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Third Evaluation Round

Compliance Report on Slovenia

“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 Slovenia to implement the 19 recommendations issued in the Third Round Evaluation Report on Slovenia. Both reports cover 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 35th Plenary Meeting (7 December 2007) and made public on 13 June 2008, following authorisation from the Slovenian authorities (Greco Eval III Rep (2007) 1E [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Slovenian authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received in two parts, namely on 30 September 2009 and 27 November 2009 and served as a basis for the Compliance Report.
4. GRECO selected Finland and Germany to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Matthias KORTE on behalf of Germany and Jussi AALTONEN on behalf of Finland. The rapporteurs 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 Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

THEME I: INCRIMINATIONS (ETS 173 and 191, GPC 2)

6. It is recalled that GRECO in its evaluation report addressed 6 recommendations to Slovenia concerning Theme I – Incriminations. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to ensure that the relevant provisions of the Criminal Code concerning bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, including any use/misuse of the public official's position, whether or not within the scope of the official's rights.*

8. The authorities of Slovenia report that a new Criminal Code entered into force on 1 November 2008 which now includes a new wording of the provisions concerning bribery (Articles 261 and 262) in order to cover all acts and omissions in the exercise of the functions of a public official, including specifically any use/misuse of the public official's position.
9. GRECO welcomes the legislative amendments introduced in the Criminal Code to comply with recommendation i, which should allow, in principle, to cover acts and omissions which are made possible in relation to the public official's function, whether or not within the scope of the official's rights.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

11. *GRECO recommended to clarify or extend the scope of Articles 269 and 269a of the Criminal Code concerning trading in influence to cover instances of supposed influence.*
12. The authorities of Slovenia indicate that Articles 263 and 264 on trading in influence of the new Criminal Code now explicitly refer to instances of presumed influence.
13. GRECO is pleased to note that the new provisions of the Criminal Code concerning trading in influence now refer to both real and supposed influence, in line with recommendation ii.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendations iii and iv.

15. *GRECO recommended to abolish the requirement of double criminality with respect to the offences of bribery and trading in influence.*
16. *GRECO recommended to extend the scope of Article 122 of the Criminal Code in order to allow for the exercise of jurisdiction over bribery and trading in influence offences committed outside Slovenia by/or involving Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens.*
17. The authorities of Slovenia indicate that, pursuant to Article 14 of the new Criminal Code, the requirement of double criminality (Article 14(3), Criminal Code) may be lifted by the Minister of Justice of Slovenia (Article 14(4) and (5), Criminal Code). In this connection, the Minister of Justice of Slovenia may authorise the institution of criminal proceedings in Slovenia and the application of the criminal legislation of Slovenia when the act committed is not punishable under the law in force in the country in which it was committed, but has been committed against Slovenia or one of its citizens (Article 14(4), Criminal Code) or, in all other cases, the offence is deemed to be a criminal offence according to the general principles of law of the international community (Article 14(5), Criminal Code).
18. GRECO accepts that the new Criminal Code extends the possibility of prosecuting criminal offences committed abroad by Slovenian citizens, as well as Slovenian public officials and members of domestic public assemblies of a foreign nationality. GRECO, however, takes the view that the need for approval by the Minister of Justice to prosecute cases where the

requirement of double criminality is not fulfilled may lead to the risk of a political decision. In addition, GRECO has doubts whether the approval of the Minister of Justice covers all instances of active bribery and trading in influence committed by Slovenian citizens abroad, since there may well be cases that would not necessarily target Slovenia or one of its citizens (Article 13(1), Article 14(4), Criminal Code).

19. GRECO concludes that recommendations iii and iv have been partly implemented.

Recommendation v.

20. *GRECO recommended that the effectiveness of the criminal provisions concerning bribery and trading in influence offences be assessed in order to facilitate their full use in practice.*
21. The authorities of Slovenia report that the Code of Criminal Procedure was amended in October 2009¹ in order to enhance the capacity of law enforcement authorities to prosecute organised crime, economic crime and corruption. In particular, amendments to Article 160a now provide prosecutors with a leading role in the investigation of the aforementioned offences, including by establishing joint investigation teams with specialised expertise concerning taxes, customs, financial transactions, securities, competition protection, prevention of money laundering, prevention of corruption, etc. The number of criminal charges for corruption offences has drastically increased following amendments to the Criminal Code and the Code of Criminal Procedure: 18 in 2005, 44 in 2006, 19 in 2007, 18 in 2008 and 231 in 2009.
22. GRECO takes note of the intention of the recently introduced amendments to the Code of Criminal Procedure and is pleased to note the positive trend reported which points at an increasing number of corruption investigations and goes in the direction of recommendation v. GRECO trusts that the already promising number of investigations under way will lead to effective punishment of corruption offences, as appropriate.
23. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

24. *GRECO recommended to abolish the possibility provided in the Criminal Code by the special defence of effective regret to return the bribe to the briber who has declared the offence before it is uncovered.*
25. The authorities of Slovenia report that the relevant provisions in the new Criminal Code dealing with the possibility to resort to the special defence of effective regret, insofar active bribery and trading in influence offences are concerned (i.e. Articles 262(3) and 264(3) of the Criminal Code), do not allow for returning the bribe to the briber having declared the offence before it is uncovered.
26. GRECO is pleased to note that the possibility provided by the former Criminal Code to return the bribe to the briber, who has declared the offence before it is uncovered, has been abolished in the new Criminal Code.
27. GRECO concludes that recommendation vi has been implemented satisfactorily.

¹ Official Gazette of the Republic of Slovenia No. 77/09, 2 October 2009.

THEME II: TRANSPARENCY OF PARTY FUNDING

28. It is recalled that GRECO in its evaluation report addressed 13 recommendations to Slovenia concerning Theme II – Transparency of Party Funding. Compliance with these recommendations is dealt with below.
29. The authorities of Slovenia report that with a view to strengthening the rules on party funding and responding to GRECO recommendations, amendments are under preparation with respect to the key legislation in this area, i.e. the Elections and Referenda Campaigns Act (2007) and the Political Parties Act (1994, as amended).
30. Regarding the draft amendments to the Elections and Referenda Campaigns Act, these were prepared in November 2009; they reportedly underwent public consultation (published at the Ministry of Public Administration's website) and will be submitted to the Government for further discussion. The authorities have included the aforementioned draft amendments in their response to GRECO.
31. Drafting of the relevant amendments to the Political Parties Act is still ongoing: it is currently subject to expert consultation before being sent to the Government for further discussion; adoption of the aforementioned amendments is expected to take place by the end of 2010. No specific details have been provided to GRECO concerning the content of the foreseen reform in this field.

Recommendation i.

32. *GRECO recommended to require parties and election campaign organisers to disclose their income and expenditure in greater detail, including the nature and value of individual (cash and in-kind) donations and loans.*
33. The authorities of Slovenia indicate that the draft amendments to the Elections and Referenda Campaigns Act require campaign organisers to report in more detail concerning income and expenses of election campaigns. In particular, disaggregated information is to be provided concerning the nature and value of all donations received from legal persons (independent of the value/type of donation), as well as donations granted by natural persons in an amount exceeding three average monthly salaries². Likewise, expenditures incurred during election campaigns are to be itemised so as to include information on their amount, purpose and the provider of the service or the seller of the product. The reports submitted by campaign organisers must also furnish details on loans (including, identity of the lender) and any deferred payments.
34. GRECO welcomes the changes proposed which might well allow, in principle, and if effectively implemented, for better identification of the income received and expenditure made by campaign organisers during election campaigns. GRECO notes that no information has been provided concerning particular improvements to the deficiencies identified in the Political Parties Act (paragraph 107, Third Round Evaluation Report) with respect to the reporting requirements on political parties (whether in connection with an election campaign or the financing of parties' routine activities).
35. GRECO concludes that recommendation i has been partly implemented.

² The average monthly gross salary in Slovenia is 1,448.12 EUR; the average monthly net salary amounts to 936.77 EUR (salary scales for January 2010. Source: Statistical Office of the Republic of Slovenia, published March 2010).

Recommendation ii.

36. *GRECO recommended to (i) require parties to provide separate details on the finances of organisations within the party structure as part of their annual and campaign reports, and; (ii) to adequately regulate the involvement of entities outside the party structure, related directly or indirectly to the party, in election campaigns.*
37. The authorities of Slovenia stress that, pursuant to the draft amendments to the Elections and Referenda Campaigns Act (Article 15, paragraph 7), the information on costs of election campaigns provided by political parties is also to comprise the activities of organisations within the party structure (e.g. youth, women, labour, agricultural organisations). Concerning the second part of the recommendation, the authorities report that a solution to reflect the involvement of entities outside the party structure in the costs of election campaigns has not yet been found.
38. GRECO notes that the proposed legislative amendments require election reports to include details on costs incurred during election campaigns by organisations within the party structure; this goes in the direction of the first part of recommendation ii. However, it should also be ensured that the income and expenditure of this type of organisations are tracked in the parties' annual accounts. With respect to the second part of the recommendation, the Third Round Evaluation Report (paragraph 108) stressed that a significant shortcoming of the system was the lack of regulation concerning campaigning or fundraising by associations and societies set up separately from parties (and acting outside the formal party structure). It would appear that no concrete steps have been taken to address this issue.
39. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

40. *GRECO recommended to facilitate public access to the unabridged annual reports of political parties.*
41. The authorities of Slovenia report that the draft amendments to the Elections and Referenda Campaigns Act would require campaign organisers to submit to the National Assembly and the Court of Audit a report on funding of the election or referendum campaign, which is to be published immediately on the website of the Court of Audit. In addition, the Court of Audit's final report on election campaigns is also to be made publicly available on its website and reviewed by the National Assembly.
42. GRECO takes note of the provisions included in the draft amendments to the Elections and Referenda Campaigns Act to facilitate public access to campaign reports on the website of the Court of Audit. Moreover, GRECO notes that the proposed amendments aimed at ensuring greater transparency of campaign income and expenses (see paragraph 33) should also assist, if enacted and properly enforced, in meeting the aim of recommendation iii. However, GRECO wishes to recall that, in its Third Evaluation Report (paragraph 109), it was particularly concerned about public access to the unabridged annual reports of political parties, which include data not only on elections, but also on their routine activity. No concrete action has apparently been taken in this respect.
43. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

44. *GRECO recommended to assess whether there is a need to adjust the current spending limits for election campaigns, in order to promote transparency of the actual costs of campaigns.*
45. The authorities of Slovenia indicate that the draft amendments to the Elections and Referenda Campaigns Act raise the level of the maximum amount per eligible voter which can be spent for election campaign purposes by 50%; the amount of partial reimbursements remains unchanged.
46. GRECO notes the reported intention of the authorities to adjust the current spending limits for election campaigns in line with recommendation iv. Pending adoption of the draft amendments to the Elections and Referenda Campaigns Act, GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

47. *GRECO recommended to seek ways to increase transparency as regards substantial corporate donations to political parties, and acts and decisions which could be beneficial to these donors.*
48. The authorities of Slovenia stress that the draft amendments to the Elections and Referenda Campaigns Act would require campaign organisers to report details on all donations received from legal persons, independently of their value (the 2007 Elections and Referenda Campaigns Act included a reporting obligation only for donations exceeding three average salaries). Furthermore, the draft incorporates provisions to ban donations from legal persons operating under public law (i.e. State bodies, self-governing local community bodies, legal persons of public law, humanitarian organisations, religious communities, public enterprises as defined by the Law on Transparency of Financial Relations, business organisations in which the State or a self-governing local community's invested capital exceeds 25%, and enterprises in which those organisations have a majority share according to the Law on Business Organisations).
49. GRECO takes note of the declared intention of the Slovenian authorities to increase the transparency of corporate donations to political parties during election campaigns, as proposed in the draft amendments to the Elections and Referenda Campaigns Act. It, however, regrets that no information has been provided as to how the transparency of this type of donation is to be increased outside electoral periods.
50. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

51. *GRECO recommended to (i) to undertake a comprehensive audit of the finances of political parties represented in Parliament, both as regards public and private funding, in accordance with international audit standards; (ii) to provide more resources to the Court of Audit to carry out these audits, as well as those of election campaign organisers; and (iii) to give the Court of Audit a mandate and resources to investigate routine party finances and to enhance its capacity to investigate campaign finances.*
52. The authorities of Slovenia report that, as regards control over the financing of election campaigns, the Court of Audit has been given new responsibilities and powers. In this context,

persons/entities having entered into commercial terms with a campaign organiser are specifically required to cooperate with the Court of Audit, including by granting access to their books and accounts. Moreover, according to the draft amendments to the Elections and Referenda Campaigns Act, the Court of Audit would be entitled, in cases of doubt about the accuracy of financial reports furnished by campaign organisers, to make inquiries with other persons, as necessary.

53. GRECO acknowledges the reported plans to enhance the capacity of the Court of Audit to investigate campaign finances which goes in the direction of the last part of recommendation vi(iii). However, the allocation of additional financial/human resources to the Court of Audit would also be required so that it could effectively perform its functions (including its enhanced investigative role with respect to campaign finances). No information has been provided concerning the capacity of the Court of Audit to investigate routine party finances. Likewise, nothing has been reported concerning the need to undertake a comprehensive audit of the finances of political parties represented in Parliament. Overall, the information provided indicates that Slovenia is still at a very early stage of implementation of recommendation vi.

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

Recommendations vii, xi and xiii.

55. *GRECO recommended to clarify the jurisdiction and scope of competences of all authorities entrusted with supervisory tasks as regards party and campaign finances.*

56. *GRECO recommended to consider providing an institutionally independent entity with the responsibility for imposing sanctions for political finance offences.*

57. *GRECO recommended to examine the advisability of entrusting a single, independent body (whether existing or yet to be created) with the mandate and resources to effectively supervise, investigate and enforce political finance regulations.*

58. The authorities of Slovenia report on a series of proposed changes to clarify and ultimately strengthen the supervision, investigation and enforcement of political finance regulations. Under the draft amendments to the Elections and Referenda Campaigns Act, monitoring and enforcement of campaign finance regulations will be transferred from the Slovenian Ministry of the Interior Inspectorate to the Court of Audit and the Commission for the Prevention of Corruption, respectively. In particular, according to the proposed amendments, the Court of Audit will be entrusted with oversight and auditing responsibilities and the Commission for the Prevention of Corruption with sanctioning powers for administrative infringements. Furthermore, the draft Integrity Act (which was submitted to the Government for approval on 22 February 2010) provides for a monitoring role of the Commission for the Prevention of Corruption with respect to party and campaign finances. Insofar as criminal charges are concerned, it is planned that the competent judicial body designated for this type of offences be the District Court in Ljubljana.

59. GRECO takes note of the measures reported to better clarify and strengthen the institutional framework with respect to monitoring/sanctioning of political finance regulations, which is the purpose of recommendations vii, xi and xiii. Pending adoption of the legislation which will permit the new institutional set-up to operate, the recommendations can only be assessed as partly implemented. GRECO is hopeful that the planned legislative changes which are aimed at clarifying and strengthening the supervisory, investigative and enforcement roles of the Court of

Audit and the Commission for the Prevention of Corruption will also involve, in practice, the allocation of adequate resources to these bodies, so that they can effectively fulfil their pivotal tasks in this field.

60. GRECO concludes that recommendations vii, xi and xiii have been partly implemented.

Recommendation viii.

61. *GRECO recommended to (i) increase the maximum level of sanctions included in the Political Parties Act and the Elections and Referenda Campaigns Act to ensure that these can be effective, proportionate and dissuasive in practice and (ii) ensure that donations received in violation of the Elections and Referenda Campaigns Act and/or Political Parties Act are not kept by the party.*
62. The authorities of Slovenia indicate that the draft amendments to the Elections and Referenda Campaigns Act provide for a significant increase in the monetary fines imposed in case of infringements. With respect to the second part of the recommendation, the authorities reiterate that illegally obtained assets – on the basis of a criminal or a minor offence – are to be taken away mandatorily (Article 74 of the Criminal Code; Article 28 of the Minor Offences Act).
63. GRECO notes that the draft amendments to the Elections and Referenda Campaigns Act include higher monetary fines, in line with part of recommendation viii(i). However, recommendation viii(i) also refers to the need to increase the maximum level of sanctions included in the Political Parties Act; nothing has been reported by the authorities in this respect. With respect to the last part of the recommendation, GRECO already took note, in the Third Round Evaluation Report, of the legislative provisions aimed at depriving perpetrators of assets obtained in the context of an illegal act. However, GRECO was concerned that the authorities entrusted with oversight of party and campaign finances were not sufficiently aware of this possibility (paragraph 121, Third Round Evaluation Report). No information has been added by the authorities to justify this concern no longer being prevalent.
64. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

65. *GRECO recommended to provide sanctions for all infringements of the Elections and Referenda Campaigns Act, in particular for accepting funds from non-permitted sources and of non-permitted amounts, for intentionally submitting a false, incorrect or incomplete report and for undertaking campaign activities outside the campaign period which extend into the prescribed election campaign period.*
66. The authorities of Slovenia report that new sanctioning provisions have been included in the draft amendments of the Elections and Referenda Campaigns Act for infringements concerning the acceptance of funds from non-permitted sources and of non-permitted amounts, the submission of a false, incorrect or incomplete campaign report, as well as the undertaking of campaign activities outside the campaign period.
67. GRECO takes note of the steps taken to address recommendation ix. However, pending adoption of the draft amendments of the Elections and Referenda Campaigns Act, GRECO can only conclude that recommendation ix has been partly implemented.

Recommendations x and xii.

68. *GRECO recommended to raise awareness on the possibility to impose sanctions for violations of the campaign finance provisions even after an election campaign organiser ceases to exist in this capacity.*
69. *GRECO recommended to raise public awareness on the importance of political funding and the damage caused by questionable political finance practices.*
70. The authorities of Slovenia report that certain steps have been/are being taken by the Ministry of Public Administration, the Court of Audit and the Commission for the Prevention of Corruption, to raise public awareness in this area. In particular, a public consultation process was launched in early November 2009 to involve civil society in the reform process of party/campaign funding rules, including, by signalling corruption risks and by providing information on the new legislative features concerning transparency, monitoring and enforcement of political finances. The authorities add that they intend to undertake further awareness-raising activities following adoption of the proposed legislative amendments in this field.
71. GRECO acknowledges that some initial steps have been taken to increase public awareness on the importance of political funding and the damage caused by questionable political finance practices. It further notes the reported plans of the authorities to intensify their efforts in this respect, in particular, once the ongoing amendments to the legislation on party and campaign funding are formally adopted.
72. GRECO concludes that recommendations x and xii have been partly implemented.

III. CONCLUSIONS

73. **In view of the above, GRECO concludes that Slovenia has implemented satisfactorily or dealt with in a satisfactory manner four of the nineteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii and vi have been implemented satisfactorily. Recommendation v has been dealt with in a satisfactory manner. Recommendations iii and iv have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i, ii, iv, v, vi, vii, viii, ix, x, xi, xii, xiii have been partly implemented. Recommendation iii has not been implemented.
74. In particular, concerning incriminations, a reform of the Criminal Code and the Code of Criminal Procedure took place in 2008 and 2009, respectively, to better align the relevant provisions on bribery and trading in influence with the Criminal Law Convention on Corruption (ETS 173). That said, additional steps are needed to abolish the requirement of double criminality, as well as to allow for the exercise of jurisdiction over bribery and trading in influence offences committed abroad by (or involving) Slovenian public officials and members of domestic public assemblies who are not Slovenian citizens.
75. Insofar as the transparency of party funding is concerned, new draft legislative provisions are being discussed to enhance the transparency and monitoring of political financing. In particular, amendments to the Elections and Referenda Campaigns Act were prepared in November 2009; they reportedly underwent public consultation and will be submitted to the Government for further discussion. The proposed amendments include some promising measures designed to

strengthen financial discipline and increase the transparency of party accounts during elections, e.g. disclosure of campaign income and expenditure in greater detail, stricter reporting requirements for campaign organisers and tougher sanctions for infringements. The revision of the Political Parties Act – another important legislative project crucial to the implementation of GRECO's recommendations – is still at its initial drafting stages; it is essential that more determined steps be taken to enhance the overall transparency of political activity, also outside campaign periods. Likewise, the jurisdiction and scope of competences of the authorities entrusted with supervisory, investigative and enforcement tasks as regards party and campaign finances need to be clarified and the responsible bodies vested with adequate resources to perform their tasks in an efficient manner.

76. In the light of what has been stated in paragraphs 73 to 75, GRECO notes that Slovenia has made tangible efforts to comply with the recommendations issued in respect of Theme I – Incriminations. Some preliminary steps have also been taken to meet the concerns raised in respect of Theme II – Transparency of Party Funding; however, much more clearly needs to be done in this area. It can be assumed that, on the basis of the information received and the plans reported, Slovenia may well be in a position to attain, in principle, an acceptable level of compliance with the pending recommendations within the next 18 months. 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 the delegation of Slovenia to submit additional information regarding the implementation of recommendations iii and iv (Theme I – Incriminations) and recommendations i to xiii (Theme II – Transparency of Party Funding) by 30 September 2011 at the latest.
77. Finally, GRECO invites the authorities of Slovenia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.