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Third Evaluation Round

Addendum to the Second Compliance Report on Malta

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 75th Plenary Meeting
(Strasbourg, 20-24 March 2017)

I. INTRODUCTION

1. This Addendum assesses further measures taken by the authorities of Malta since the adoption of the previous Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Malta. It is recalled that the Third Evaluation Round covers 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 44th Plenary Meeting (8 October 2009) and made public on 10 November 2009, following authorisation by Malta (Greco Eval III Rep (2009) 2E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Maltese authorities submitted situation reports with information regarding actions taken to implement the recommendations within the framework of the compliance procedure. GRECO selected Cyprus and the Slovak Republic to appoint Rapporteurs for the compliance procedure.
4. The First Compliance Report was adopted by GRECO's 52nd Plenary Meeting (21 October 2011) and made public on 2 January 2012, following authorisation by Malta ([Greco RC-III \(2011\) 11E](#)). GRECO recognised the efforts made by Malta to tackle its recommendations: all nine recommendations issued to Malta had been partly implemented and substantial legislative reforms were underway in respect of both themes under evaluation. GRECO invited the Maltese authorities to submit additional information regarding the implementation of all recommendations.
5. The Second Compliance Report was adopted by GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 25 March 2014 ([Greco RC-III \(2013\) 22E](#)). GRECO concluded that Malta had implemented satisfactorily two recommendations under Theme I and that one remained partly implemented. It also concluded that Malta had not made any tangible progress on Theme II – Transparency of Party Funding, as compared to the situation assessed in the First Compliance Report more than two years earlier (and well over four years since the adoption of the Evaluation Report). Given the fact that none of the six recommendations addressed to the country in the aforementioned area had been implemented satisfactorily or dealt with in a satisfactory manner, GRECO considered the overall response as “globally unsatisfactory” in 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 Malta to provide a report on the progress made in implementing recommendations i to vi (Theme II – Transparency of Party Funding).
6. In the Interim Compliance Report, adopted by GRECO's 65th Plenary Meeting (10 October 2014) and made public on 24 June 2015 ([Greco RC-III \(2014\) 21E](#)), GRECO noted that the pending recommendation under Theme I had been implemented satisfactorily. However, it also noted that

all recommendations under Theme II remained partly implemented. In the light of the limited progress achieved by Malta, GRECO concluded that the level of compliance with the recommendations remained “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure and requested Malta to report back regarding the action taken to implement the pending recommendations.

7. Further, on 16 October 2014, and in accordance with Rule 32, paragraph 2, subparagraph (ii.a), GRECO instructed its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of the Maltese delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to attaining tangible progress as soon as possible.
8. A Second Interim Compliance Report, was adopted by GRECO’s 69th Plenary Meeting (16 October 2015) and made public on 4 December 2015 ([Greco RC-III \(2015\) 15E](#)). GRECO concluded that, with respect to Theme I, all three recommendations had been implemented satisfactorily, while regarding Theme II, two recommendations (ii and iv) had been implemented satisfactorily and four recommendations (i, iii, v and vi) had been partly implemented. GRECO therefore concluded that the current level of compliance with the recommendations was no longer “globally unsatisfactory”. Application of Rule 32 was discontinued and Malta was requested to submit additional information regarding the implementation of recommendations i, iii, v and vi (Theme II – Transparency of Party Funding). This information was sent by Malta on 30 September 2016.
9. The current Addendum to the Second Compliance Report, drawn up by Ms Alexandra KAPIŠOVSKÁ (Slovak Republic), assisted by the GRECO Secretariat, assesses the further implementation of the pending recommendations i, iii, v and vi since the adoption of previous compliance reports.

II. ANALYSIS

Theme II: Transparency of Party Funding

10. Reference is made throughout the report to the Financing of Political Parties Act (FPPA), which regulates the financing of political parties and independent election candidates and applies to local, general and European elections; it was adopted by the Maltese Parliament and published in the Government Gazette on 28 July 2015 and came into force on 1 January 2016. The authorities also refer to the Fourteenth Schedule to the General Elections Act (GEA), Chapter 354, which regulates certain aspects of the involvement of independent candidates in national elections previously included in the Seventh Schedule to the Electoral (Polling) Ordinance.

Recommendation i.

11. *GRECO recommended (i) to introduce a general requirement for both political parties and election candidates to disclose all individual donations (including of a non-monetary nature) they receive above a certain value together with the identity of the donor and to revise spending limits in respect of election candidates; and (ii) to introduce a general ban on donations from donors whose identity is not known to the party or candidate.*
12. GRECO recalls that this recommendation was considered partly implemented. With regard to part (i) of the recommendation, GRECO acknowledged that spending limits had been reviewed, as

recommended. However, this part of the recommendation remained partly implemented due to the high disclosure threshold which applies to parties, and to the inconsistent disclosure rules established for independent candidates. As concerns part (ii) of the recommendation, GRECO welcomed the general ban on anonymous donations (other than small amounts below EUR 50 collected at party rallies or events). However, GRECO found a potential loophole of the system, since the so-called “confidential donations” (donations below EUR 500) do not have to be registered. Thus, this part of the recommendation was also assessed as partly implemented.

13. The authorities of Malta stress that the FPPA now makes it clear that all donations to political parties over EUR 50 must be recorded by source in their books. While sources only have to be reported to the Electoral Commission for donations above EUR 7 000, the Electoral Commission can request disclosure of the sources of any donation above EUR 50 received by a political party. For donations under EUR 500, it must establish that there are reasonable grounds to believe that the amount actually donated confidentially from the same source in a period of one year exceeds EUR 500 (Article 37(4) FPPA). The authorities further clarify that the rules for the recording of donations by source and the information to be provided to the Commission also apply to independent candidates (Article 38(6) FPPA). Regarding the level of disclosure thresholds, the authorities are of the view that, while there may be a case to revisit the current thresholds when political parties and independent candidates get used to the law, the lowering of this threshold at this initial stage in the local context would be likely to be seen as oppressive and to give rise to undesirable circumvention measures. They give the example of a political party that launched a scheme of 10-year loans of EUR 10 000 each, at an interest rate of 4% per year, with the source being kept confidential, arguing that these loans were apparently made on commercial terms in a manner which is arguably not in breach of the FPPA.
14. GRECO takes note of the information provided by the Maltese authorities, which indicates that, with the adoption of the FPPA, Malta has come a long way in creating a regulatory framework to provide for transparency in respect of the funding of political parties and election candidates. In particular, GRECO welcomes the steps taken to adjust spending limits in respect of election candidates, to establish a general ban on anonymous donations and to provide for an obligation for both political parties and candidates to record in their books any donation over EUR 50.
15. Concerning disclosure thresholds, GRECO takes note of the considerations made by Malta as to how their tightening may lead in practice to undesirable effects circumventing the spirit of the law. However, GRECO underscores that the EUR 7 000 disclosure threshold is much higher than in other European countries. GRECO regrets this situation. In point of fact, GRECO has reiterated in its pronouncements on this matter that high disclosure thresholds are inadequate to ensure a sufficient level of transparency in the funding of political activities.
16. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

17. *GRECO recommended to develop a co-ordinated approach for the publication of political financing accounts and/or reports (including party and election campaign financing) in order to facilitate the public's access to such documents.*
18. GRECO recalls that this recommendation was considered partly implemented. While welcoming the introduction of a requirement on the Electoral Commission to publish on its website political parties' annual financial statements, including in connection with electoral campaigns, it pointed

out that work on defining the format and contents of the annual statement was still on-going. It further noted that parties were allowed to decide on the dates on which to open and close their financial year, which in turn impacted on the dates for the submission and publication of annual statements, thus preventing a co-ordinated approach to the publication of annual statements. It also noted that the time limit for the publication of parties' annual statements (five months from the end of their respective financial year) had not been reduced, as had been previously suggested. As regards independent candidates, it was not clear whether they had an obligation to publish donations from legal persons.

19. The authorities of Malta indicate that the FPPA has now been supplemented by subsidiary legislation (S.L.544.02) entitled "Forms of Political Party Financial Statements Regulations" which standardises the forms to be submitted by political parties for publication on the Electoral Commission's website. As to the question of political parties adopting the same opening and closing dates for the financial year covered by their annual statement, the authorities indicate that there appears to be broad agreement: discussions are ongoing and the two main political parties are moving towards a uniform period of accounting. Regarding independent candidates, Article 38(6) FPPA stipulates that they must prepare donation reports showing the amounts received by way of donations for the period from their nomination as independent candidate until the election, and submit them to the Electoral Commission. Under Article 50 of the Fourteenth Schedule to the GEA, they must also submit, within 31 days of the publication of the election results, a return on their electoral expenses. In this respect, the authorities add that Article 4 of the Interpretation Act, Chapter 249 of the Laws of Malta, stipulates that the expression "person" used in Article 50 of the Fourteenth Schedule to the GEA includes a body or other association of persons whether or not they have been granted legal personality in accordance with the Civil Code.
20. GRECO welcomes the steps taken to meet recommendation iii and further align publication requirements in a meaningful and timely manner. Standard forms for political parties' annual financial statements are now available. Discussions have been engaged with political parties with a view to harmonising the starting and ending dates of their financial years so that their annual statements coincide and are published at the same time, even though the outcome of these discussions is not known yet. As regards independent candidates, the authorities have clarified that the wording of Article 50 of the Fourteenth Schedule to the GEA concerning information to be included in the return on election expenses by all candidates does cover payments made by legal persons to cover their electoral expenses.
21. Considering that the harmonisation of dates of political parties' financial years and annual statements is still pending and that this has a clear impact on a coordinated and timely publication of political accounts, GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

22. *GRECO recommended to effectively ensure independent monitoring of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4.*
23. GRECO recalls that this recommendation was considered partly implemented. While welcoming the extension of the Electoral Commission's supervisory duties over the funding of independent election candidates, it considered that the Commission's oversight remained fairly limited since it did not cover candidates' election-related expenditure. Further, while Article 45 FPPA provides for the appointment of one or more auditors to assist the Commission with its monitoring function, the

effectiveness of the Commission could not be assessed as the FPPA had not entered into force and the system had therefore not become fully operational.

24. The authorities of Malta now refer to the newly added Article 52 of the Fourteenth Schedule to the GEA, which stipulates that where the Commissioners, after examining the return of the election expenses of an elected candidate, determine *prima facie* that there is false information in this return or that an elected candidate has incurred election expenses in an amount exceeding the amount permissible by law, the Electoral Commission will file an application with the Constitutional Court asking it to determine with urgency the question as to whether the seat of the said candidate has become vacant in terms of paragraph (ff) of sub-article (1) of Article 55 of the Constitution.
25. GRECO welcomes the fact that Article 52 of the Fourteenth Schedule to the GEA gives additional powers to the Electoral Commission should an elected candidate provide *prima facie* incorrect information in his/her election expenses return or should he/she have gone beyond the amount allowed by law in terms of electoral expenses. While considering that the powers of the Commission would gain in being further broadened, GRECO views this additional power of the Electoral Commission as a positive development. With regard to the operability of the system, GRECO notes that the FPPA is now fully enforceable; it entered into force on 1 January 2016. Time and experience will show whether the monitoring system established by law effectively performs its tasks concerning political financing.
26. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

27. *GRECO recommended that existing and yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by appropriate sanctions, which are effective, proportionate and dissuasive*
28. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed the introduction of administrative and criminal law sanctions for breaches of the FPPA; however, it regretted that in certain cases a clear link between obligations and sanctions seemed to be missing and that the system did not provide for greater flexibility regarding the application of sanctions (with a current emphasis on criminal measures). GRECO further called for additional measures to provide for appeal proceedings in respect of independent candidates.
29. The authorities of Malta indicate that with regard to the applicability of Article 34 FPPA to independent candidates, in line with Article 40 FPPA, the contents of GRECO's comments in this regard have been taken note of, and consider that a purposive interpretation of the law would clarify the applicability of Article 34 FPPA to independent candidates. In this connection, the Maltese authorities emphasise that the role of independent candidates in elections is minimal and that, in practice, independent candidates lack adequate resources to campaign for elections. The authorities also underline that the FPPA provides for reporting and disclosure by independent election candidates as well as for the imposition of the same administrative sanctions on independent candidates as those applicable to political parties. With regards to Article 44(2) FPPA articulating appeal proceedings, the Maltese authorities point out that the term "and other interested persons" includes independent candidates. The difference in the sanctions regime applicable to political parties and independent candidates has now been eliminated.

30. GRECO notes that there is still no direct indication that Article 34 FPPA on the list of prohibited donations for political parties also applies to independent candidates even if this can be deduced from Article 40 FPPA which indicates that donations reports to the Electoral Commission must declare that all donations received are permissible. Further, GRECO takes note of the fact that Article 44(2) FPPA on appeal proceedings to contest findings of breaches of the FPPA is interpreted as covering independent candidates under the term “other interested persons”. GRECO invites the authorities to unequivocally clarify their interpretation of the FPPA, for instance by adopting official guidelines on its implementation.
31. GRECO notes that, where applicable, the FPPA provides for the same administrative and criminal law sanctions for both political parties and independent candidates. Rules on elections expenses reports, which are applicable to independent candidates, are now included in the GEA and the sanction for illegal practice in relation to electoral expenses are fines, but only on criminal conviction. Therefore, GRECO once again invites the authorities to consider introducing administrative fines for less serious offences relating to electoral expenses reports.
32. GRECO concludes that recommendation vi has been partly implemented.

III. CONCLUSIONS

33. **In view of the conclusions contained in the previous Third Round Compliance Reports on Malta and in light of the above, GRECO concludes that to date, Malta has implemented satisfactorily or dealt with in a satisfactory manner six of the nine recommendations contained in the Third Round Evaluation Report.**
34. With respect to Theme I – Incriminations, all three recommendations have been implemented satisfactorily and, with respect to Theme II – Transparency of Party Funding, recommendation v has now been implemented satisfactorily (recommendations ii and iv had already been considered implemented satisfactorily), while recommendations i, iii, and vi remain partly implemented.
35. Malta has amended its Criminal Code in a way that meets all the concerns raised in the Evaluation Report under Theme I – Incriminations, including ratifying the Additional Protocol to the Criminal Law Convention.
36. With regard to Theme II, Malta has put in place a legal framework for increasing the transparency of party funding which was altogether lacking as transpires from GRECO’s evaluation report. The entry into force in 2016 of the Financing of Political Parties Act (FPPA) constitutes an important milestone, and the authorities should be commended for this important step forward to enhance transparency and accountability in an area previously unregulated. The FPPA has introduced many requirements which are in line with Recommendation (2003)4, in particular the keeping of books and accounts which are audited and monitored, at regular intervals, by an independent oversight body, the Electoral Commission, vested with the authority to impose sanctions in case of non-compliance and to publish political parties’ annual financial statements and donations reports on its official website. A number of requirements of the FPPA apply to independent candidates as well, in particular donations reports transmitted to the Election Commission for oversight.
37. In GRECO’s view, the current legislative regime has very valid features to better regulate money flows in politics, it is now essential that the few gaps left are closed. While GRECO welcomes the

recent publication of a standard form for political parties' annual financial statements, it considers it crucial for parties to align the dates of their financial years so that annual financial statements are posted on the Electorate Commission's website at the same time and can be more easily accessed and compared. Furthermore, for meaningful publication of political finances, the current disclosure threshold, which stands at EUR 7 000, should be lowered in accordance with the practice of most other GRECO member states. GRECO also calls on the authorities to provide for more flexible sanctions in respect of less serious violations pertaining to the electoral expenses reports.

38. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Malta.
39. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.