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Third Evaluation Round

Compliance Report on the United Kingdom

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

"Transparency of Party Funding"

Adopted by GRECO
at its 46th Plenary Meeting
(Strasbourg, 22-26 March 2010)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of the United Kingdom to implement the 8 recommendations issued in the Third Round Evaluation Report on the United Kingdom (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 36th Plenary Meeting (11-15 February 2008) and made public on 3 April 2008, following authorisation by the United Kingdom (Greco Eval III Rep (2007) 3E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the United Kingdom authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 23 September 2009 and served as a basis for the Compliance Report.
4. GRECO selected Bulgaria and Ireland to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Irena Borisova, Head of Department, Ministry of Justice, Bulgaria and Mr David Waddell, Secretary to the Standards in Public Office Commission, Ireland. 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 2 recommendations to the United Kingdom in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to proceed with the efforts to revise existing criminal law in order to provide for comprehensive, consistent and clearer definitions of bribery offences.*
8. The authorities of the United Kingdom report that on 25 March 2009, the Government published a draft Bribery Bill, which extends to *England and Wales and Northern Ireland* (<http://www.justice.gov.uk/publications/draft-bribery-bill.htm>), building on proposals by the

Law Commission. The Bill was published in draft for pre-legislative scrutiny by a Joint Committee of Parliament. The report of the Joint Committee, which was published on 28 July 2009, supported the draft Bill overall and made a number of recommendations in respect of the draft to the Government. The Bribery Bill was introduced in the Parliamentary Session, which started on 18 November 2009. The objectives of the draft Bribery Bill are

- to replace the fragmented and complex offences under common law and the Prevention of Corruption Acts 1889-1916 with a new consolidated and comprehensive scheme of offences;
 - to provide two new general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting an advantage;
 - to create a discrete offence of bribery of a foreign public official; and
 - to create an offence of failure by commercial organisations to prevent bribery.
9. The authorities have furthermore reported that the Scottish Executive which has devolved responsibility for criminal law in *Scotland*, published a consultation paper on reforming the law on bribery and corruption on 24 July 2009 asking for respondents' views on whether the draft Bill in respect of England and Wales and Northern Ireland represents a sound basis for legislative reform of the law in Scotland. The Scottish Parliament agreed in March 2010 that the Bribery Bill should extend to Scotland.
10. GRECO welcomes the information provided and recalls its previous conclusion, contained in the Evaluation report, paragraph 133, that the current bribery legislation, which is drawn from a number of sources, would benefit from reform in order to provide a fully coherent and consistent terminology and legal framework for corruption offences. This would no doubt be beneficial for legal practitioners as well as for the wider public. It appears now that the on-going reform process is progressing towards the establishment of a new comprehensive legislation. GRECO very much supports this important and promising process. GRECO also takes note of the pre-legislation process reported in respect of Scotland.
11. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

12. *GRECO recommended to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention.*
13. The authorities of the United Kingdom report that it is their intention to maintain the current reservations¹ pending the implementation of new bribery legislation. With regard to Article 12 of the Criminal Law Convention, the Government has previously indicated that it does not intend to introduce a new offence of "trading in influence" because of the concern about how to ensure that legitimate lobbying activities are excluded. However, the reservation will be reviewed when the new bribery legislation is implemented.
14. The authorities have added that the proposed general bribery offences in the Bribery Bill would criminalise "trading in influence" to the extent that it involves an inducement for a public function or activity to be performed improperly, and where the person performing it is expected to perform it in good faith, impartially or is in a position of trust. In addition, the authorities claim that the

¹ A letter to this effect was submitted by the United Kingdom authorities to the Secretary General of the Council of Europe on 22 October 2009.

proposed offence of bribery of a foreign public official would criminalise “trading in influence” to the extent that it involves an undue payment to a foreign public official intended to influence the official in his capacity as an official in order to obtain or retain business or a business advantage.

15. GRECO regrets that the Bribery Bill does not contain a clear-cut provision to criminalise “trading in influence” in full compliance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and would hope that this matter still can be reconsidered. GRECO acknowledges that although the Government to some extent has considered the possibilities of introducing “trading in influence”, the withdrawal or altering of the reservation relating to Article 12 of the Criminal Law Convention will again be considered when new bribery legislation will be in place. As the process of reflection is still on-going, GRECO takes the view that the consideration concerning the reservation in respect of Article 12 of the Criminal Law Convention is not yet completed.
16. GRECO concludes that recommendation ii has been partly implemented.

Theme II: Transparency of Party Funding

17. It is recalled that GRECO in its evaluation report addressed 6 recommendations to the United Kingdom in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

18. *GRECO recommended that a common format be established for parties' accounts and returns with a view to ensuring that such information to be made available to the public is coherent, meaningful and comparable to the greatest extent possible*
19. The authorities of the United Kingdom recognise the problem of a lack of consistency between accounts of various political parties which has a negative impact on overall transparency, and report that the Electoral Commission has been working with the political parties to determine how best to address this issue. The Commission, which is a body independent from the Government, is keen to ensure that the requirements for keeping statements of accounts result in more transparency, but also that they are simple to operate, in particular for small accounting units which are often largely staffed by volunteer workers. As such, the Commission intends to develop new requirements, in close co-operation with the political parties, with implementation expected from 2011.
20. GRECO welcomes the information which indicates that this issue is being addressed by the Electoral Commission. It is convinced that the various concerns indicated call for a balanced and flexible approach and looks forward to follow further developments in this area.
21. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

22. *GRECO recommended that to the greatest extent possible, election candidates and third parties be subjected to transparency standards in respect of loans which are comparable to those applying to political parties.*
23. The authorities of the United Kingdom reiterate that the Electoral Administration Act 2006 introduced more stringent reporting requirements for loans and other credit facilities to political

parties and that these requirements also apply to loans and other credit facilities to members of political parties where they are obtained for political purposes. Furthermore, the 2006 Act (section 62) allows these provisions to be extended to cover loans to third parties, permitted participants at referendums and candidates (though loans to candidates who are party members are already covered by the requirements introduced by the 2006 Act). The Government has not yet made the regulations required, however, the intention reported is to do so as soon as Parliamentary time allows. The authorities expect these regulations to be brought forward towards the end of 2010.

24. GRECO takes note of the declared intention to introduce necessary regulations in order to widen the transparency standards concerning loans to election candidates and third parties in due course.
25. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

26. *GRECO recommended that consideration be given to increasing the transparency of political financing at constituency level and in respect of election candidates, bearing in mind the particular conditions and needs at the local level.*
27. The authorities of the United Kingdom state that the reporting and other requirements imposed on political parties and politicians at local level need to be based on the particular circumstances of local, as opposed to national, politics. Political parties at the local level are often composed largely, or even exclusively, of volunteer workers. It is the Government's view that any changes to the political party finance and expenditure rules need to take account of this in order not to impose excessive or unnecessary bureaucratic demands on volunteer workers which might result overall in a reduction in political activity, a matter of considerable cross-party consensus in the United Kingdom. However, the authorities also recognise that transparency of political party financing and expenditure, including at the local level, contributes significantly to public understanding of, and confidence in, the political system.
28. The Government position is that the reporting thresholds ought to remain at two different levels, with a lower threshold for local units of political parties as opposed to the central party level. The threshold for "local" reporting, which was previously £1,000 (1,100 Euros) in the Political parties, Elections and Referendums Act 2000 (PPERA) has with the adoption of the Political Parties and Elections Act 2009 (PPEA) increased to £1,500 (1,700 Euros). The Government believes that a requirement to declare all donations received by individuals or local party organisations of above £1,500 (1,700 Euros) is proportionate and strikes the right balance between the two objectives of maintaining public confidence and imposing proportionate reporting demands.
29. In respect of the frequency of the reporting, the authorities recall that the PPERA requires more frequent reporting from central parties in the run-up to a general election, which is intended to ensure that a maximum amount of information is in the public domain about the source of funding used in the parties' campaigns. However, they are also of the opinion that such frequent reporting is not required for candidates or small accounting units of parties. The same information relating to such donations is published by the Electoral Commission, albeit with a more significant time delay than for donations to central parties. The concern to avoid excessive demands on local political volunteers, lead the Government to believe that additional reporting requirements in election periods are not desirable as there is no evidence to date that donations are being "channelled" to the local level to avoid being made public at an earlier point than had they been

provided to the national party. The authorities state, however, that this is an issue that the Government will keep under review, and if it materialises that donations are being channelled via the local branches to circumvent transparency as outlined in the Evaluation report, that will merit further consideration.

30. GRECO takes note of the information provided, which indicate that the concerns raised in the Evaluation report have been subject to consideration in the light of the introduction of the PPEA in 2009. Although the situation has not changed significantly since the adoption of the Evaluation Report, it appears that the United Kingdom authorities remain vigilant to the concerns underlying the current recommendation. GRECO therefore accepts that sufficient consideration has been given in respect of recommendation iii.
31. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendations iv and v.

32. *GRECO recommended that the regulating function of the Electoral Commission be reinforced, and that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities. (recommendation iv)*
33. *GRECO recommended that – as a complement to the current (mainly criminal) sanctions – more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions. (recommendation v)*
34. The authorities of the United Kingdom explain that **recommendation iv** is fully in line with several national reports as referred to by GRECO in the Evaluation report (paragraph 121) on the Electoral Commission's role as regulator of party finance and expenditure, that the Government has supported the main thrust of these findings and – as a result – that the new Political Parties and Elections Act 2009 (PPEA) strengthens the Electoral Commission's powers to regulate party spending and political donations and to adopt a proactive approach. Particularly, the PPEA extends the Commission's investigatory powers to obtain information to allow it to require the production of information from relevant individuals, such as donors, who are not currently covered by the PPERA powers. Under these powers the Commission may also require individuals to answer oral questions put to them. The Commission can only use these powers where it has a reasonable suspicion of a breach of the rules. Where the Commission forms a suspicion of this sort and has issued a disclosure notice requiring documents to be produced or explanations to be given, which have not been complied with, there is also a power to seek a court order to enforce the Commission's disclosure notice. Each of the new powers is subject to safeguards in order to ensure that they are used fairly and lawfully. Moreover, the Electoral Commission's "*Better Regulation of Party and Election Finance consultation*", which ran until 1 November 2009, outlines the Commission's proposed use of risk assessment techniques and sets out in detail the principles that the Commission proposes to underpin their approach to risk and enforcement activity.
35. The authorities report in respect of **recommendation v** that the PPEA provides the Electoral Commission with a widened range of sanctions. The new sanctions, intended to complement the new investigatory and supervisory powers of the Commission, are modelled on an approach

taken in 2008 to grant civil sanctioning powers to other regulators in the United Kingdom². The new range of civil sanctions, contained in the Act, provide alternatives to referral for criminal prosecution under PPERA, allowing the Electoral Commission to apply sanctions that are thought to be appropriate to the nature of each contravention and to use new approaches to secure compliance with the law, rather than imposing a traditional penalty. The new civil sanctions include Fixed monetary penalties³, Discretionary requirements⁴, Stop Notices⁵ and Enforcement Undertakings⁶, a suite of flexible sanctions that was established for use by a range of regulators under the Regulatory Enforcement and Sanctions Act 2008. The Act does not set out which offences will attract the civil penalties, and secondary legislation will be brought forward for that purpose in due course. Furthermore, the Electoral Commission is required to publish guidance about how to use its new powers and sanctions before the provisions can be applied. The Electoral Commission's consultation on its draft enforcement policy (referred to above) discusses the Commission's proposed policy for use of the new sanctions.

36. To conclude, the authorities are of the opinion that the above mentioned changes, which are all designed to achieve the over-riding policy objective of maintaining and building public confidence in the political process, will enable the Electoral Commission to operate as a modern regulator and to adopt the more pro-active approach, as recommended by GRECO. The authorities add that the Government will ensure that responses to the Electoral Commission's consultation are taken into account when bringing forward the secondary legislation and commencing the civil sanctioning powers for the Electoral Commission. It is expected that, subject to Parliamentary approval of the regulations, the new powers will be in force as from mid 2010.
37. GRECO welcomes the positive legislative developments reported in respect of the role of the Electoral Commission as a regulator equipped with a wide range of flexible means and sanctions in order to develop a proactive approach. GRECO considers the measures taken by the authorities of the United Kingdom in this respect as examples of good practice which may serve as models for many of its member States which are in the process of developing independent monitoring mechanisms concerning political financing. GRECO urges the authorities to pursue the current developments, with the necessary secondary legislation and rules of the Electoral Commission, in order to fully translate the reported approaches into practice as soon as possible.
38. GRECO concludes that recommendations iv and v have been partly implemented.

Recommendation vi.

39. *GRECO recommended that objective research be carried out concerning future police investigation and prosecution in respect of political funding offences.*

² The Regulatory Enforcement and Sanctions Act 2008 contained the model provisions for the PPERA 2009 civil sanctioning powers.

³ Fixed monetary penalties allow a penalty of a fixed level to be imposed on a person, political party or other regulated body, where the Electoral Commission have a criminal standard of proof that a regulation in PPERA 2000 has been breached and are intended for use in relation to smaller scale breaches.

⁴ Discretionary requirements comprise of three separate sanctions which are the requirement to pay a monetary penalty of a varying amount, the requirement to take steps as instructed by the Electoral Commission to cease a particular action or the requirement to take steps to return a situation to how it would have been had the action not taken place. These requirements may be used separately or in combination and are intended for more serious breaches than fixed monetary penalties.

⁵ A stop notice requires the recipient to immediately cease a particular activity and may be imposed where the Electoral Commission believe that activity is breaching PPERA in a serious and detrimental way, or will do so if the action continues.

⁶ An enforcement undertaking constitutes an agreement with the Commission, voluntarily entered into by a regulated person or other body, which sets out how the person or body can take steps to move to compliance with PPERA without recourse to the other sanctions available.

40. The authorities of the United Kingdom refer to a joint guidance note between the Association of Chief Police Officers (ACPO) and the Electoral Commission which addresses their respective roles. The Government believes that the changes to the Electoral Commission's powers which are contained in the new PPEA are so significant that it is preferable to allow the changes to bed down prior to any further consideration of the operation of the sanctioning regime. For example, any research about police investigations and prosecutions in respect of political funding offences would most usefully be conducted with the benefit of experience of the operation of the new regime. The Government will keep this issue under review and consider whether, once the changes to the system have been implemented and applied, there would be merit in consideration of the operation of the new system.
41. GRECO takes note of the position of the authorities of the United Kingdom, including the reference to the guidance note between the ACPO and the Electoral Commission, which was already mentioned in the Evaluation report. GRECO recalls that this recommendation was triggered by allegations – even if not fully substantiated – of a general reluctance of the police to initiate investigations in respect of political financing (Evaluation report, paragraph 132). Although a more pro-active investigative approach of the Electoral Commission in the future is likely to have an impact also on the work of the police and the prosecution services, GRECO would expect the authorities also to pay some attention to future police investigations and prosecutions, which are not solely connected to the development of the Electoral Commission.
42. GRECO concludes that recommendation vi has not been implemented.

III. CONCLUSIONS

43. **In view of the above, GRECO concludes that the United Kingdom has implemented satisfactorily only one of the eight recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i and ii, have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation iii has been implemented satisfactorily, recommendations iv and v have been partly implemented and recommendations i, ii and vi have not been implemented.
44. In respect of incriminations, the United Kingdom has reached an advanced stage of reform through the submission of the Bribery Bill on 19 November 2009 to Parliament. If the Bribery Bill leads to the eventual adoption of new Bribery legislation, this would be a major achievement, not least in the light of the fact that this matter has been under consideration in the United Kingdom for many years and that earlier attempts to revise bribery legislation have failed. That said, GRECO urges the authorities to further consider the possibilities of criminalising “trading in influence” and thus withdrawing the reservation in respect of Article 12 of the Criminal Law Convention on Corruption (ETS 173).
45. Insofar as the transparency of party funding is concerned, new promising legislation is in place to further develop the role of the monitoring mechanism, the Electoral Commission, as a regulator with proactive powers, including the possibility to impose appropriate sanctions. This major achievement is in the process of being fully implemented with the establishment of secondary legislation and procedural rules which are underway. Although the relevant recommendations (recommendations iv and v) are not yet fully complied with, what remains to be done appears to be minor in comparison with what has already been achieved. GRECO is also generally pleased

with the responses to most of the other recommendations the implementation of which seems to be well under way.

46. In the light of what has been stated in paragraphs 43 to 45, GRECO notes that the United Kingdom has been able to demonstrate that substantial reforms with the potential of achieving an acceptable level of compliance with the pending recommendations within the next 18 months are underway. 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 the Rules of Procedure. GRECO invites the Head of the delegation of the United Kingdom to submit additional information regarding the implementation of recommendations i and ii (Theme I – Incriminations) and recommendations i, ii and iv - vi (Theme II – Transparency of Party Funding) by 30 September 2011 at the latest.
47. Finally, GRECO invites the authorities of the United Kingdom to authorise, as soon as possible, the publication of this report.