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Third Evaluation Round

Addendum to the Second Compliance Report on Portugal

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

* * *

"Transparency of Party Funding"

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

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of Portugal, since the adoption of the Compliance Report, in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Portugal. 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 49th Plenary Meeting (3 December 2010) and made public on 8 December 2010, following authorisation by Portugal (Greco Eval III Rep (2010) 6E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 58th Plenary Meeting (7 December 2012) and made public on 17 December 2012, following authorisation by Portugal ([Greco RC-III \(2012\) 20E](#)). In view of the low level of compliance with the recommendations issued in the Third Evaluation Report, GRECO decided to apply Rule 32 of its Rules of Procedure, regarding action in respect of non-complying members, and invited the Portuguese delegation to provide a report on the progress made in implementing the pending recommendations. The Interim Compliance Report was adopted at GRECO's 61st Plenary Meeting (18 October 2013) and made public on 24 October 2013, following authorisation by Portugal ([Greco RC-III \(2013\) 18E](#)). On the basis of the progress substantiated by Portugal in the Interim Compliance Report, GRECO decided not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the evaluation report. The second compliance report was subsequently adopted at GRECO's 67th Plenary Meeting (27 March 2015) and made public on 1st April 2015, following authorisation by Portugal ([Greco RC-III \(2015\) 2E](#)).
3. In view of the fact that five of the six recommendations concerning theme I – incriminations were yet to be fully implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asked the Head of the Portuguese delegation to submit additional information regarding the implementation of recommendations i to v (Theme I – Incriminations) by 31 December 2015 at the latest. This deadline was extended and the discussion of the present report postponed due to GRECO's workload. A situation report was thus submitted by the authorities on 20 April 2016; it served as a basis for the present Addendum to the Second Compliance Report.
4. GRECO had selected the Netherlands and Monaco to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for this Addendum to the Second Compliance Report were Mr Bart RUNNEBOOM, Law Enforcement Department, Ministry of Security and Justice (Netherlands) and Mr Jean-Marc GUALANDI, Technical Advisor, Financial Information and Monitoring Department (SICCFIN), Ministry of Finance and Economy (Monaco). They were assisted by GRECO's Secretariat in drawing up the present report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its evaluation report addressed six recommendations to Portugal in respect of Theme I. One of these – recommendation vi – was assessed as implemented satisfactorily in the First Compliance Report. Recommendations i to v were assessed as partly implemented in the Interim Compliance Report. The situation remained unchanged in the Second Compliance Report.
6. As a general introductory remark, the authorities point out that draft Law 453/XII, which was approved by all political parties in a final parliamentary vote on 20 February 2015, was subsequently published in the Official Gazette, after its enactment by the President of the Portuguese Republic, as Law Nr 30/2015. It entered into force on the same day, on 22 April 2015. It amended several provisions, in particular Articles 118, 335, 374-B and 386 of the Criminal Code, article 8 of Law Nr. 20/2008 on the new criminal framework to combat corruption in international trade and in the private sector, as well as Article 3 of Law Nr. 34/87 on the liability of political officeholders.

Recommendations i, ii and iii.

7. *GRECO recommended:*

- *to enlarge the scope of application of the legislation concerning active and passive bribery of foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies as well as judges and officials of international courts, in order to fully comply with the requirements of Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173); (recommendation i);*
- *to criminalise active and passive trading in influence in respect of foreign/international officials in conformity with Article 12 in conjunction with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) (recommendation ii);*
- *to ensure that bribery of foreign arbitrators and jurors is criminalised under Portuguese law in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and to proceed swiftly with the ratification of this Instrument (recommendation iii).*

8. GRECO recalls that these recommendations had been considered partly implemented. In the *interim* report to the first Compliance Report of October 2013, GRECO had welcomed the planned amendments to the Criminal Code and other related criminal law provisions, as contained in draft Law 453/XII stating that, if adopted in their current wording, they would satisfy the requirements of all recommendations. GRECO also stated at a later stage (second Compliance report of March 2015) that it was looking forward to assessing the final text of the amendments. It also welcomed the ratification of the Additional Protocol to the Criminal Law Convention (ETS 191), which would enter into force in respect of Portugal. However, it regretted that “a reservation was made to the Protocol, according to which Portugal “reserves the right not to establish the bribery of foreign arbitrators and foreign jurors as criminal offences as described in Articles 4 and 6 of the Protocol, except for infractions committed fully or partially in Portuguese territory”. According to explanations provided by the Portuguese authorities, this reservation is

only temporary, pending the entry into force of Law 453/XII, after which the reservation will be withdrawn. GRECO points out that, according to Article 9.2 of the Protocol, a reservation to Articles 4 and 6 is only possible if the Party has made a similar reservation to Article 5 of the Criminal Law Convention. Such a reservation was made by Portugal, but it expired on 1 March 2009⁹. It therefore urged the Portuguese authorities to withdraw the reservation to the Additional Protocol as soon as possible, as it is contrary to the aim of recommendation iii which is to criminalise bribery of foreign arbitrators and jurors.

9. The authorities indicate that in order to fully comply with this recommendation, Law nr 30/2015 was adopted and entered into force on 22 April 2015. It has introduced the following amendments to the Criminal Code and to Law nr. 34/87 of 16 July 1987, on the liability of political officeholders; these are marked in bold and underlined:

Criminal Code

Article 386 – Concept of public official [*funcionário*]

1 - For the purposes of the criminal law the expression public official includes:

- a) The civil servants;
- b) The administrative agents; and
- c) The arbitrators, jurors and experts; and
- d) Whoever, even provisionally or temporarily, against remuneration or without any payment, voluntary or compulsorily, has been called to perform or to participate in the performance of an activity comprised in the public administrative or judicial function, or in the same circumstances, perform functions in public utility bodies or participates therein.

2 - The managers, the members of oversight bodies and the employees of public companies, nationalised companies, State-owned companies or companies which majority of the share capital is public as well as of concessionaires of public services are equivalent to public officials.

3 - For the purposes of Articles 335 and 372 to 374, are also equivalent to a public officials:

- a) the judges and public prosecutors, public officials, agents and other persons with an equivalent status of organisations of public international law ~~the European Union~~, regardless of their nationality and place of residence;
- b) the public officials who are nationals of other States, whenever the offence has been committed, in whole or in part, in Portuguese territory;
- c) all those who perform functions similar to those described in paragraph 1 in the framework of any international organisation governed by public law of which Portugal is a member, whenever the offence has been committed, in whole or in part, in Portuguese territory;
- d) the judges, public prosecutors and officials of international courts, provided that Portugal has declared to accept the jurisdiction of such courts;
- e) all those who perform functions in the scope of extrajudicial resolution of conflicts' procedures, irrespective of their nationality and residence, whenever the offence has been committed, in whole or in part, in Portuguese territory;
- f) foreign jurors and arbitrators, whenever the offence has been committed, in whole or in part, in Portuguese territory;

4 - The equivalency to a public official, for the purposes of criminal law, of who performs political functions is governed by special law.

Law nr. 34/87 on the liability of political officeholders

Article 3 - Political office

(...)

2 - For the purposes of articles 16 to 19, the political officeholders of international organisations, as well as those of foreign states, are considered equivalent to national political officeholders, regardless of their nationality and residence, whenever the offence has been committed, in whole or in part, in Portuguese territory;

(...)

10. The Portuguese authorities indicate that in accordance with article 9 paragraph 2 of ETS 191, the reservation to the Protocol was renewed for the period 1 July 2015 to 1 July 2018 and that the country still reserves its right not to criminalise bribery of foreign arbitrators and foreign jurors, as provided for in Articles 4 and 6 of the Protocol, except where the offense has been committed in whole or in part in the Portuguese territory.
11. GRECO recalls that Portuguese law criminalises bribery and trading in influence through various pieces of legislation: a) the Criminal Code, which covers the offences of bribery and trading in influence involving public officials (or officers/functionaries, depending on the translation used for *funcionário*); b) Law 34/87 on the liability of political officeholders, which covers the bribery offences involving political officeholders; c) Law 20/2008 which is specifically aimed at active corruption in international business transactions, involving national and foreign officials, officials of an international organisation and national and foreign political officeholders (and which also deals with private sector bribery). Given the specific focus of the latter for public sector corruption, GRECO had left it out of focus.

As regards specifically recommendation i.

12. the Portuguese authorities take the view that active and passive bribery of all the categories of persons referred to in articles 5, 6, 9, 10 and 11 of ETS 173 is now criminalised in article 386, paragraph 3 a), b), and d) and in article 3, paragraph 2 of Law 34/87, on the liability of political officeholders. They also consider that paragraph b) of article 386 - which continues to refer to "acts committed in whole or in part in the Portuguese territory", is fully in line with Article 17 of the Criminal Law Convention on Corruption.
13. GRECO considers that the new provisions of article 386 paragraph 3 items a), b) and d) of the Criminal Code, combined with the new wording of article 3 paragraph 2 of Law nr. 34/87 on the liability of political office holders of international organisations and foreign countries refer to all pertinent categories of officials.
14. The Portuguese authorities may wish bear in mind that as GRECO pointed out in the Evaluation Report (para. 96), *"[it] should be added that there is [an] (...) additional requirement contained in Article 386 CC, namely that the bribery offence by an official of an EU Member State or an official of an international organisation must have been committed at least partly in Portugal. Consequently, the narrow approach of Article 386 CC further limits the scope of the application of the bribery offences in the foreign context."*
15. GRECO notes that in the light of the full wording of the amended provisions, the incriminations of bribery now contain this restriction in relation to nearly all categories of foreign and international office holders (as well as arbitrators and jurors – see recommendation iii) mentioned in article 386 CC and in article 3 of Law 34/87. The main exceptions are the bribery offences involving "judges and public prosecutors, public officials, agents and other persons with an equivalent status of organisations of public international law" and those concerning "judges, public prosecutors and officials of international courts".
16. GRECO anticipated that the above restriction would be removed when Portugal updates its legislation and criminalises foreign and international bribery broadly, in line with the Convention. But this did not materialise. GRECO does not agree that such a restriction would be in line with article 17 of the Convention because it prevents Portugal from having jurisdiction also over the criminal offences contemplated under article 17 which have not, in whole or in part, been

committed in its territory.¹ Leaving apart this aspect, the main objective of the recommendation has been achieved.

17. GRECO concludes that recommendations i, has been implemented satisfactorily.

As regards specifically recommendation ii,

18. The Portuguese authorities refer to the provisions below:

Criminal Code
Article 335 - Trading in influence

1 - Whoever, by himself or through a third party, with his consent or ratification, requests or accepts, for himself or for a third party, an advantage, whether of economic nature or not, or its promise, to abuse of his influence, actual or supposed, before any public entity, is punished:

- a) With imprisonment from one to five years, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any unlawful favourable decision;
- b) With imprisonment of up to three years, or with a fine, if a more serious penalty is not applicable to the offender through another legal provision, and if the purpose is to obtain any lawful favourable decision;

2 - Whoever, by himself or through a third party, with his consent or ratification, gives or promises, an advantage, whether of economic nature or not, to the persons mentioned in the previous number for the purposes mentioned in paragraph a) is punished with imprisonment of up to three years or with a fine.

Criminal Code
Article 386 – Concept of public official [*funcionário*]

3 - For the purposes of Articles 335 and 372 to 374, are also equivalent to public officials:
(...) [see full text in paragraph 9]

19. They stress that trading in influence is criminalised both in its active and passive form in Article 335 of CC, which is rather broad in scope, as results from the use of the term “whoever” (both in the active and passive forms of the offence). Article 386 paragraph 3 (first sentence) CC now lists a series of professions who are considered equivalent to national public officials for the purposes of the application of Portuguese criminal law to acts of trading in influence. In addition, according to Article 5, paragraph 1 a) CC, the Portuguese criminal law is applicable to the offence of trading in influence irrespective of the place where the acts have been committed.
20. They take the view that Article 12 of ETS 173 criminalises the trilateral relationship where a person having real or supposed influence on persons referred to in Articles 2, 4, 5, and 9 –11, trades this influence in exchange for an undue advantage from someone seeking this influence (according to the explanatory report) and that in this sense it does not require the criminalisation

¹ Definitions of incriminations and jurisdiction rules are two different subject-matters which should not be mixed-up. By being an integral part of the definition of incriminations, the territorial limitation becomes a mandatory condition for the prosecution of bribery and trading in influence and this may impact negatively on the country's jurisdiction. Article 17 provides for a series of alternative jurisdiction criteria which include that a country be also able to prosecute offences committed outside the national territory, for instance those committed by its nationals, those involving its public officials or those involving international officials who are also nationals.

of active and passive trading in influence in respect of foreign or international officials. The authorities consider that this recommendation has therefore been fully implemented.

21. GRECO takes note of the above. Leaving aside the gaps pointed out under the analysis of recommendation iv below, the enumeration of those officials who are equated with a “public official” under article 386 CC paragraph 3 – as amended – now makes also a cross reference to article 335 CC on trading in influence offences. However, the definition of article 386 CC (reproduced in full in paragraph 9) does not cover clearly all pertinent categories of officials, especially those referred to in articles 5, 6 and 10 of the Convention, for instance where the target of the influence is a foreign political office-holder such as a mayor or minister (who are “public officials” in the sense of article 1a of the Convention) or a member of a foreign or international assembly.
22. As it was explained by the Portuguese authorities in the Evaluation Report, the concept of a “public entity” applies only within the borders of Portugal and it therefore covers domestic officials broadly including political office-holders such as mayors, ministers and assembly members, but not similar functions in foreign jurisdictions or in an international assembly/organisation.
23. The authorities now object that the content of the explanatory report to the Convention deviates from the letter of the Convention when it comes to the determination of the categories of officials actually referred to under article 12 of the Convention. GRECO recalls that the Convention itself is clear in this regard and that it requires the criminalisation of trading in influence in relation to the officials mentioned under articles 2, 4 to 6 and 9 to 11 of the Convention. These include foreign and international officials (also those who are political office-holders).
24. In conclusion, GRECO cannot but maintain its earlier conclusion on the implementation of the present recommendation and it urges the Portuguese authorities to amend the legislation so as to comply consistently and unequivocally with article 12 of the Convention. As an additional remark which bears no consequences for the overall conclusion, the authorities may wish to bear in mind that the incrimination of trading in influence is also affected by the frequent limitation to offences committed “in whole or in part within Portuguese territory” contained in article 386 CC. GRECO wishes to stress again that incriminations and jurisdiction rules are two different subject-matters which should not be mixed up for the reasons mentioned before (see paragraphs 13 et seq.).
25. GRECO concludes that recommendations ii remains partly implemented.

As regards specifically recommendation iii.

26. As regards the first part of recommendation iii, article 386 paragraph 3 item f) of the Criminal Code (CC) now extends the categories of persons equated with public officials to “foreign jurors and arbitrators.
27. However, as pointed out earlier, bribery of foreign arbitrators and jurors is criminalised only insofar as the offence was committed fully or partly in the national territory and Portugal has not withdrawn the reservation to the Protocol – which is problematic for the reasons stated in paragraph 8 above. It has actually renewed it in 2015 for a further period of three years. GRECO reiterates that by maintaining a reservation to the Protocol, Portugal is in contradiction with article 9.2 of the Protocol because a reservation to articles 4 and 6 is only possible if the Party has made a similar reservation to article 5 of the Criminal Law Convention (which is not the case). GRECO

urges the authorities once again to withdraw the reservation to Protocol ETS 191 as soon as possible.

28. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

29. *GRECO recommended (i) to increase the criminal sanctions in respect of bribery in the private sector and trading in influence in order to ensure effective, proportionate and dissuasive sanctions as required by Article 19 of the Criminal Law Convention on Corruption (ETS 173); (ii) to criminalise trading in influence (active form for "licit" act) in conformity with Article 12 of the same Convention and (iii) to adjust the limitation period for trading in influence to that of public sector bribery.*
30. GRECO recalls that this recommendation was considered partly implemented pending the final adoption and entering into force of the intended amendments presented in the First Compliance Interim Report of October 2013.
31. The authorities confirm that in order to implement Recommendation iv, Law nr 30/2015 amends articles 8 and 9 of Law nr 20/2008, and articles 118 and 335 of the Criminal Code. The amendments (in bold and underlined) entered into force on 22 April 2015:

Law nr. 20/2008, establishing the new criminal framework to combat corruption in international trade and in the private sector

Article 8 - Passive corruption in the private sector

1 - Whoever works for a private sector entity and who, by himself or through a third party, upon his consent or ratification, either demands or accepts, for himself or for a third party, any undue advantage, whether patrimonial or non-patrimonial, or the promise thereto, for any act or omission contrary to the duties inherent to the office he holds, shall be punished with imprisonment up to five years or with a fine up to 600 days.

2 - Where the action or omission referred to in the preceding paragraph is likely to distort competition or to cause a financial damage to third parties, the offender shall be punished with imprisonment from one to eight years.

Article 9 - Active corruption in the private sector

1 - Whoever by himself, or through a third party, upon his consent or ratification, either gives or promises the person referred to in the previous article, or to a third party with the former's knowledge, any undue advantage, whether patrimonial or non-patrimonial, shall be punished with imprisonment up to three years or with a fine.

2 - Where the conduct referred to in the preceding paragraph seeks to obtain or is likely to distort competition or to cause a financial damage to third parties, the offender shall be punished with imprisonment up to five years or with a fine up to 600 days.

Article 335 - Criminal Code - Trading in influence

1 - Whoever, by himself or through a third party, upon his consent or ratification, either demands or accepts, for himself or for a third party, an advantage, whether patrimonial or non-patrimonial, or the promise thereto, to abuse his influence, real or alleged, before any public entity, is punished:

- a) With imprisonment from one to five years, unless a more severe penalty applies by virtue of another legal provision, if the purpose is to obtain any unlawful favourable decision;
- b) With imprisonment up to three years or with a fine, unless a more severe penalty applies by virtue of another legal provision, if the purpose is to obtain any lawful favourable decision.

2 - Whoever, by himself or through a third party, upon his consent or ratification, either gives or promises an

advantage, whether patrimonial or non-patrimonial, to the persons referred to in the preceding paragraph for the purposes mentioned in sub-paragraph a) is punished with imprisonment up to 3 years.

Article 118 - Statute of limitation

1 - The criminal proceedings are extinguished on the grounds of the statute of limitations when, from the time the criminal offence was committed, the following time periods have elapsed:

- a) 15 years, in case of criminal offences punishable with custodial sentence with a maximum limit higher than ten years or in the case of offences under Articles 335, 372, 373, 374, 374-A, 375, n.º1, 377, n. 1, 379, n. 1, 382, 383 e 384 of the Criminal Code, 16, 17, 18 and 19 of the Law 34/87, of 16 July, amended by the Laws 108/2001, of 28 November and 30/2008, of 10 July, and 8, 9, 10 and 11 of the Law 50/2007, of 31 August, as well as the crime related to fraud in obtaining grants or subsidies.

32. GRECO is pleased to see that the incriminations under consideration now provide for heavier penalties for acts of private sector bribery and trading in influence. All sanctions are now punishable by up to three years imprisonment, at least (the other sanctions are imprisonment up to five years, or between one and five years, or between one and eight years). The level of punishment has been increased and it is now more comparable to the one applicable to public sector bribery offences. The first part of the recommendation has thus been implemented. It would appear that the second part of the recommendation has not been dealt with at all; the active form of trading in influence in article 335 paragraph 2 CC still refers only to an act involving an unlawful favourable decision, whereas the passive form of the offence clearly covers also the buying of influence for a favourable decision which does not constitute a breach of the law. The Portuguese authorities indicate in their latest comments that the intended amendments which would have filled those gaps were not retained during the last reading of Law 30/2015. GRECO urges the authorities to resume consideration of the above matters. As for the third part of the recommendation, as it was announced in the previous reports, the offence of trading in influence of article 335 CC was included in the catalogue of designated offences for which the statute of limitation for criminal prosecution is 15 years. The same statute thus applies to all offences of bribery and trading in influence. This part of the recommendation has thus been fully implemented.

33. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

34. *GRECO recommended to analyse and accordingly revise the mandatorily total exemption from punishment granted to perpetrators of bribery offences in the public sector which is conceded in consequence of effective regret.*

35. GRECO recalls that this recommendation was considered partly implemented. The draft amendments (Law 453/XII prepared by the government and sent to parliament) examined in October 2013, provided for certain changes taking into account the above recommendation. GRECO was looking forward to assessing the final text of the amendments.

36. The authorities have communicated the final wording of Article 374B paragraph 1, as amended and effective as from April 2015 (changes are highlighted in bold and underlined):

Criminal Code

Article 374-B - Exemption or mitigation of penalty

1 - The offender may be exempted from penalty where s/he:

- a) has reported the crime within 30 days from the time the offence was committed and before the criminal proceedings, provided he/she voluntarily returns the advantage or its value;
- b) prior to committing the offence voluntarily repudiates the offer or promise accepted, or returns the advantage or its value
- c) prior to committing the offence, withdraws the promise or refuses to offer the advantage or requests its restitution.

2 - The penalty is mitigated if the agent:

- a) until the end of the trial in first instance, gives assistance in obtaining or producing conclusive evidence for the identification or capture of other responsible parties, or
- b) has committed the offence at the request of an officer, directly or through an intermediary.

37. GRECO also noted that the same amendments were made to the effective regret provision contained in article 19A of Law 34/87 on the liability of political officeholders, which is applicable specifically to bribery offences involving such categories of public officials (see footnote 1).
38. GRECO is pleased to see that the above amendments have now entered into force in the wording which was assessed positively in the First Compliance Interim report. The benefit of the exemption of liability of Article 374-B has now lost its mandatory nature since the inclusion of the words "may be" allow the judge to review the circumstances of the case before exempting a perpetrator from punishment. In their latest comments, the authorities provided a more complete translation of article 374B and confirmed that the amended mechanism of effective regret is applicable both to the conduct of the bribe-giver and to that of the bribe-taker. Moreover, the inclusion of the expression "provided he/she voluntarily returns the advantage or its value" – under the circumstances of paragraph 1a which is about completed offences – makes it clear that the crime shall not generate any profit for the person who has committed it. These remarks also apply to article 19A of Law 34/87 on the liability of political officeholders.
39. Portugal has taken the necessary measures to address the present recommendation. It may nonetheless wish to bear in mind that under the Criminal law Convention on Corruption, acts of active and passive bribery are to be treated as autonomous offences and are considered as completed already with the mere requesting, offering or promising of an undue advantage, and not just with the conclusion / execution of a corrupt deed.
40. GRECO concludes that recommendation v has been implemented satisfactorily.

III. CONCLUSIONS

41. In view of the above, GRECO concludes that Portugal has now implemented satisfactorily or dealt with in a satisfactory manner ten of the thirteen recommendations contained in the Third Round Evaluation Report. The remaining three recommendations have been partly implemented.
42. More specifically, with respect to Theme I – Incriminations, recommendations ii, iii and iv remain partly implemented and recommendations i, and v have now been implemented satisfactorily. It is recalled that with respect to Theme II – Transparency of Party Funding, all recommendations had already been implemented satisfactorily or dealt with in a satisfactory manner.
43. Concerning incriminations, GRECO welcomes the final adoption and entering into force, on 22 April 2015 of amendments to the criminal law provisions on corruption. Portugal has thus incriminations in place to prosecute bribery involving all the relevant categories of persons contemplated under the Criminal Law Convention on Corruption and its Protocol. Also, the level of sanctions for private sector bribery and trading in influence corruption was increased and the arrangements under article 374B of the Criminal Code and article 19A of Law 34/87 on the liability of political officeholders were amended to the effect that the judge can review the circumstances of the case before exempting a perpetrator from punishment.
44. However, the offence of trading in influence is still limited to situations involving an illegal act (as regards the active form) and it does not apply to some of the categories of officials mentioned in article 12 of the Convention, especially where these are foreign political office-holders (e.g. mayors, ministers, heads of State, assembly members) or members of international assemblies, under articles 5, 6 and 10 of the Convention.
45. Finally, although Portugal has ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), it has not withdrawn the reservation made to articles 4 and 6 regarding bribery of foreign jurors and arbitrators. Instead, the reservation was renewed until 1st July 2018. GRECO urges once again the Portuguese authorities to withdraw this reservation for the existence of which there is no legal basis.
46. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Portugal.
47. Finally, GRECO invites the authorities of Portugal to translate the report into the national language and to make this translation public.