39. It is recalled that this recommendation was partly implemented in the Compliance Report, following the adoption of Law No. 3396 "on Amendments to Particular Laws of Ukraine as regards Improvement of Law on Issues of Holding Elections", adopted in November 2013, which introduced limits to the maximum amount of election funds of political parties/candidates to parliamentary elections. GRECO considered that more needed 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". It also noted that Law No. 3396 only concerns parliamentary elections, whereas the recommendation was aimed at all elections, including presidential and local elections.

40. The authorities of Ukraine again refer to the legislation in place concerning the obligation to establish election funds for the campaign funding of all elections, that these funds consist of own funds of the candidates, own funds of a political party in case the candidate is nominated by a party and voluntary contributions, which currently are limited by so called caps in relation to candidates (to the election fund) and political parties (annually), approximately EUR 20 000 in respect of physical persons and approximately 40,000 in respect of legal persons. The authorities also submit that one lever to minimise risks of the reception of voluntary contributions (donations) by the candidates themselves in violation of the legislative requirements is to oblige them to report on their financial operations; such reports are to mandatorily specify each transaction. An additional lever, according to the authorities is that contributions from a physical person and legal entities with close bonds (e.g. the beneficiary owner of a legal entity) will be considered to be contributions originating from the same person, and therefore limited to the overall caps.

41. GRECO takes note of the information provided. It acknowledges the adoption of legislation in respect of parliamentary, presidential and local elections, according to which election campaign financing and spending in a similar way are to be channelled through the specific election funds. These funds consist of the candidates' own funds, voluntary contributions and in case candidates

are nominated by a party also the party's own funds. Moreover, the legislation provides for caps on donations and some additional rules to prevent that the caps are circumvented, for example, in situations where donations come from a legal person as well as from the beneficiary owner of the legal person. Moreover, the legislation provides for rules on the management (administration) of the election funds, audits and detailed rules on the financial reporting and external monitoring. These regulations appear rather solid in respect of providing for a good level of transparency of the election funds, if applied as intended. That said, as stated already in the Compliance Report, GRECO considers that more needs to be done in order to effectively prevent the circumvention of the transparency regulations on election funds by the possible use of indirect contributions to the funds, via parties' or candidates' "own funds", which was the central issue raised in the Evaluation Report. The authorities have not indicated any specific measure taken in this particular respect.

42. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

43. *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).*

44. It is recalled that this recommendation was partly implemented in the Compliance Report; amended legislation concerning parliamentary elections had been adopted; however, it only concerned limited financial information and there was only limited legislation established in respect of other elections.

45. The authorities now explain that, following the amendments to the legislation referred to above, campaign financing in respect of parliamentary, presidential and local elections are to be made accessible to the public within specified timeframes. The procedure for sharing interim and final financial reports on the financing and expenditure of the election funds in respect of parliamentary elections is determined by part six of Article 49 of the Law # 4061-VI as worded by the Law № 731-VIII). In particular, the manager of the savings account of a party election fund is to submit - five days before the voting day - an interim financial report on the election fund – (spanning from the day of the opening of the account of the election fund until the tenth day before the voting day) to the party, the Central Election Commission and the National Agency for Prevention of Corruption. This report is to be made public in full at the official web-sites of the party, the Central Election Commission and the National Agency for Prevention of Corruption no later than the following day from reception. Moreover, a final financial report is to be submitted no later than on the fifteenth day after the voting day to the same entities. Also the final report is to be made public in full at the web-site of the party, the Central Election Commission and the National Agency for Prevention of Corruption, no later than one day following the reception. Similar rules concerning interim and final reporting and publication of accounts apply in respect of the election funds of individual MP candidates, as a well as for political parties in case the MP candidate was nominated by a party. The rules in respect of presidential elections are provided in part five of Article 42 of the Law # 474-XIV as amended by the Law № 731-VIII. Eight days before the voting day, the manager of the election fund is to submit, to a manager of the savings account of the election fund, an interim financial report on the account of the election fund (spanning from the day of opening of the account of election fund until the tenth day before the voting day). In turn, the manager of the savings account of the election fund must, no later than five days prior to the voting day, submit to the Central Election Commission and the National Agency for Prevention of

Corruption (in case the candidate was nominated by a party, also to the party) an interim financial report on the election fund (spanning from the day of the opening of the account until the tenth day before the voting day). The report is to be made public in full at the official web-sites of the party (if applicable), the Central Election Commission and the National Agency for Prevention of Corruption no later than one day following the reception. The final financial report on the election fund, follows the same steps; the manager of the election fund is to send the report to the manager of the savings account within seven days after the voting day; s/he in turn sends the financial report - within 15 days, to the Central Election Commission and the National Agency for Prevention of Corruption - the final financial report on the receipt and use of the election fund (and to the party, if applicable). The report is to be made public in full by the Central Election Commission and the National Agency for Prevention of Corruption no later than one day following the reception. The provisions of parts four to six and ten of Article 71 of the Law № 595-VIII also provide for the need to submit and share with the public the interim and final financial reports during local elections (as noted in paragraph 35, above).

46. GRECO welcomes the new comprehensive and coherent legislation in respect of the various forms of elections in Ukraine. The legislation provides for a far-going reporting on campaign financing which has its point of departure within the framework of the management of election funds. GRECO is pleased that the reporting concerns election financing during the election campaign, through interim reports as well as after the elections through final reports. Moreover, the new legislation provides for several measures to make the full accounts of the election funds publicly accessible via the official Central Election Commission, the National Agency for Corruption Prevention as well as through the respective parties, if applicable. The timeframes for submission of the reports as well as for the publication are established by law.

47. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

48. *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.*

49. It is recalled that this recommendation was not implemented in the Compliance Report as no concrete progress had been made.

50. The authorities of Ukraine report that Law № 731-VIII amends the Law on Political Parties including in respect of the general party funding. Importantly, it provides for state funding to political parties as well as for private funding of parties. The state funding of parties includes the funding of the statutory activities of the parties and the reimbursement of expenses related to their election campaigns during regular and pre-term parliamentary elections. The annual amount of state funding is set at 2% of the minimum wage (around EUR 1) for each constituent at the close of the voting at the most recent regular parliamentary elections, to be determined by the Central Election Commission.

51. The authorities also report that the new legislation obliges political parties and their local organisations to open accounts in banking institutions of Ukraine. All contributions to a party and its respective local organisation are to be transferred to these accounts. The respective banking institutions of Ukraine are to notify the Accounting Chamber of Ukraine and the National Agency

for Prevention of Corruption on the opening and termination of such accounts within three banking days. The Law № 731-VIII establishes that funds shall be contributed to a party or a local party organisation only through the banking system. If a Ukrainian citizen financially contributes to a party without opening an account, a banking institution must identify such a citizen (surname, first name, place of residence and other details required by law). Article 15 of the Law on Political Parties (as amended by the Law № 731-VIII) lists persons and entities who are prohibited from providing contributions to political parties, *inter alia*, public authorities and enterprises, entities and organisations as well as legal entities partly owned by the central or local governments, foreign states, entities and persons, anonymous persons or persons using a pseudonym etc. Moreover, parties are obliged to submit quarterly reports on the property, incomes, expenses and financial obligations (Article 17 of the Law on Political Parties in Ukraine as worded by the Law № 731-VIII). The reports are to contain information about each contribution to a party and its local organisations. The total amount of contribution(s) to the party that a Ukrainian citizen may provide during one year cannot exceed four hundred minimum wages (around EUR 20 000) and by a legal entity, approximately EUR 40 000 at most.

52. GRECO recalls 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. Since then, political parties are exclusively regulated by the Law on Political Parties (LPP). This move is to be welcomed. Moreover, GRECO takes note of the recent information provided and acknowledges that the new legislation on political parties further strengthens the legal framework for the regular funding of political parties which was one of the concerns in the Evaluation Report (paragraph 80). It also provides for a number of measures that did not exist in the past. One of the basic features of the law is the provision of state funding to political parties. This is to be welcomed as it may have a positive impact on the furthering of a pluralistic party system in Ukraine. However, the establishment of state funding does not address the particular concerns behind the current recommendation, which were about the level of transparency of other forms of funding. Nevertheless, also in this respect GRECO notes that concrete measures have been taken with the adoption of the new law, for example, that donations to parties are to be channelled through bank transfers and accounts and that other forms of payments into the obligatory accounts of the parties cannot be done without the provision of the full identity of the contributor. Caps on donations to political parties are also in line with such caps in respect of election campaign funding. Moreover, the amended law provides for quarterly reporting on the financial accounts of political parties and that these are to contain information on each contribution received by the party or its local organisation as well as for making the financial statements public. GRECO is of the opinion that the measures taken comply with the measures expected in the current recommendation.

53. GRECO concludes that the recommendation has been dealt with in a satisfactory manner.

Recommendation v.

54. *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.*

55. It is recalled that this recommendation was not implemented in the Compliance Report as at the time no pertinent measures had been taken.

56. The authorities now refer to the amendments to the Law on Political Parties as amended by Law № 731-VIII. More precisely, they state that Article 14, provides that contributions to parties include cash or other property, preferences, benefits, services, loans (credits), intangible assets, and any other intangible or non-cash benefits, including membership fees, sponsorship by third parties of events or other activities to support a party, goods, works, services provided or obtained free of charge or on concessional terms (at a price lower than the market price of identical or similar works, goods and services in the relevant market), received by a party, its duly registered local branch, proxy of the party or its local branch, candidate promoted by the party or its local branch at parliamentary elections, presidential elections and local elections etc. Moreover, the law establishes caps on donations to political parties; four hundred minimum wages (around EUR 20 000) in respect of citizens and eight hundred minimum wages (around EUR 40 000) in respect of legal persons. Contributions in form of works, services or goods are to be determined on the basis of the market value of the same or similar goods, works, services at the respective market using a methodology approved by the National Agency for Prevention of Corruption (parts three and five of Article 15 of the Law on Political Parties in Ukraine as worded by the Law № 731-VIII). The parties are obliged to specify the date of each contribution irrespective of its type, amount and purpose in their reports on the property, incomes, expenses and financial obligations (part eight of Article 17 of the Law on Political Parties as amended by Law № 731-VIII).

57. GRECO takes note of the new legislation which defines what is to be considered as contributions, which includes not only donations and in-kind donations (at the market value) but also loans and other permitted sources of political party funding as well as membership fees. The legislative measures taken address adequately the concerns of the current recommendation.

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

Recommendation vi.

59. *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.*

60. It is recalled that the current recommendation was not implemented in the Compliance Report as no concrete measures had been taken.

61. The authorities refer again to Law 731-VIII which amends the Law on Political Parties also in respect of content and the form of the party accounts concerning their property, income, expenses and other financial obligations, as well as the procedure for making them public (Article 17). According to the amendments, parties are obliged to submit to the National Agency for Prevention of Corruption hard and electronic copies of their quarterly financial reports on the property, income, expenses and financial obligations and to make them public at their official web-sites. They also state that the form of a party report is to be approved by the National Agency for Prevention of Corruption on the basis of the law. Furthermore, the more precise type of information to be included in such reports is to be approved by a legislative act in terms of the

property of parties and their local organisations; contributions to election funds specifying the date, amount, details of donors (private persons or legal entities); funds received from the State budget etc. Moreover, party reports are to be made publicly available at the official web-site of the National Agency for Prevention of Corruption, including in the form of open data no later than on the tenth day after it was received by the National Agency for Prevention of Corruption.

62. GRECO takes note of the information provided which indicates that a basic legal framework - also for the accounting and reporting - has been put in place through the amended legislation. This framework is aimed at ensuring a full account of the financing of political parties, including donations and other forms of income as well as the expenditure. The new law also establishes a monitoring mechanism, the National Agency for Prevention of Corruption (NAPC), and that party accounts and reports are to be made publicly available within 10 days from their submission to that body. This legal framework, which to a large extent is in line with the recommendation, is to be welcomed. That said, GRECO notes that the legislation referred to is not enough to comply with the recommendation for several reasons. GRECO notes that the NAPC has not yet been fully established and its members and staff are not appointed and the level of independence of this body remains to be seen. The NAPC, once established, is to develop a suitable format for the financial party reports. The establishment of such a "standard format" will be of utmost importance in order to provide for uniform and comparable reporting among all political parties. The practical aspects of the publication of party accounts will also be a task of the NAPC. As a consequence, the Ukrainian authorities need to complement the legislative measures taken in order to comply fully with this recommendation.

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

Recommendation vii.

64. *GRECO recommended to introduce independent auditing of party and election campaign accounts by certified auditors.*

65. It is recalled that this recommendation was not implemented at the time of the adoption of the Compliance Report.

66. The authorities now report that Law 731-VIII amending the Law on Political Parties (Article 17) introduces obligatory independent financial auditing of the operation of parties. According to the new provision a political party that was part of the election process (parliament, president or local elections) as well as political parties that receive state funding, are to undergo external independent financial auditing of their financial reports in the year that follows the year of such elections or after receiving state funding. External independent financial audit is to be conducted by an auditing firm that corresponds to the criteria set forth by the law. Political parties have the right to sign a contract for conducting the audits with the same auditing firm for no more than three years in a row. Moreover the authorities stress that regulations pertaining to the audits, their subjects and overall requirements of the auditors (audit firms), as well as other technicalities for conducting the audits are specified in the Law "On Audit Activities" of 22 April 1993 № 3125-XII.

67. GRECO welcomes the new legislation which introduces an obligation to carry out audits by independent certified auditors in accordance with recognised auditing standards in respect of parties which receive state funding as well as those that are active in elections at central or local levels. This important measure will apply broadly; however, the smallest parties, with only few

members or with no significant party activities are left out of the obligation, which corresponds well to standards established by GRECO in this respect.

68. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

69. *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.*

70. It is recalled that this recommendation was partly implemented in the Compliance Report as some moves in respect of the monitoring of political financing of election campaigns under the Central Election Commission (CEC) had been taken whereas, in respect of regular party funding, no measures had been taken at the time.

71. The authorities of Ukraine now refer to the adoption of Law 731-VIII which amends the Law on Political Parties and the Law on Presidential Elections, the Law on Parliamentary Elections and the Law on Preventing Corruption in order to entrust the National Agency for Prevention of Corruption (NAPC) to perform the supervision of political party financing. The precise mandate of the NAPC is spelt out in the Law on the Prevention of Corruption (Article 11). The authorities add that the Code on Administrative Offences (CAO), as amended by Law № 731-VIII, establishes administrative liability for violations of the procedures for political funding rules.

72. GRECO takes note of the information provided. The new legislation establishes the National Agency for Prevention of Corruption (NAPC) as a monitoring mechanism for political party financing. At the same time, the Central Election Commission (CEC) remains responsible for the monitoring of political financing rules in respect of election campaigns. Obviously, this calls for extensive co-ordination not least as it is not always easy to make a clear distinction between election and regular funding. Moreover, the recommendation calls for a mandate and resources to carry out a pro-active monitoring, to investigate violations of the regulations and to impose sanctions, as appropriate. GRECO notes in this respect that the NAPC - at the moment - is only established by law. The members of the NAPC have not yet been appointed and it remains to be seen how independent this body will be in its establishment as well as in the performance of its functions. Moreover, it appears unclear to what extent the NAPC will be provided with adequate financial resources and to what extent it will be given sufficient and dedicated staff and the necessary expertise for its functions. In this context, GRECO notes that the NAPC has a very broad mandate in respect of corruption prevention in general and that the monitoring of political financing is only one of its diverse functions. Furthermore, its mandate does not cover the authority to impose sanctions in respect of procedural violations by the parties, e.g. late submission of reports etc. The administrative sanctions referred to by the authorities require decisions by a court, following reporting by the NAPC. Consequently, a range of measures need to be implemented in terms of regulations as well as in practice, before the requirements of this recommendation are met more than to some extent.

73. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

74. *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.*

75. It is recalled that this recommendation was not implemented in the Compliance Report as no new measures had been taken in this respect.

76. The authorities now refer to Law № 731-VIII amending the Code on Administrative Offences (CAO) as well as the Criminal Code (CC) in respect of offences relating to violations of political financing regulations: Article 212.15 CAO deals with violations of the procedures for making or receiving contributions to a political party or in an election campaign. Citizens may be punished with a fine (approx. EUR 40 – 60) and officials (approx. EUR 80). Article 212.21 CAO sanctions violations of the procedures for submitting financial reports concerning regular party funding as well as election campaign funding with a fine (approx. EUR 190-250). The authorities also refer to Article 159.1.1 CC, which now sanctions the submission of false information in respect of political financing with fines, or correctional work up to two years as well as with a possible ban on the holding of certain offices for up to three years. Article 159.1.2 establishes similar sanctions for deliberate contributions to parties or election campaigns by an un-authorised person or in excess of the established caps on donations, with fines or correctional work. These criminal sanctions may also be applied in relation to legal persons as well as combined with confiscation.

77. GRECO takes note of the information provided. It welcomes this establishment of specific administrative offences for violations of the procedures for providing or receiving political financing. Moreover, administrative sanctions are also in place in respect of the procedures and deadlines for submitting financial reports concerning party funding, as well as in relation to election campaign financing. GRECO notes with concern that such sanctions require decisions by a court and cannot be applied by the monitoring bodies in a more flexible way. As far as criminal liability is concerned, the amended Article 159.1.1 provides for such liability in respect of the deliberate submission of false information, contribution and reception of contributions from un-authorised persons or entities or the deliberate provision or receiving of contributions exceeding caps on donations. These legislative measures represent improvements since the adoption of the Evaluation Report. That said, further information is required to provide for a complete list of available sanctions, to clarify who may be subject to such sanctions as well as in respect of the relevant limitation periods as requested in the recommendation.

78. GRECO concludes that recommendation ix has been partly implemented.

III. CONCLUSIONS

79. **In view of the above, GRECO concludes that Ukraine has implemented satisfactorily or dealt with in a satisfactory manner ten of the sixteen recommendations contained in the Third Round Evaluation Report.** Moreover, of the remaining recommendations six have been partly implemented.

80. With respect to Theme I – Incriminations, recommendations ii-v and vii have been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner and recommendation i has been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations iii, v and vii have been implemented satisfactorily, recommendation iv has been dealt with in a satisfactory manner and recommendations i, ii, vi, viii and ix have been partly implemented.

81. Concerning incriminations, Ukraine has carried out rather extensive reforms of the criminal legislation in respect of corruption offences. In particular, various elements missing in bribery offences, as well as in respect of trading in influence, have now been included in the amended legislation regarding the details requested in the Evaluation Report, except for the scope of private sector bribery which, contrary to what is required by Articles 7 and 8 of the Criminal Law Convention on Corruption, is limited to such offences committed in relation to legal persons. Moreover, the sanctions available for these offences have been strengthened to a large extent and are now in compliance with the requirements of the Criminal Law Convention on Corruption (ETS 173). 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. Ukraine is to be commended for these efforts.

82. Insofar as the transparency of political funding is concerned, Ukraine has established a new legislative framework which, to a large extent, improves the legal system in this respect. A major achievement - however, not directly related to the recommendations of this report - is the establishment of public funding to political parties. As far as the particular recommendations addressed by GRECO to Ukraine are concerned, it is to be welcomed that a number of important steps have been taken, for example, to harmonise and improve the legislation concerning transparency of regular party funding with the rules on election campaign financing; to better define various sources of contributions and income, including donations, in order to prevent circumvention of the transparency rules concerning donations; and to introduce mandatory auditing of party accounts by certified auditors. That said, the reforms only take the form of amended legislation and much remains to be seen in respect of the implementation of the new laws. This applies particularly to the establishment of the new monitoring body, the National Agency for Prevention of Corruption (NAPC), in respect of party funding. It will have to work in tandem with the Central Election Commission which is still responsible for the monitoring of election campaign financing. The true independence of the NAPC still remains to be seen as well as to what extent it will be adequately funded and equipped with the staff and tools necessary to carry out this function.

83. In view of the fact that still five out of nine recommendations concerning Theme II are yet to be implemented GRECO, in accordance with Rule 31, paragraph 9 of its Rules of Procedure requests the Head of the delegation of Ukraine to submit additional information regarding the implementation of recommendations i, ii, vi, viii and ix (Theme II - party funding) as well as recommendation i (Theme I – incriminations) by 30 September 2016.

84. Finally, GRECO invites the authorities of Ukraine to translate the report into the national language and to make this translation public.