



Adoption: 22 March 2019
Publication: 28 June 2019

Public
GrecoRC3(2019)3

Third Evaluation Round

Addendum to the Second Compliance Report on Turkey

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

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“Transparency of Party Funding”

Adopted by GRECO
at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

I. INTRODUCTION

1. The Third Round Evaluation Report (Greco Eval III Rep (2009) 5E, [Theme I](#) and [Theme II](#)) was adopted at GRECO's 46th Plenary Meeting (26 March 2010) and made public on 20 April 2010, following authorisation by Turkey. It contained a total of 17 recommendations: eight in respect of Theme I and nine in respect of Theme II.
2. As required by GRECO's Rules of Procedure, the Turkish authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Bulgaria and Norway to appoint Rapporteurs for the compliance procedure.
3. In the [Compliance Report](#), which was adopted by GRECO at its 54th Plenary Meeting (23 March 2012) it was concluded that Turkey had not implemented satisfactorily or dealt in a satisfactory manner any of the 17 recommendations contained in the Third Round Evaluation Report. In view of the fact that in respect of both themes (Theme I – Incriminations, and Theme II – Transparency of Party Funding) substantial reforms were underway and on the understanding that the Turkish authorities would further pursue their efforts, GRECO did not categorise the overall response to the recommendations as “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure but invited the Head of the Turkish delegation to submit additional information regarding the implementation of pending recommendations by 30 September 2013.
4. The [Second Compliance Report](#) was adopted by GRECO at its 63rd Plenary Meeting on 28 March 2014. With respect to Theme I – Incriminations, GRECO welcomed the adoption of a new legal framework for the criminalisation of corruption offences, taking into account the requirements of several recommendations. However, some shortcomings remained and GRECO therefore encouraged the authorities to pursue their commendable efforts and further amend the legal framework. With regard to Theme II – Transparency of Party Funding, GRECO took note of the preparation of a draft bill by the Ministry of Justice, but found it too early in the reform process to conclude that any substantial and tangible progress had been achieved since the Compliance Report. GRECO therefore assessed the overall situation as “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure and invited the Head of the Turkish Delegation to submit a report on the progress made in implementing pending recommendations by 30 September 2014.
5. In the first [Interim Compliance Report](#), adopted by GRECO at its 66th Plenary Meeting on 12 December 2014, GRECO concluded that Turkey had made only moderate progress by implementing two of the thirteen pending recommendations, both of them on Theme I – Incriminations. Seven recommendations remained partly implemented and four recommendations not implemented. GRECO consequently concluded that the level of compliance with the recommendations remained “globally unsatisfactory” and asked the Head of Delegation of Turkey to provide a new report on the action taken to implement the pending recommendations, namely recommendations v and vii regarding Theme I and recommendations i to ix regarding Theme II by 30 September 2015. In accordance with Rule 32, paragraph 2, subparagraph (ii) a), GRECO also instructed its President to send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Turkey, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
6. In the [Second Interim Compliance Report](#), adopted at its 70th Plenary Meeting (4 December 2015), GRECO concluded that Turkey had not made any tangible progress in the implementation

of the above eleven pending recommendations (Theme I: recommendations v and vii; Theme II: recommendations i to ix). In accordance with Rule 32, paragraph 2 subparagraph (ii) b), GRECO also requested the President of the Statutory Committee to bring the situation to the attention of the Permanent Representative of Turkey to the Council of Europe and pointing also to the need for the country to take determined action.

7. In the [Third Interim Compliance Report](#), adopted by GRECO at its 74th Plenary Meeting (2 December 2016) the situation remained unchanged; out of a total of seventeen recommendations, six recommendations had been implemented satisfactorily. Seven recommendations remained partly implemented and four not implemented. In accordance with Rule 32, paragraph 2 subparagraph (ii) c), GRECO also invited the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs of Turkey, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
8. In the [Fourth Interim Compliance Report](#), adopted by GRECO at its 78th Plenary Meeting (8 December 2018) and made public on 15 March 2018 following the Turkish authorities' authorisation, the situation remained globally unchanged with the exception of one recommendation which was implemented satisfactorily, bringing it to seven recommendations implemented satisfactorily out of a total of seventeen recommendations. As a result, the level of compliance was no longer "globally unsatisfactory" and GRECO found that the "non-compliance procedure" did not apply anymore. However, as no development was reported as to the remainder of outstanding recommendations, GRECO urged the authorities to make progress on the implementation of the remaining recommendations. GRECO accordingly requested that Turkey provide a new situation report on developments concerning the 10 outstanding recommendations. This report, which was received on 28 September 2018, has served as a basis for this Addendum to the Second Compliance Report.
9. In this [Addendum to the Second Compliance](#) report, drawn up by the rapporteurs, Mr Jens-Oscar NERGÅRD (Norway) and Mr Georgi RUPCHEV (Bulgaria), assisted by the GRECO Secretariat, assesses progress in the implementation of the pending recommendations since the adoption of the Fourth *Interim* Compliance Report, and performs an updated overall appraisal of the level of compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

10. GRECO recalls that up until now, six of the eight recommendations issued in the Evaluation Report have been considered to be implemented satisfactorily, whilst recommendations v and vii remain partly implemented.

Recommendation v.

11. *GRECO recommended to criminalise active and passive bribery in the private sector – applicable to any persons who direct or work for, in any capacity, any private sector entities – in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
12. As pointed out in the previous reports, the provision on private sector bribery had been amended (revised article 252, paragraph 8 TPC). While the amendments had taken into account several

elements of the recommendation, GRECO was concerned that the list of entities covered by the above provision was still restricted to a limited number of entities with public participation or acting in the public interest. No progress had been recorded in the First and Second *Interim* Compliance Reports and the recommendation was thus assessed as partly implemented. In the Third *Interim* Compliance Report, the authorities had indicated that, in their view, active and passive bribery in the private sector and the act of providing an undue advantage to others were also criminalised in another set of rules, namely Article 155 of the Turkish Penal Code. However, GRECO had noted that this provision concerned the incrimination of abuse of trust and was thus unrelated to the subject of the present recommendation.

13. The authorities provide no new information in this respect, other than maintaining their previously expressed position.
14. GRECO regrets once again that Turkey has still not taken additional action to fully implement this recommendation and it concludes that recommendation v remains partly implemented.

Recommendation vii.

15. *GRECO recommended (i) to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active and passive bribery in the public sector in cases of “effective regret”, and to abolish the restitution of the bribe to the bribe-giver in such cases; and (ii) to make it clear to everyone, including the practitioners who are to apply the law, that exemption from punishment is not granted in cases where “effective regret” is invoked after the start of preliminary investigations.*
16. As pointed out in the previous reports, the recommendation was considered as partly implemented in the Second Compliance Report. The provisions on effective regret had been amended to abolish the restitution of the bribe to the bribe-giver and to ensure that this defence cannot be invoked in any situations where the bribery act has already come to the knowledge of official authorities (thus making it clear that no exemption from punishment can be granted in cases where effective regret is invoked after the start of preliminary investigations). However, no additional changes had been made to extend the judge’s control and to further attenuate the automatic and mandatory nature of this defence, as the relevant working group established under the Ministry of Justice considered the defence in its present form as an effective tool for fighting corruption. This position was maintained in the First, Second, Third and Fourth *Interim* Compliance Reports.
17. The authorities reiterate that Turkey still maintains its position as expressed in the Second, Third and Fourth Compliance Reports with respect to the automatic – and mandatorily total – nature of the effective regret defence.
18. GRECO once more regrets that Turkey has still not taken additional action to fully implement this recommendation and it concludes that recommendation vii remains partly implemented.

Theme II: Transparency of Party Funding

19. GRECO recalls that up until now, one of the nine recommendations issued in the Evaluation Report has been considered to be implemented satisfactorily, whilst recommendations iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix remain not implemented.

Recommendations i and iii to ix.

20. GRECO recommended:

- to ensure that annual accounts of political parties include a) income received and expenditure incurred individually by elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and b) as appropriate, the accounts of entities related, to political parties or otherwise under their control (recommendation i);
- to ensure that annual accounts of political parties and monitoring reports of the supervisory body are made easily accessible to the public, within timeframes to be specified by law (recommendation iii);
- to regulate transparency in the financing of parliamentary, presidential and local election campaigns of political parties and candidates and, specifically, to find ways of increasing the transparency of contributions by third parties (recommendation iv);
- to require political parties and election candidates to regularly disclose all individual donations (including of a non-monetary nature) they receive above a certain value, indicating the nature and value of each donation as well as the identity of the donor, including during the electoral campaign period (recommendation v);
- to introduce independent auditing of party accounts by certified experts (recommendation vi);
- that the supervision of the party accounts be complemented by specific monitoring of the campaign financing of parties and candidates, to be effected during and/or shortly after presidential, parliamentary and local elections (recommendation vii);
- (i) to ensure more substantial, pro-active and swift monitoring of political financing, including investigation of financing irregularities and closer cooperation with the law enforcement authorities; and (ii) to increase the financial and personnel resources dedicated to the control of political financing (recommendation viii); and
- to introduce effective, proportionate and dissuasive sanctions for infringements of yet-to-be established regulations concerning election campaign funding of political parties and candidates (recommendation ix).

21. As already pointed out by GRECO in the Second Compliance Report and the First, Second and Third and Fourth *Interim* Compliance Reports, in respect of recommendations i, iii to vii and ix reference was made to the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, which envisaged amendments to Law No. 2820 on Political Parties (hereafter “the LPP”) and Law No. 298 on Basic Provisions on Elections and Voter Registers. The draft bill had been prepared by a working group established under the Ministry of Justice and submitted to the Prime Minister. However, due to the busy political agenda, the draft bill had not been transmitted to the Council of Ministers for approval before being submitted to Parliament. GRECO had regretted that the draft bill had still not been submitted to Parliament and had noted that work regarding the preparation and supervision of party accounts was on-going, but not yet completed.

22. GRECO had therefore concluded that recommendations i, v, vi and ix remained not implemented in the absence of the legislative changes needed to meet the requirements of the recommendations. Insofar as recommendations iii, iv, vii and viii were concerned, it had concluded that they remained partly implemented, taking into consideration that new legislation had been adopted to address part of the recommendations, but that the remaining parts of the recommendations had not been tackled by reason of the lack of new legislative steps needed to fully comply with them.
23. The authorities do not indicate any progress regarding the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”. They contend that, over the last year, Turkey focused on adopting the new presidential system and all efforts of the legislature have been aimed at that.
24. GRECO notes that no new development on the implementation of the above recommendations has been reported. The situation as described in previous compliance reports remains the same: recommendations i, v, vi and ix have not been implemented as they depend on draft legislation that has still not been finalised; parts of recommendations iii, iv, vii and viii had been addressed in new legislation, leading to them being considered partly implemented, while the rest of these recommendations also depended on new legislation not finalised yet.
25. As a result, GRECO maintains its conclusions that recommendations iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.

III. CONCLUSIONS

26. **In view of the conclusions contained in previous compliance reports and in view of the above, GRECO concludes that Turkey has implemented satisfactorily seven of the seventeen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations, six recommendations remain partly implemented and four not implemented.
27. With respect to Theme I – Incriminations, recommendations i, ii, iii, iv, vi and viii have been implemented satisfactorily and recommendations v and vii remain partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation ii has been implemented satisfactorily, recommendations iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.
28. In respect of Theme I, the majority of the recommendations have been complied with. Given the absence of any new development, GRECO urges the authorities also to fully comply with the two outstanding recommendations, concerning respectively private sector bribery and the special defence of effective regret.
29. Regarding Theme II, in view of the continued lack of progress, the situation remains disappointing. While the adoption of the Guidebook on the Financial Audit of Political Parties (recommendation ii), was a positive development, considerable progress is yet to be made regarding all other Theme II recommendations. Some recommendations were found to be partly implemented as a result of legislative measures having been taken to address parts of these recommendations, while others remain not implemented pending concrete legislative steps to be taken. GRECO notes in particular that already in the Compliance Report, adopted in March 2012, the authorities referred to legislative reforms (draft Bill) being underway with a view to preparing

new legislation. Since then, nothing new has been reported in this respect. In the absence of progress, a new impetus still appears to be needed concerning the drafting of adequate legislation on which depends the full implementation of outstanding recommendations. Turkey is once again urged to take steps to effectively address the remaining issues of the transparency of party funding.

30. GRECO cannot but repeat its previous conclusions, namely that the results of the action taken by Turkey are still insufficient at this stage, nine years after the adoption of the Evaluation Report. Consequently, GRECO, in accordance with Rule 31.9 revised of the Rules of Procedure, calls on the head of the Turkish delegation to provide additional information on the implementation of recommendations v and vii (Theme I – Incriminations) and recommendations i and iii-ix (Theme II – Transparency of Party Funding) and to do so by 31 December 2019 at the latest.
31. Finally, GRECO invites the authorities of Turkey to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.