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Third Evaluation Round

***Interim* Compliance Report on Switzerland**

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

"Transparency of Party Funding"

Adopted by GRECO
at its 64th Plenary Meeting
(Strasbourg, 16-20 June 2014)

I. INTRODUCTION

1. The Third Round Evaluation Report on Switzerland was adopted at GRECO's 52nd Plenary Meeting (21 October 2011) and was made public on 2 December 2011, following authorisation by Switzerland (Greco Eval III Rep (2011) 4E, [Theme I](#) and [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Swiss authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected the Republic of Moldova and France to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Ms Cornelia VICLEANSCHI, prosecutor, Head of General Section, Office of the General Prosecutor of Moldova, on behalf of the Republic of Moldova, and Mr Paul HIERNARD, judge, *chargé de mission* to the Director of Legal Affairs, Ministry of Foreign and European Affairs, on behalf of France. They were assisted by GRECO's secretariat in drawing up the Compliance Report.
3. In the Compliance Report adopted at its 61st plenary meeting (Strasbourg, 14-18 October 2013), GRECO concluded that Switzerland had satisfactorily implemented three of the eleven recommendations contained in the Third Round Evaluation Report. In view of this outcome, it qualified the very low level of compliance with the recommendations so far as "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the head of the Swiss delegation to provide a report on progress made in implementing the pending recommendations (i.e. recommendations i and iii regarding Theme I, and recommendations i to vi regarding Theme II) at the latest by 30 April 2014, pursuant to paragraph 2(i) of that rule.
4. The present Interim Compliance Report assesses developments in the implementation of the recommendations pending since the adoption of the Compliance Report and gives an overall evaluation of the level of Switzerland's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It can be noted that, in its Evaluation Report, GRECO addressed five recommendations to Switzerland concerning Theme I. The Compliance Report showed that three of these recommendations – recommendations ii, iv and v – had been implemented satisfactorily. Compliance with the other recommendations is dealt with below.
6. Generally, the Swiss authorities state that, as indicated in the Compliance Report (paragraph 7), the Swiss government (Federal Council) decided, on 15 May 2013, to submit for public consultation a preliminary draft law aimed at strengthening the criminal-law provisions criminalising corruption, along with the accompanying explanatory report. These documents were accordingly sent to the cantons, political parties and other interested parties, which were asked to give an opinion on them by 5 September 2013. On 30 April 2014 the Swiss government took note of the results of the consultation and adopted a draft law, and the accompanying message, for submission to Parliament.

Recommendation i.

7. *GRECO recommended to ensure that the offences of granting and receiving advantages in articles 322^{quinquies} and 322^{sexies} of the criminal code cover, unambiguously, cases in which the advantage is intended for a third party.*
8. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. The preliminary draft law sent for public consultation proposed a new wording for Articles 322^{quinquies} and 322^{sexies} of the Criminal Code (hereafter CP) including the term "third party", whose absence was mentioned in the Evaluation Report as constituting a source of uncertainty.
9. The Swiss authorities state that the draft legislation mentioned in paragraph 6 adopts the solution proposed in the preliminary draft of 15 May 2013, which was well received at the public consultation stage. The Swiss government accordingly proposes that Parliament amend Articles 322^{quinquies} and 322^{sexies} CP so as to incriminate expressly all cases where the undue advantage is intended to benefit a third party, including where the public official has no financial links with that third party. The authorities point out that this amendment will therefore eliminate the ambiguity that remained in this matter.
10. GRECO takes note of the submission to Parliament of draft amendments to Articles 322^{quinquies} and 322^{sexies} CP. It recalls that it already considered in the Compliance Report that the wording of the proposed articles made it possible to remove the ambiguity in respect of cases where the advantage is intended to benefit a third party. However, since the amendments to the Criminal Code have not yet entered into force, GRECO cannot yet consider this recommendation to have been fully implemented.
11. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

12. *GRECO recommended to abolish the requirement for a prior complaint before prosecutions are brought for bribery in the private sector.*
13. GRECO recalls that this recommendation was considered partly implemented in view of the proposed new wording of Articles 322^{octies} and 322^{novies} CP, as set out in the preliminary draft law of 15 May 2013. These articles, which respectively criminalise active and passive bribery and replace Articles 4a and 23 of the Law against Unfair Competition, provide for automatic prosecution of these two offences.
14. The Swiss authorities explain that the above-mentioned draft legislation also takes into account the solution proposed in the preliminary draft law of 15 May 2013 and accordingly provides for the abolition of the requirement that a complaint must first be laid in cases of bribery in the private sector. Although this amendment was rejected by a number of participants in the public consultation process, in particular certain business associations, the Swiss government considers that this change is justified by the overriding public interest in being able to prosecute a case of bribery in the private sector also where no criminal complaint has been lodged.
15. GRECO takes note of the pursuit of the legislative work aimed at including private bribery offences in the Criminal Code, thus permitting their automatic prosecution. It welcomes the Swiss

authorities' position that the overriding public interest justifies the possibility of bringing a prosecution even if no criminal complaint has been lodged.

16. GRECO concludes that recommendation iii remains partly implemented.

Theme II: Transparency of party funding

17. It can be noted that, in its Evaluation Report, GRECO addressed six recommendations to Switzerland concerning Theme II. In the Compliance Report GRECO considered that none of these recommendations, discussed below, had been implemented.

Recommendations i. to vi.

18. *GRECO recommended:*

- (i) to introduce accounting rules for political parties and election campaigns that provide for full and appropriate accounts to be kept; (ii) to ensure that income, expenditure and the various elements of assets and liabilities are accounted for in detail and in full and presented in a coherent format; (iii) to explore ways of consolidating accounts to include parties' cantonal and local branches and bodies directly or indirectly linked to them or otherwise under their control; (iv) to ensure that adequate financial information is readily available to the public in good time; (v) where appropriate, to invite the cantons to adapt their own regulations in line with this recommendation (recommendation i);

- (i) to introduce a general obligation for political parties and candidates to elections to provide information on all donations received, including donations in kind, above a certain size; (ii) to introduce a general ban on donations from persons or bodies that fail to reveal their identity to the political party or candidate concerned; (iii) to invite cantons that do not yet have such measures to adopt them (recommendation ii);

- (i) to seek ways of increasing the transparency of the financing of political parties and election campaigns by third parties; (ii) to invite also the cantonal authorities to consider these matters ((recommendation iii);

- (i) to ensure that, as far as possible, independent audits are carried out on political parties subject to the obligation to maintain accounts and on election campaigns accounts; and (ii) to invite cantons to do the same ((recommendation iv);

- (i) to ensure the effective and independent supervision of the financing of political parties, and election campaigns, in accordance with Article 14 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; and (ii) to invite cantons to do the same ((recommendation v);

- that the future rules on the financing of political parties and election campaigns be accompanied by effective, proportionate and dissuasive sanctions ((recommendation vi).

19. As in the case of the Compliance Report, the information provided by the Swiss authorities is general in nature and does not specifically concern the individual recommendations. The authorities describe the new developments since the Compliance Report at different levels of the Swiss administration.

20. At the level of the federal government, the Federal Council has twice discussed the follow-up action to be given to GRECO's recommendations based on proposals from the Federal Department of Justice and Police. No decision has yet been taken and a further discussion is planned.
21. At the level of the federal parliament, the Swiss authorities indicate that, on 3 May 2013, the Legal Affairs Committee of the Council of States (CAJ-E), one of the Parliament's chambers, decided to follow up a parliamentary initiative by Thomas Minder, a member of the Council of States, entitled "Limited companies listed on the stock exchange and companies controlled by public authorities. Publication of donations to politicians".¹ This initiative, already mentioned in the Compliance Report (paragraph 36), has two aspects. It would require:
- limited companies listed on the stock exchange to inform their shareholders of any donations to politicians in excess of 10 000 Swiss francs;
 - companies controlled by the Confederation or by other public authorities (cantons, municipalities) to abide by the same rules.
22. However, on 23 January 2014 the Legal Affairs Committee of the National Council (CAJ-N), the other chamber of Parliament, decided against following up this initiative by a narrow margin of just one vote. It proposed instead that a committee initiative be developed, based on the second part of Mr Minder's parliamentary initiative, whereby legislation would be put in place to oblige companies in which the Confederation or another public authority held a majority share to make public, in their annual financial statements, all donations to politicians, parties and political organisations, along with the names of the beneficiaries and the amounts concerned.
23. At its session on 3 April 2014, the CAJ-E reiterated its support for the Minder initiative and rejected that of the CAJ-N, considering that it did not constitute a valid counter-proposal. However, the Council of States refused on 10 June 2014, by 26 votes to 12, to pursue this initiative; thus, it is now abandoned for good. The CAJ-N's initiative, rejected by the CAJ-E, for its part, has to be discussed by the CAJ-N again, so that it may decide if it wishes to maintain it and to bring it before the National Council.
24. Lastly, at cantonal level, the Swiss authorities indicate that, in the canton of Solothurn, a popular initiative aimed at making political parties' accounts more transparent did not receive the 3 000 signatures required for the holding of a popular vote. The initiative committee behind this proposal withdrew it at the end of October 2013.
25. Conversely, in the canton of Aargau, the cantonal initiative tabled in April 2013 (see paragraph 34 of the Compliance Report) will be put to popular vote on 28 September 2014. This initiative seeks an amendment to the cantonal constitution, whereby parties and initiative committees would be required to publish their budgets and their main sources of funds. The cantonal government gave an opinion against this initiative last February.
26. GRECO notes with interest that the theme of transparency in party funding remains a matter of political debate in Switzerland both at the federal level and within certain cantons. Although, given the lack of significant progress in this area, it cannot be considered that any initial implementation of the recommendations has taken place, GRECO hopes that the current initiatives and future debates on this issue will permit the emergence of a political majority in favour of legislating. In

¹ According to the initiative, "politicians" should be understood to include candidates, parties, political associations and other political organisations, popular initiative committees, referendum committees and foundations giving politicians financial support".

the meantime, and in view of the Swiss government's unchanged position, already stated in the Compliance Report, to the effect that, for the time being, it does not envisage implementing the recommendations on transparency in political financing, GRECO can but note that the recommendations are still not implemented.

27. GRECO concludes that recommendations i-vi have still not been implemented.

III. CONCLUSIONS

28. **In view of the above, GRECO concludes that Switzerland has made little tangible progress regarding the overall implementation of the recommendations considered not to have been acted upon in the Third Round Compliance Report. The total number of recommendations implemented or addressed satisfactorily – three out of eleven – remains unchanged as compared with the Compliance Report.**
29. In respect of Theme I – Incriminations, recommendations i and iii remain partly implemented. In respect of Theme II – Transparency of Party Funding, all the recommendations (i to vi) have still not been implemented.
30. With regard to incriminations, GRECO notes the satisfactory progress of the work to reform the Criminal Code so as to criminalise explicitly all cases where an undue advantage intended for a third party is granted or received and to eliminate the requirement that a complaint must be lodged before a prosecution can be brought for bribery in the private sector, even though the level of implementation of the recommendations is for the time being unchanged.
31. With regard to transparency of party funding, GRECO notes that the discussions are continuing at federal level, while the initiatives at cantonal level are obtaining mixed results. It hopes that they will permit the emergence of a political majority in favour of legislating on this subject. In the meantime, it can but note that the Swiss authorities' position remains unchanged and that they currently do not envisage remedying the lack of legislation and regulations noted in the Evaluation Report and implementing the recommendations made by GRECO.
32. In view of the above, GRECO concludes that the present very low level of compliance with the recommendations is still "globally unsatisfactory" within the meaning of Article 31, paragraph 8.3, of the Rules of Procedure.
33. Pursuant to paragraph 2(i) of Article 32 of the Rules of Procedure, GRECO asks the head of the Swiss delegation to provide a report on the progress made in implementing the pending recommendations (i.e. recommendations i and iii under Theme I and recommendations i to vi under Theme II) by 31 March 2015.
34. In addition, in accordance with Article 32, paragraph 2, sub-paragraph (ii.a), GRECO instructs its President to send a letter – with a copy to the President of the Statutory Committee – to the head of the Swiss delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
35. Lastly, GRECO invites the Swiss authorities to authorise, as soon as possible, the publication of this report, to translate it into the other official languages and to make these translations public.