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Third Evaluation Round

Fifth Interim **Compliance Report** **on Denmark**

“Incriminations (ETS 173 and 191, GPC 2)”

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“Transparency of Party Funding”

Adopted by GRECO
at its 74th Plenary Meeting
(Strasbourg, 28 november-2 December 2016)

I. INTRODUCTION

1. The Third Round Evaluation Report on Denmark was adopted at GRECO's 43rd Plenary Meeting (2 July 2009) and made public on 25 February 2010, following authorisation by Denmark (Greco Eval III Rep (2008) 9E [Theme I](#) / [Theme II](#)). In accordance with its Rules of Procedure, GRECO had selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure.
2. In the Compliance Report, which was adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011), it was concluded that out of the five recommendations under Theme I - Incriminations, three (iii-v) had been implemented satisfactorily or dealt with in a satisfactory manner, recommendation ii had been partly implemented and recommendation i had not been implemented. In respect of Theme II – Transparency of Party Funding, none of the nine recommendations had been implemented. Despite discernible progress achieved under Theme I, the non-implementation of the recommendations under Theme II made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
3. In the first Interim Compliance Report, which was adopted by GRECO at its 55th Plenary Meeting (Strasbourg, 16 May 2012), the level of compliance was again assessed as “globally unsatisfactory” since the level of compliance had not improved. Therefore, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to transmit a letter to the Head of Delegation of Denmark¹, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined steps with a view to achieving decisive progress.
4. In the Second Interim Compliance Report, adopted at GRECO's 61st Plenary Meeting (Strasbourg, 18 October 2013), Denmark's level of compliance remained “globally unsatisfactory”. In accordance with Rule 32, paragraph 2 subparagraph (ii) c), on 27 November 2013, the Secretary General of the Council of Europe, invited by GRECO, sent a letter to the Minister of Foreign Affairs of Denmark, drawing his attention to the non-compliance of Denmark with pending recommendations.
5. In the Third Interim Compliance Report, which was adopted by GRECO at its 65th Plenary Meeting (10 October 2014), GRECO maintained its assessment that the level of compliance with the recommendations was “globally unsatisfactory” and the authorities were again requested to report on this matter. The authorities submitted new information on 24 August 2015.
6. In the Fourth Interim Compliance Report, adopted by GRECO at its 69th Plenary Meeting (16 October 2015), it was again concluded that no concrete progress had been achieved and that the level of compliance remained “globally unsatisfactory. Furthermore, GRECO requested the authorities of Denmark to receive a high-level mission in order to discuss - on the spot with the stakeholders concerned - ways to expedite pending legislative and policy changes concerning political financing.
7. On 25 May 2016, the High-level meeting was held at the premises of the Ministry of Justice in Copenhagen, at which the GRECO delegation (headed by the President of GRECO) met with the Minister of Justice, Mr Søren PIND, and other representatives of the Ministry of Justice and the Ministry of Social Affairs and Interior and the Head of the Danish Delegation to GRECO. In a

¹ The letter was sent on 15 June 2012.

separate meeting, the delegation of GRECO met with representatives of all political parties in the Danish Parliament (Folketinget). The Minister made a commitment to actions to be taken aiming at improving the level of compliance with GRECO's recommendations (concerning political financing). It was also stated that discussions between all political parties represented in the Folketinget were about to start.

8. The current Fifth Interim Compliance Report was drawn up by Ms Lorena PULLUMBI (Albania) and Ms Marja VAN DER WERF (the Netherlands), with assistance from the GRECO Secretariat. It evaluates further steps taken by the authorities to comply with the pending recommendations (i.e. recommendation i under Theme I and recommendations i-ix under Theme II) since the adoption of the Fourth Interim Compliance Report.

II. **ANALYSIS**

Theme I: Incriminations

Recommendation i.

9. *GRECO recommended to put beyond doubt that all forms of “undue advantages” are covered by the relevant bribery offences concerning foreign public officials and officials of international organisations/assemblies/courts.*
10. It is recalled that this recommendation has been assessed as not implemented, lastly in the Fourth Interim Compliance Report. In summary GRECO had taken note of the authorities' interpretation of Section 122 of the Criminal Code (CC), which remained the same as analysed and criticised in the Evaluation Report. As for the Guidelines issued by the Director for Public Prosecution (DPP), GRECO had found that they fell short of the requirements of the recommendation and, moreover, that the Ministry of Justice's booklet on “How to avoid corruption”, which had been updated in 2015 to fall in line with the DPP's Guidelines represented a step backwards as the revised text indicated that small facilitation payments, although generally to be discouraged, made in connection with international business transactions in order to induce a public official to act in contravention of his/her duties (but only in this situation) will always be undue and thus constitute a criminal offence. Moreover, the situation concerning the different forms of bribery of officials of foreign assemblies and courts had not been clarified. The authorities had also submitted that in September 2014 an “Anti-Corruption Forum” (bringing together representatives of the Ministry of Justice, the DPP, SØIK, the Ministry of Foreign Affairs, the Ministry of Finance, etc.) had been launched with the goal of attaining improved co-ordination and information sharing between authorities for the fight against corruption. The authorities had also reported that, in September 2015, the SØIK was to establish a reinforced international unit for investigating and prosecuting cases with an international dimension, including all cases in Denmark concerning bribery of foreign public officials. Despite this information, GRECO could not conclude that all forms of “undue advantages” had been covered by the relevant bribery offences concerning foreign public officials.
11. The Danish authorities now reiterate their position, as stated at the adoption of the Evaluation Report in 2009 and throughout the compliance procedure - including the clarifications referred to above - that Danish law criminalises bribery, including in respect of facilitation payments to the extent required by the Criminal Law Convention.

12. GRECO notes that the legal situation remains the same to date as it did at the time of the adoption of the Evaluation Report.
13. GRECO concludes that recommendation i remains not implemented.

Theme II: Transparency of Party Funding

14. It is recalled that in the Evaluation Report GRECO had addressed nine recommendations to Denmark in respect of Theme II and that all of them have been considered not implemented to date.
15. *GRECO recommended:*
 - *to introduce a ban on donations from donors whose identity is not known to the political party/election candidate (recommendation i);*
 - *that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the Accounts of Political Parties Act, be complemented with an obligation upon political parties to report the total value of donations provided by each donator, in addition to the identity of the donors (recommendation ii);*
 - *to provide further guidance on the reporting and valuation of in-kind contributions to political parties (recommendation iii);*
 - *to consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public (recommendation iv);*
 - *to consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible, regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties (recommendation v);*
 - *to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed (recommendation vi);*
 - *to ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties (recommendation vii);*
 - *to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (recommendation viii); and*

- *that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive (recommendation ix).*

16. It is also recalled that at the beginning of 2013, a review of the national rules on party funding had been announced by the Speaker of Parliament and, in March 2014, a Committee of experts on the transparency of financial contributions to the Danish political parties had been established by the Government to draw up models for possible future regulation in this area. In March 2015, the Committee had produced a *Report on openness concerning financial support to political parties*, containing proposals aimed at increasing transparency with respect to private and public sources of financing to political parties and reinforcing the accounting duty of parties and candidates. Different models for future regulation in this sphere were also presented. In the Fourth Interim Compliance Report, GRECO was of the opinion that the suggestions by the Committee represented a suitable basis for launching a comprehensive legal reform² and expressed support, in particular, for the proposed “Model 2”, which envisaged reforms in line with GRECO’s recommendations. However, following the publication of the report, no further actions have been reported.
17. The authorities of Denmark now state that since the high-level meeting that took place on 25 May 2016, between representatives of GRECO, the Danish Government and representatives of political parties (referred to in paragraph 7), no political agreement has as yet been reached.
18. GRECO takes note of the information that, so far, no tangible results have been reported in respect of the recommendations concerning political financing and concludes that recommendations i-ix remain not implemented.

III. CONCLUSIONS

19. **GRECO concludes that no tangible progress has yet been achieved by Denmark as regards the implementation of the ten recommendations found not to be implemented in the Fourth Interim Compliance Report (out of the fourteen included in the Third Round Evaluation Report).**
20. With respect to Theme I – Incriminations, recommendation i remains not implemented as do all nine recommendations under Theme II – Transparency of Party Funding.
21. As far as the pending Theme I recommendation is concerned, GRECO notes that nothing has changed in respect of the position taken by the authorities with regard to small facilitation payments. GRECO insists that it still has to be ensured beyond doubt that all facilitation payments are covered by the relevant bribery provisions.
22. Concerning the transparency of political financing (Theme II), GRECO has already commended the authorities for the 2015 “Report on openness concerning financial support to political parties”, which appears to be a suitable starting point for legal reform in this area. That said, GRECO regrets that since then – and despite the High-level meeting that was held between representatives of GRECO (including its President) and representatives of the Danish

² The Report is broken down into ten sections which describe, *inter alia*, the existing legislation on party funding, outline the principle features of the political debate in the Danish Parliament on the current provisions governing the political financing, review the funding provisions for political parties in several European countries and discuss the recommendations emanating from GRECO and the European Commission.

Government (including the Minister of Justice) and representatives of all political parties represented in the Danish Parliament (Folketinget) – no concrete step forward has been reported. The Danish authorities are again encouraged to initiate reforms in line with the commitment of the Minister of Justice, at the above mentioned high-level meeting, to take actions with a view to achieving tangible results as soon as possible.

23. GRECO concludes that the level of compliance with the recommendations remains “globally unsatisfactory” (within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure).
24. Pursuant to Rule 32, paragraph 2 subparagraph (i) of the Rules of Procedure, GRECO requests the Head of Delegation of Denmark to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendation i under Theme I and recommendations i-ix under Theme II) by 30 September 2017.
25. GRECO invites the authorities of Denmark to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.