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Third Evaluation Round

Fourth *Interim* Compliance Report on the Czech Republic

"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 the Czech Republic was adopted at GRECO's 50th Plenary Meeting (28 March – 1 April 2011) and made public on 29 April 2011, following authorisation by the Czech authorities (Greco Eval III Rep (2010) 10E, [Theme I](#) and [Theme II](#)). As required by GRECO's Rules of Procedure, the authorities submitted a Situation Report on measures taken to implement the thirteen recommendations contained in the Evaluation Report. GRECO selected Italy and Hungary to appoint Rapporteurs for the compliance procedure.
2. The [Compliance Report](#) was adopted at GRECO's 59th Plenary Meeting (22 March 2013) and made public on 4 April 2013, following authorisation by the Czech authorities. It concluded that of the four recommendations under Theme I – Incriminations, recommendation ii had been dealt with in a satisfactory manner, recommendations iii and iv 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. This made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore applied Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
3. The First [Interim Compliance Report](#) was adopted at GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 4 April 2014, following authorisation by the authorities. It concluded, with respect to Theme I that recommendations i, iii and iv had been partly implemented and, with respect to Theme II, that recommendations i-ix remained not implemented. Since the level of compliance was assessed again as “globally unsatisfactory”, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO had instructed its President to send a letter to the Head of Delegation of the Czech Republic to GRECO, drawing her attention to the non-compliance with the relevant recommendations.
4. The [Second Interim Compliance Report](#) was adopted at GRECO's 66th Plenary Meeting (12 December 2014) and made public on 5 February 2015, following authorisation by the authorities. It concluded that no changes had occurred in the rating of the pending recommendations under Theme I and Theme II. The level of compliance was therefore again assessed as “globally unsatisfactory” and, in accordance with Rule 32, paragraph 2 subparagraph (i), GRECO instructed its President to transmit a letter to the Permanent Representative of the Czech Republic to the Council of Europe, drawing his attention to the need for determined action to be taken with a view to achieving tangible progress as soon as possible. GRECO also requested the Head of Delegation of the Czech Republic to GRECO to provide a report on the action taken to implement the pending recommendations by 30 September 2015.
5. In the [Third Interim Compliance Report](#) which was adopted by GRECO at its 70th Plenary Meeting (4 December 2015) and made public on 12 February 2016, following authorisation by the authorities, GRECO noted that there had been some progress especially on Theme II since draft legislation had been prepared. But overall, GRECO maintained its assessment that the level of compliance with the recommendations remained “globally unsatisfactory” and it invited the authorities to report back on further action taken. The authorities submitted new information on 30 September 2016.
6. The current Fourth *Interim* Compliance Report was drawn up by Ms Maria Laura PAESANO (Italy) and Ms Nora BAUS (Hungary) with assistance from the GRECO Secretariat. It assesses further steps made by the authorities in order to comply with the pending recommendations (i.e.

recommendations i and iv under Theme I and recommendations i-ix under Theme II) since the adoption of the Third *Interim* Compliance Report.

II. ANALYSIS

Theme I: Incriminations

Recommendation i.

7. GRECO recommended to clarify that bribery of all categories of employees in the public sector is covered, regardless of whether they are able to fundamentally influence a final decision in connection with procuring affairs in the public interest or not.
8. GRECO recalls that this recommendation has been considered partly implemented since the adoption of the Interim Compliance Report. The authorities have continuously maintained that the existing bribery provisions of the Criminal Code cover all categories of employees in the public sector. However, as it was pointed out in the previous interim reports, bribing someone “in connection with procuring affairs in the public interest” is understood by the Supreme Court to refer to “a person deciding or co-deciding on the affair in the public interest” or “a person who does not have any decision-making authority but – for example – prepares background information for a decision” or conducting other activities which could “fundamentally influence the final decision”. An almost identical interpretation is found in the 2010 Methodological guidance issued by the Supreme Prosecutor’s Office. Although the authorities have referred to one court case where a broader interpretation was given to the concept “in connection with procuring affairs in the public interest”, GRECO concluded that this did not establish with certainty that all public sector employees, in particular those exercising ancillary jobs, whose tasks or actions cannot be considered as “fundamentally influencing the final decision”, fall within the scope of the bribery and trading in influence provisions.
9. The authorities of the Czech Republic indicate in their latest submission that there have been no new development and that, in their view, the broad interpretation of the definition of bribery offences, as underlined in previous situation reports, continues to prevail.
10. GRECO regrets the lack of progress and urges the authorities to fully implement the present recommendation.
11. GRECO concludes that recommendation i remains partly implemented.

Recommendation iv.

12. GRECO recommended to clarify in an unequivocal manner the way in which bribery of foreign arbitrators and foreign jurors is criminalised in the Czech Republic and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.
13. GRECO recalls that this recommendation was partly implemented in previous compliance reports. While the first part of the recommendation had been addressed already in 2013, there has been a persisting lack of progress in respect of the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption.
14. The authorities of the Czech Republic now report that the ratification process of the Additional Protocol is still being prepared.

15. GRECO regrets the absence of any progress in respect of the second part of the recommendation and that the Czech Republic has still not become a party to the Additional Protocol. It calls upon the authorities to ensure full compliance with this recommendation.
16. GRECO concludes that recommendation iv remains partly implemented.

Theme II: Transparency of Party Funding

17. It is recalled that in the Third *Interim* Compliance Report GRECO welcomed the on-going legislative process aiming at amending the Political Parties and Movements Act (AAPP) and several electoral laws.
18. The authorities of the Czech Republic now report that the act amending the Political Parties and Political Movements Act (AAPP, no. 424/1991 Coll.) was adopted by Parliament ([document No. 569](#)) on 24 August 2016 and published as Act no. 302/2016 Coll. on 21 September 2016. The act amending the Parliamentary Elections Act (APEA, no. 247/1995 Coll.), the Regional Assembly Elections Act (ARAE, no. 130/2000 Coll.), the Elections to the European Parliament Act (AEEP, no. 62/2003 Coll.) and the Presidential Elections Act (APE, no. 275/2012 Coll.) was adopted by Parliament ([document No. 568](#)) on 6 September 2016, and published as Act no. 322/2016.
19. The authorities furthermore point out that the amendments to the above mentioned acts shall enter into force on 1 January 2017, with the following exceptions concerning the AAPP:
 - Articles 19b-19e AAPP, establishing the Office for Supervision of Political Parties and Movements, entered into force on the date of its publication in the Collection of Laws,
 - Article 19c(3)(f) AAPP regarding the eligibility criteria for the Chair of the Office, which require that to be appointed, one shall not have been politically active in the past 3 years, enters into force on 1 January 2020,
 - Article 19e(3)(f) AAPP on the eligibility criteria for members of the Office (which provides for a similar disqualification for a period of 2 years), enters into force on 1 January 2019,
 - new provisions related to the allocation of state support to the functioning of political parties and their institutes enter into force on the first day after the first elections to the Chamber of Deputies following publication of this Act in the Collection of Laws.

Recommendation i.

20. *GRECO recommended to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements.*
21. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented as the authorities had presented draft legislation, *inter alia*, establishing caps on the total amount of support which can be provided annually by a natural or legal person to a political party or movement and caps applicable to membership fees which would, if adopted, introduce certain safeguards to limit risks that membership fees be used to circumvent the transparency rules applicable to donations. Further details on the draft legislation were provided in previous compliance reports.
22. The authorities of the Czech Republic now report that the amended Political Parties and Political Movements Act (AAPP) now provides that the total value of donations for one natural or legal

person, whether monetary or in-kind, shall not exceed CZK 3 000 000 (EUR 110 819) per year.¹ In the same provision it is stated that membership fees exceeding CZK 50 000 (EUR 1 847) shall be considered as donations for the purpose of calculating the total value of donations per year. In case a person pays membership fees equal to CZK 49.999 (thus below the threshold), s/he may still donate to the party 3 000 000 (EUR 110 819), making the real maximum contribution CZK 3 049 999 (EUR 112 666).

23. Furthermore, the AAPP, as amended, provides that the annual financial report of the party/movement is to include: (a) a list of all donors, the amounts donated by them and the market value of any in-kind donation including when the donor is a party member²; (b) a list of all services provided free of charge if their overall usual value exceeds CZK 50 000/EUR 1 847³; and (c) a list of party members whose membership fee exceeds CZK 50 000/EUR 1 847 in one calendar year⁴. If a political party obtains a donation, whether monetary or in-kind, in breach of the Act, it shall return the donation to the donor no later than the 1 April of the following year. If the donation cannot be returned, the political party shall transfer a sum of money equivalent to the value of the donation or its usual price to the state budget.
24. GRECO takes note of the information provided. It is pleased that several of the intended amendments presented earlier by the Czech Republic in order to implement the present recommendation have materialised, including the overall caps on private support to political parties and movements which apply to donations and to membership fees. It also notes that the annual reports are to contain the values of donations (including in-kind donations) and the identity of the donors. The accounts are also to include a list of political party members who have exceeded the cap on membership fees, and that what is in excess of this threshold is to be considered a donation. GRECO acknowledges that these measures correspond to several of the concerns behind the current recommendation, as they will aim at ensuring that contributions in excess of the membership fee threshold will be accounted for as donations. Consequently, the previous situation where donations could be disguised by members through labelling them as membership fees have been considerably limited in the new legislation.
25. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

26. *GRECO recommended to establish precise rules for the valuation and reporting of in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value.*
27. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented, pending the adoption of the amendments (to AAPP, APEA, ARAE, AEEP and APE).

¹ Article 18(2) AAPP. Parent and subsidiary companies are considered as one legal person for the purposes of the Act.

² Article 19h(1)(g) AAPP. Donors should be identified by name and date of birth in case of natural persons and name and ID in case of legal persons.

³ Article 19h(1)(h) AAPP. Donors should be identified by name and date of birth in case of natural persons and name and ID in case of legal persons.

⁴ Articles 19h(1)(j) and 6 (2)(b) (9) AAPP

28. The authorities report that the valuation of in-kind and other donations, services provided by donors and loans shall be done in accordance with the Property Evaluation Act (No. 151/1997 Coll.).

S. 1(1) of the Act no. 151/1997 Coll., on Evaluation of Property: *“The Act regulates ways of property evaluation, legal rights and other monetary values (hereinafter “property”), and services for purposes determined by special laws.”*

S. 2(1) of the Act no. 151/1997 Coll: *“Property and services are to be evaluated at their usual price, unless provided otherwise. For the purpose of this act usual price means the price that was achieved in sales of the same or similar property or in provision of the same or similar service in the course of usual business activities in the Czech Republic at the time of evaluation. All circumstances that effect the price shall be taken into account, except exceptional circumstances related to the market, personal relations of the vendor or the vendee, and personal endearment of the property or services in question. For the purpose of this act exceptional circumstances mean e.g. sale under stress of the vendor or the vendee, or natural or other catastrophes. Personal relations mean especially property relations, family relations or other similar relations between the vendor and the vendee. Personal endearment of the property or services results from personal relationship towards the property or services in question of the vendor or the vendee. Usual price expresses the value of the property or services in question and is to be determined by comparison.”*

29. Moreover, the authorities refer to the reporting obligations concerning in-kind donations and other services provided free of charge⁵, noted in respect of recommendation i. Furthermore, the authorities report that the annual financial statements of political parties shall now contain a list of all loans and other debts, including information on their value, the contractual obligations (conditions), the terms and repayment deadlines, and the identification of the creditor/lender⁶.
30. GRECO welcomes that the requirements of the Property Evaluation Act now apply in respect of the valuation of in-kind donations. It also welcomes the adoption of the relevant amendments to the electoral laws, especially the inclusion of specific provisions on “credits, loans and other debts”⁷ in the AAPP and in the electoral laws, as well as on goods and services provided at preferential rates.⁸ Overall, significant improvements have thus been made in respect of the current recommendation.
31. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

32. *GRECO recommended to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control.*
33. GRECO recalls that in the Third *Interim* Compliance Report this recommendation was partly implemented, pending the adoption and entry into force of the amendments to the AAPP. GRECO was satisfied that the amendments to the AAPP would bring greater transparency with regard to the shareholding of political parties/movements in commercial companies (with the inclusion in the financial statements of information on any shareholding and the related income, as well as of the information on political institutes affiliated with political parties or movements, as well as the availability of financial data online through the public register of legal persons).

⁵ Articles 19 (1) (g) and 19 (1) (h) AAPP

⁶ Article 19h(1)(c)(2) AAPP

⁷ Article 19h(1)(c)(2) AAPP

⁸ Article 16c, Law amending electoral laws and other related laws of 6 September 2016

34. The authorities state that political parties may not engage in business activities under their own name⁹. However, they may form, or own a share in, a corporation or a co-operative conducting business in certain areas¹⁰. Pursuant to amendments to the AAPP, the final accounts of such entities will be audited in accordance with the Auditors' Act¹¹ and the annual financial report should refer to the corporations/co-operatives in which the party holds shares and the amount of such a financial participation¹².
35. Moreover the authorities submit that the amendments to the AAPP enable a party to establish a "political institute" - a legal person that carries out research, publishing, educational or cultural activities in certain domains¹³. The "political institute" shall make publicly available all outcomes of its activities¹⁴. The authorities specify that state support can be provided to the activities of a political institute only if the latter has been registered with public utility status. This contribution cannot be used to finance the activities of political parties' campaigns, nor campaigns of independent candidates¹⁵. A political party is reportedly eligible for state contribution in support of a political institute only if at least one of its members in the Chamber of Deputies has been elected at least twice in the last three elections, including the most recent one. This contribution can only be used to finance the functioning of the political institute¹⁶. The annual financial report of a party shall include references to the name and the address of the political institute and the expenses paid by the party in support of it. As for the other financial data on entities related directly or indirectly to a political party or movement (incl. their income), they are accessible through the public register of legal persons¹⁷. Political institutes do not have a separate reporting obligation. Moreover, the same provisions apply for political institutes and political parties as far as bank accounts are concerned. Also, the Office shall have authority to supervise financing of political parties institutes under Sec.19f(a) AAPP.
36. GRECO takes note of the improvements introduced as a result of the above amendments to the AAPP. These amendments increase the transparency of the shareholding of political parties/movements in commercial companies. The legislature has finally decided to include in the annual financial report the list of all corporations/co-operatives in which the political party hold shares and the amount of those shares, but no further financial information such as the actual income generated by this financial participation, contrary to what the draft amendments provided for previously. GRECO recalls that the present recommendation left some discretion to the Czech Republic as to how to reflect in the financial statements of the parties the situation of entities related to them and that it did not impose the full consolidation in the parties' accounts of the financial situation of entities possibly controlled by them (including their income and expenditure, assets, debts and liabilities). However, with the amendments which have now been adopted, the

⁹ Article 17(2) AAPP

¹⁰ Article 17(3) AAPP. These domains are as follows : (a) publishing, printing, radio or TV broadcasting, (b) publication and promotional activities, (c) organization of cultural, social, sport related, recreational, educational or political activities, (d) manufacture and retail of promotional objects related to the activities of that political party.

¹¹ The same auditor may be appointed for up to 5 consecutive years.

¹² Article 19h(1)(c)(1) AAPP

¹³ Article 17(4) AAPP. These domains are as follows: (a) development of democracy, rule of law, pluralism and protection of fundamental rights and freedoms; (b) development of civil society and social cohesion; (c) support of active participation of Czech citizens in public life; (d) improvement of the quality of political culture and public discourse; and (e) contribution to international co-operation and understanding.

¹⁴ Article 17 (5) AAPP

¹⁵ Article 17 (7) AAPP

¹⁶ Article 20 (5) AAPP

¹⁷ Pursuant to the Public Registers of Legal and Natural Persons Act (no. 304/2013 Coll.) the final accounts of all legal persons are to be published in the Public Register. The public register shall contain among others "annual reports, regular and exceptional final accounts, if they are not included in the annual report, allocation of profits, way of handling losses and the auditor's assessment regarding the final accounts." (Article 66 (c))

amount of information on related entities which is to be included in the parties' annual report (and subsequently made available to the public) does not give a meaningful picture of the political parties' actual financial capacity. GRECO cannot consider that the present recommendation has been fully implemented.

37. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

38. *GRECO recommended to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public.*
39. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented, pending the adoption and entry into force of the intended amendments to the AAPP. GRECO welcomed the authorities' intention to make the annual financial reports of political parties and movements public, through on-line access.
40. The authorities now report that following the recent adoption of amendments to the AAPP, the annual reports of political parties become public and accessible both at the premises of the Office for the Oversight of Financing of Political Parties and Movements and on its Internet website, not later than 7 days following their submission¹⁸. The political parties are required to file their annual financial reports with the Office by the 1 April for the previous financial period¹⁹. As for election campaign reports, pursuant to the amendments to the APEA, the ARAE, the AEEP and the APE, these will be published by the parties running, movements and independent candidates not later than 90 days after the relevant elections²⁰.
41. The authorities also submit that political parties may only use funds kept on bank accounts held in financial institutions of the Czech Republic, except for expenses not exceeding CZK 5.000/EUR 185 (for which cash may be used)²¹. Political parties have "special accounts" (a) for state contributions, income from donations (including in-kind), (b) transactions regarding remuneration of the political parties or political institute's employees, (c) financing of election campaigns in light of electoral laws, (d) other expenses (including membership fees)²². The political parties shall report to the Office the numbers of the bank account mentioned under (d) above, and on request of the Office the numbers of the account mentioned under (b) above²³. The political party, the political institute or any other person requesting a transaction for or from a special bank account must indicate the purpose of the transaction in the transaction order²⁴. The special accounts are accessible to the public at any moment free of charge²⁵. Parties and political institutes are to provide the Office with the address of the website of their special accounts and the Office shall make this information public²⁶, while the financial institutions where special/transparent accounts

¹⁸ Article 19h(6) AAPP

¹⁹ Article 19h(1) AAPP

²⁰ Parties, movements and independent candidates will also be obliged to submit these reports to the Office alongside the completed books of accounts on the relevant election campaign.

²¹ Article 17a(1) AAPP

²² Article 17a(2) AAPP

²³ Article 17a(4) AAPP

²⁴ Article 17b(1) AAPP

²⁵ Article 17a(3) AAPP

²⁶ Article 17b(3) AAPP

are open shall enable the public to view the transaction history of each account for the last three years²⁷.

42. GRECO welcomes the adoption of the amendments to the AAPP and to the electoral laws. The new legislation requires on-line publication of the annual financial reports of political parties and movements and those concerning election campaigns. This is an important development to achieve more transparency.
43. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

44. *GRECO recommended to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns.*
45. GRECO recalls that in the Third *Interim* Compliance Report this recommendation was partly implemented, pending the adoption and entry into force of the relevant amendments. The draft amendments provided for the annual financial reports of political parties to cover expenses for election campaigns (mentioned by types of election), the duty to open a special account for the election campaign, the requirement to keep proper accounts, the publication of all donations and donors and of election campaign reports.
46. With regard to the first part of the recommendation, the authorities specify that, following the adoption of the recent amendments, the annual financial reports of political parties will include *inter alia* expenses pertaining to election campaigns²⁸, to be sorted according to the type of election a political party/movement has participated in during the previous year. Any cash transaction should be properly reflected in the final accounts. All parties, movements and independent candidates are required to keep a book of accounts (in accordance with the applicable accountancy legislation) and a record of donations of any nature²⁹.
47. Regarding the second part of the recommendation, the authorities specify that following the adoption of amendments to the APEA, the ARAE, the AEEP and the APE, the list of all donors supporting a particular political party, coalition or independent candidate must be published no later than 3 days before the day of elections. The overall election campaign reports shall be published no later than 90 days after the election and shall include *inter alia* a list of all donations, including those in kind, services received as donations with an indication of their usual value, as well as a list of all loans and the list of all expenses³⁰ related to the election campaign with a

²⁷ Article 17b(2) AAPP

²⁸ The election campaign is defined as “any promotion or agitation in favour of or against running political party, or coalition, their candidates or independent candidates”. Election campaign begins on the day of announcement of the date of the elections and ends on the day of announcement of its results. Media owned by local authorities or by companies owned by those authorities may not be used for the purpose of election campaign. All means of promotion or agitation must contain information on the person who submitted it and who processed it.

²⁹ Election campaign financing covers all expenses related to the election campaigns

³⁰ The overall expenses may not exceed 90.000.000,- CZK/3 324 590 EUR in case of election campaign for the Chamber of Deputies, 2.000.000,- CZK/73 879 EUR for the first round of elections to the Senate (2.500.000,- CZK/92 349 EUR for both rounds of Senate elections), 7.000.000,- CZK/258 579 EUR multiplied by number of regions where the political party or coalition ran for the elections (max. 14) to the Regional Assemblies and 40.000.000,- CZK (1 477 595 EUR) for the first round of Presidential elections (50.000.000,- CZK/1 846 994 EUR for both rounds). This includes all expenses that the running political party, coalition, or independent candidate has paid or is scheduled to pay, as well as expenses that third parties have paid or are scheduled to pay in form of a gift or in-kind donation on their behalf.

statement of purpose (if any goods or services were provided for a lower price than the usual price, the usual price shall be noted). A political party, coalition or independent candidate shall provide their complete books of accounts to the Office within 90 days after the elections.

48. The authorities also submit that political parties are obliged to open a “special” (“transparent”) bank account for the purpose of an election campaign not later than five days from the announcement of the date of an election. This account must only be used for all transactions related to electoral campaigns. Within 60 days after the elections, the funds of the transparent account shall be either transferred to the general transparent bank account of the political party in question (applies to political parties) or to support some charity (applies to independent candidates). In case of proceedings regarding breach of election laws, the finances shall be frozen for up to 180 days after the elections and may be potentially used for paying possible fines for those breaches. Every candidate is responsible for ensuring that their transparent bank account is accessible via the internet and that their address is known to the public. Political parties, coalitions or independent candidates are obliged to provide this information to the Office.
49. With respect to part one of the recommendation, GRECO welcomes the fact that all election-related expenses are now broken down by type of election and are no longer included as an aggregate amount in the party annual financial reports. GRECO notes with satisfaction the introduction of detailed provisions regarding election campaign reports, with deadlines for their submission by political parties, political coalitions or independent candidates (for the latter with a specific deadline with respect to charity organisations). There has thus been undeniable progress on this part of the recommendation, which can therefore be considered as implemented.
50. As for the second part of the recommendation, GRECO welcomes the introduction of a requirement for a prompt opening of special transparent accounts for electoral campaigns. The adopted legislation does provide for a more elaborate and frequent reporting and disclosure mechanism: access to the “transparent” bank account established specifically for the purpose of an election campaign, publication of information on all donations, including in-kind, and donors, three days prior to the date of an election and the publication of election campaign reports 90 days after the elections. Taking into account the above-mentioned, this part of the recommendation has also been implemented.
51. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

52. *GRECO recommended to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves.*
53. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented. GRECO welcomed the many intended revisions in the various electoral laws which aimed at subjecting independent election candidates to transparency standards comparable to those applying to political parties and movements.
54. The authorities now indicate that the adopted amendments introduce the definition “registered third person” - a natural or a legal person that takes part in the election campaign on behalf of

one of the running entities, not necessarily with their consent³¹. The “registered third person” has to register with the Office³² and respect all obligations imposed on the entities running in a campaign. It is thus required to keep a record of all expenses, including those spent on polls, on advertisements in the mass-media and other places (e.g. bill-boards). The registered third persons shall publish the information on their website within 10 days after the election and make it available for at least 3 months; the data shall furthermore be kept by the third party for a period of 5 years.

55. A registered third person may not spend more than CZK 1 800 000/66 491 EUR for a campaign conducted in support of an official political competitor. It shall also establish a special account in order to be able to conduct campaigning activities. Financial information concerning this bank account shall be published under the same conditions as those applying to official competitors. No later than 15 days after the election, independent candidates shall publish information on their website on which charity organisations were supported from the funds left on their transparent bank account.
56. Moreover, the authorities point to several amendments to the APEA, the ARAE, the AEEP and the APE and to the following obligations they establish for independent election candidates which will be broadly identical to those applicable to political parties/movements. First, election candidates have to open “special” (“transparent”) bank accounts within five days of the announcement of the day of an election and this account will be used exclusively for the execution of all transactions pertaining to the financing of an election campaign. Secondly, candidates have to keep a book of accounts in accordance with the relevant legislation and a record of all donations of any nature. Thirdly, candidates have to publish the list of all donors no later than three days prior to the date of an election. Fourthly, candidates make their “transparent” bank accounts accessible on the Internet and inform the public and the Office for the Oversight of Financing of Political Parties and Movements of the exact internet address of those accounts. Finally, an election campaign report has to be published not later than 90 days after the election and the requirements regarding its contents have been made identical for parties and election candidates.
57. GRECO welcomes the adoption of the relevant amendments, which subject the independent election candidates to transparency standards largely comparable to those applying to political parties and movements: registration with the Office for the Oversight of Financing of Political Parties and Movements, requirement to keep records of all expenses, publication of records on donations, obligation to open a transparent account and make it accessible, publication of the election campaign report. Significant overall improvements have thus been made in respect of the present recommendation.
58. GRECO concludes that recommendation vi has been implemented satisfactorily.

³¹ These entities may not become registered third parties: state, municipalities and regions, voluntary associations of municipalities and regions, state/ municipality/ region owned corporations in which they hold more than 10% of its shares, certain types of NGOs, political institutes, trusts, other legal persons if provided for in other Acts, legal persons seated outside of the Czech Republic, natural persons without EU citizenship, natural or legal persons that on their own account create content, publish and distribute printed media or run radio or TV broadcasting.

³² Registration requirements are name, address or seat and ID number. The Office has no discretion in evaluation of applications for registration. The Office publishes list of registered third persons on its website. Registered third person may commence its campaign related activities after its name is published by the Office.

Recommendation vii.

59. *GRECO recommended to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements.*
60. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented. GRECO accepted that in the country's context – the Constitutional Court has considered that prohibiting an auditor from auditing his/her own party interfered with the independence of political parties – the rotation of auditors was an appropriate measure that is likely to strengthen the credibility of the audit.
61. The authorities now report that the relevant amendments to the AAPP have been adopted³³. Pursuant to the Auditors' Act, the final party accounts or the final accounts of a corporation or a co-operative in which a party holds shares must be verified by an auditor appointed by an advisory board of a party for a consecutive period not exceeding five years.
62. GRECO welcomes the adoption of the relevant amendments to the AAPP which introduce a mandatory rotation – on a five year basis – of auditors involved in the certification of the accounts of political parties. It is clear that the Czech Republic has thus given due consideration to the objectives of the present recommendation. More could of course be done in future. As it was pointed out in the Evaluation Report and recalled in the previous compliance report, public confidence in the audit of the political parties' financial situation is at a low level in the Czech Republic: the authorities need to bear this in mind and to envisage taking further measures to reduce the risks of political bias, for instance by requiring the larger parties to appoint a second auditor.
63. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

64. *GRECO recommended to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns.*
65. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented, pending the adoption of the relevant amendments, the setting-up of the Office for the Oversight of Financing of Political Parties and Movements and the allocation of the necessary resources to this body to enable it to effectively and proactively perform its duties. GRECO underlined that the establishment of the Office would represent an important achievement.

³³ Articles 17(9) and 17 (10) AAPP

66. The authorities now report that following the adoption of the recent amendments, the Office for the Oversight of Financing of Political Parties and Movements will be established as a central administrative authority (accounting entity), with its own budget. The Office is an independent institution and its activity is regulated by law. The Office is composed of the Chair, four members and Office employees. The remuneration of the Chair and four members of the Office is regulated by the same provisions as the ones that apply to the Chair and Vice-Chair of any committee of the Chamber of Deputies³⁴. The Chair is appointed for a six-year term, renewable once, by the President of the Republic from two candidates nominated by the Chamber of Deputies and the Senate³⁵. The President may dismiss the Chair if s/he ceases to fulfil the legal requirements³⁶. Specific eligibility³⁷ and incompatibility³⁸ criteria have been defined for the Chair, including the absence of a criminal record as a public official. The four members of the Office are appointed by the President of the Republic for a renewable six-year term from among candidates elected by the Senate on the basis of nominations made by the President of the Supreme Audit Office, the Chamber of Deputies and individual Senate members³⁹. Candidates must fulfil the same requirements as candidates for the position of Chair, with an exception related to their previous experience in political parties and political bodies – which, in the case of members of the Office, is limited for two preceding years.
67. The competencies of the Office include the following: (a) supervise, monitor and verify the financing of political parties/movements; (b) publish the annual financial reports of parties and its related findings and provide methodological guidance; (c) sanction breaches of the AAPP; (d) provide information to the Ministry of Finance regarding submission of annual reports by political parties; (e) publish its own annual activity reports; (f) fulfil other tasks as required by law. The Office acts *ex officio* or following a complaint and has access to relevant information from the state register of residents and foreigners. An amendment to the Banks Act enables the receipt of information normally shielded by bank secrecy⁴⁰. Political parties have an obligation to cooperate with the Office. Additionally, by virtue of amendments to the APEA, the ARAE, the AEEP and the APE, the Office supervises the due financing of election campaigns and sanctions breaches of those acts. The Office's website shall contain information on the websites of the political parties, coalitions, and independent candidates, their transparent bank accounts, and election campaign reports.
68. GRECO welcomes the adoption of the recent amendments providing for the establishment of the Office for the Oversight of Financing of Political Parties and Movements. Actually, articles 19b-19e AAPP regarding the establishment of the Office entered into force on the date of its

³⁴ Act no. 236/1995 Coll, on remuneration and other issues related with execution of state authority of representatives of the state, other public bodies, judges and European Parliament members

³⁵ Article 19d(2) AAPP

³⁶ Article 19c(3) AAPP

³⁷ Eligibility requirements for appointment as a chair-person: knowledge, experiences and moral characteristics that provide for an assumption that the person will duly perform his/ her duties, Czech citizenship, legal capacity to act, integrity, fulfils requirements for becoming a state official, master's degree. Also, for the time of 3 years preceding his/ her appointment, the candidate was not: political party member, parliament member, European Parliament member, regional assembly member.

³⁸ Incompatibilities: the chair-person may not at the same time act as the President of the Republic, member of the government, president, vice-president or member of the Supreme Audit Office, member of the board of the Central Bank, Parliament member, European Parliament member, judge, prosecutor, or as any other public official, public servant or member of any political party or movement. The chair-person may not be involved in any other gainful activity, with the exception of administration of his own property and scientific, artistic or pedagogical work if such activity does not hamper public trust, independence and impartiality of the Office.

³⁹ One member is elected from candidates nominated by the president of the Supreme Audit Office, two members are elected from those nominated by the Chamber of Deputies and one member is elected from those nominated by individual members of the Senate.

⁴⁰ Article 38(3)(f) of the Act on Banks (no. 21/1992 Coll).

publication in the Collection of Laws. Still, GRECO notes that Article 19e(3)(f) AAPP, on eligibility criteria for members of the Office, requiring them not to be active in political parties in the past 2 years, will enter into force only on 1 January 2019. Article 19c(3)(f) AAPP, regarding eligibility criteria for the Chair of the Office not to be politically active in the past 3 years, shall enter into force only on 1 January 2020. GRECO is concerned by this situation which must be considered in conjunction with other factors such as the lack of a clear requirement to organise selection tenders and the fact that although the mandate of the chair and members of the Office is fairly long, it remains renewable. Moreover, the information provided by the authorities at this stage does not allow to conclude that the Office has appropriate resources, including employees and legal tools to perform its tasks effectively and proactively. Last but not least, as it was noted in the previous report in the compliance procedure, the Office has been given a mandate for the in-depth financial monitoring of political parties and election campaigns.

69. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

70. *GRECO recommended to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list.*

71. GRECO recalls that at the stage of the Third *Interim* Compliance Report this recommendation was partly implemented. GRECO acknowledged that the amendments to the AAPP and to the electoral laws provided for flexible administrative sanctions applicable to political parties/movements and to election candidates.

72. The authorities now report that the relevant amendments to the AAPP have been adopted. The sanctions are applicable to political parties, political institutes, natural business persons, natural and legal persons. A political party is liable to a fine of up to CZK 200 000 (EUR 7 380) for violations such as acts as prohibited means of income (in breach of Art.17(8) AAPP), failure to open a separate bank account (in breach of Art.17a AAPP) or a “special” (“transparent”) bank account (in breach of Article 17 b AAPP), the non-submission of an annual financial report on time (in breach of Art. 19h(1) AAPP), failure to provide the Office with the Internet address for the website of the account (in breach of Art.17b AAPP), failure to provide required information to the Office for the Oversight of Financing of Political Parties and Movements (in breach of Art.17a(4) AAPP) or return of a donation after the required deadline (in breach of Article 18(3) AAPP)⁴¹. Failure to correct deficiencies in the annual report found by the Office in due time in accordance with Article 19h(5) AAPP is punishable by a higher fine – up to CZK 2 000 000 (EUR 73 808)⁴². Failure to return a donation, including an in-kind donation or failure to transfer such a donation or an amount equivalent to its usual value to the state budget (in breach of Art.18(3) AAPP) is subject to a fine equal to double the value of the donation, or forfeiture of the item⁴³. Political institutes are liable to a fine of up to CZK 200 000 (EUR 7 380) for violations such as use of the State budget contribution in breach of Article 17(7) AAPP, failure to open a separate, including “transparent”, bank accounts (in breach of Article 17a AAPP), failure to supply the requested information to the Office (in breach of Article 17a(4) AAPP) or failure to provide the Office with Internet address for the website of the account (in breach of Article 17b AAPP)⁴⁴. A fine of up to

⁴¹ Article 19j(2) and (3), AAPP

⁴² Article 19j(2) and (3), AAPP

⁴³ Article 19j(2) and (3), AAPP

⁴⁴ Article 19k(1,2) AAPP

CZK 2 000 000(EUR 73 808) has been introduced for legal persons and natural business persons requesting a transaction to or from a “special” (“transparent”) bank account without indicating its purpose⁴⁵.

73. The authorities also state that amendments to the APEA, the ARAE, the AEEP and the APE have introduced sanctions in respect of participants in elections, i.e. independent candidates, political parties or their coalitions, as well as in respect of natural and legal persons including businesses. Offences committed by candidates are subject to differentiated administrative fines. For example, failure to indicate the name of the candidate or political party on the campaign material and breaches of the legal provisions governing the election campaign reports are punishable by a fine ranging from CZK 10 000 (EUR 369) to CZK 100 000 (EUR 3 690)⁴⁶. The non-publication of the information on the identity of a donor, failure to show required information on transparent bank account or failure to disclose information on in-kind donations are punishable by a fine ranging from CZK 20 000 (EUR 738) to CZK 300 000 (EUR 11 072)⁴⁷. Breaches of the provisions on the “transparent” bank account or failure to keep books of accounts as required by law are punishable by a fine ranging from CZK 30 000 (EUR 1 107) to CZK 500 000 (EUR 18 455)⁴⁸. Failure to ensure that election-related expenses are kept below the statutory limit will be punishable by a fine ranging from CZK 10 000 (EUR 369) to up to 150% of the election campaign expenses that have exceeded the statutory limit⁴⁹. The sanctions to be established for parties and their coalitions will be largely identical. As for natural person, legal person or natural business person, these may be liable to a fine ranging from CZK 10 000 (EUR 369) to CZK 100 000 (EUR 3 690) for offences such as, for example, enabling the media owned by local authorities to be used for the purpose of an election campaign or failure to ensure that the campaign material in favour or against a party, coalition or candidate contains details on the person who has submitted/processed it⁵⁰. In addition, the same sanctions apply in the adopted amendments for participation in the election campaign without registration as registered third person⁵¹.
74. The authorities furthermore submit that the Office for the Oversight of Financing of Political Parties and Movements acts as an administrative authority for the adjudication and sanctioning of the aforementioned breaches, with minor exceptions⁵². When deciding on a sanction, the Office shall take into account the circumstances of the case such as the seriousness of the offence, the way in which it was committed, its consequences including for the future existence of the party/movement. Proceedings are time-barred after three months or two years, depending on the case⁵³ after the Office has learnt about it, or three years after the offence has been committed. Decisions of the Office can be appealed before a court of law.
75. GRECO acknowledges that the amendments to the AAPP and to the electoral laws introduce a broad range of flexible administrative sanctions applicable in relation to infringements involving political parties/movements as well as in respect of violations relating to election campaigns. As compared with the situation described in the Evaluation Report (paragraphs 43-46), this is a major achievement, which provides the Office for the Oversight of Financing of Political Parties

⁴⁵ Article 19j(1) AAPP

⁴⁶ Article 16g(1) and 16g(2), APEA

⁴⁷ Article 16g(2), (h,i,k), APEA

⁴⁸ Article 16g(2), (b-g), APEA

⁴⁹ Article 16g(2), (j), APEA

⁵⁰ Article 16g(1) (a,b) and 16h(1) (a,b), APEA

⁵¹ Article 16g(1) (d) and 16h(1) (d), APEA

⁵² Some breaches, e.g. of the obligation established by the electoral laws not to publish the results of the opinion polls regarding the elections three days prior to the date of an election, will fall within the jurisdiction of regional authorities depending on the residence of the person in question.

⁵³ APEA, ARAE, AEEP, APE – three months; AAPP – 2 years

and Movements with a number of sanctions which can be used in a flexible way as intended by this recommendation.

76. GRECO concludes that recommendation ix has been implemented satisfactorily.

III. CONCLUSIONS

77. **GRECO concludes that the Czech Republic has now implemented nine of the thirteen recommendations contained in the Third Round Evaluation Report and that notable progress has thus been achieved by the Czech Republic.**

78. With respect to Theme I – Incriminations, recommendations i and iv remain partly implemented and with regard to Theme II – Transparency of Party Funding, recommendations i, ii, iv, v- vii and ix have now been implemented satisfactorily and recommendations iii and viii remain partly implemented.

79. As for incriminations, GRECO regrets the lack of any progress. The authorities are urged once more to address the two remaining concerns, namely the need to clarify that all public sector employees, in particular those exercising ancillary jobs, fall within the scope of the bribery and trading in influence provisions of the Criminal Code and to accelerate the process of signing and ratifying the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

80. With regard to transparent political financing, GRECO is pleased that, after a lengthy process and substantial delay, a package of amendments to the Political Parties and Movements Act and to several electoral laws has finally been adopted. This represents an important achievement which will lead to more transparency in respect of political financing in the Czech Republic. Significant improvements have been made to make political parties' accounts more informative and transparent in respect of various forms of income, expenditure, loans, etc. Measures have also been taken to make financial reports more easily accessible to the public by means of using timely on-line publication. Similar measures have been applied in respect of financing of election campaigns. The establishment of the Office for the Oversight of Financing of Political Parties and Movements is another important positive development which will need to be reassessed once it is fully operational, in respect of issues such as its true independence and efficiency, which to a large degree depends on its resources and means available, including sanctions.

81. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

82. In accordance with paragraph 8.2 of Rule 31 revised of its Rules of Procedure, GRECO asks the head of the delegation of the Czech Republic to submit to it by 30 September 2017 a report on the measures taken for the purposes of implementing the outstanding recommendations (recommendations i and iv of Theme I and recommendations iii and viii of Theme II).

83. Finally, GRECO invites the authorities of the Czech Republic 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.