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Third Evaluation Round

Compliance Report on San Marino

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of San Marino to implement the 10 recommendations issued in the Third Round Evaluation Report on San Marino (see paragraph 2), covering 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 71st Plenary Meeting (18 March 2016) and made public on 12 July 2016, following authorisation by San Marino (Greco Eval III Rep (2016) 2E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the authorities of San Marino submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 September 2017 and served as a basis for the Compliance Report.
4. GRECO selected Iceland and Montenegro to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Björn THORVALDSSON, on behalf of Iceland, and Mr Dušan DRAKIC, on behalf of Montenegro. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed six recommendations to San Marino in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended proceeding swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).*
8. The authorities report that San Marino deposited its instrument of ratification of the Criminal Law Convention and its Additional Protocol on 30 August 2016. The two instruments entered into force on 1 December 2016.

9. GRECO welcomes the ratification and entry into force of the Criminal Law Convention and its Additional Protocol and concludes that recommendation i has been implemented satisfactorily.

Recommendations ii to v.

10. *GRECO recommended:*

- *ensuring that all bribery offences are construed in such a way as to explicitly cover instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official him/herself but for third parties (recommendation ii);*
- *explicitly criminalising active and passive bribery of domestic and foreign arbitrators and of foreign jurors in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (recommendation iii);*
- *criminalising active and passive trading in influence in line with Article 12 of the Criminal Law Convention on Corruption (recommendation iv);*
- *criminalising bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption (recommendation v).*

11. The authorities of San Marino indicate that the Inter-departmental Working Group on GRECO has drawn up a draft law aimed at transposing these recommendations. The draft is currently being assessed by the Government of San Marino and is anticipated to shortly undergo parliamentary consultation.

12. GRECO takes note of the information provided and welcomes the preparation of legislative amendments to fully align the Criminal Code of San Marino with the provisions of the Criminal Law Convention on Corruption and its Additional Protocol. The draft received by GRECO follows closely the said instruments and thereby has the potential to address recommendations ii, iii, iv and v. However, the draft is still at its very early stages – it has yet to undergo Government approval and then parliamentary consultation. Therefore, it would be premature today to anticipate where the current proposal may lead. GRECO expects to see conclusive action in this respect.

13. Against this background, GRECO can only conclude that recommendations ii, iii, iv and v have not been implemented.

Recommendation vi.

14. *GRECO recommended ensuring jurisdiction over all offences of bribery committed abroad (i) by Sammarinese nationals, Sammarinese public officials or members of public assemblies, in accordance with Article 17, paragraph 1, subparagraph b; (ii) or involving Sammarinese public officials or any other person referred to in Article 17, paragraph 1, subparagraph c of the Criminal Law Convention on Corruption.*

15. The authorities of San Marino refer to Decree Law No. 80 of 20 June 2016, which amends Article 6 of the Criminal Code and thereby extends jurisdiction over, *inter alia*, all bribery offences (i.e. Articles 372-374ter Criminal Code – bribery in the public sector) committed abroad and irrespective of the offenders' identity.

16. GRECO welcomes the new legislative development. San Marino has broad jurisdiction to prosecute all offences of bribery criminalised in domestic legislation, whether those are committed within the national territory (Article 5, Criminal Code) or abroad (Article 6, Criminal Code). It will, however, be important to ensure that this broad jurisdiction basis is kept in mind when further adjusting national legislation to the requirements of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), notably, with regard to the criminalisation of bribery of jurors and arbitrators, bribery in the private sector and trading in influence, as recommended above (recommendations iii, iv and v). GRECO notes that the draft law cited in paragraph 11 of this report also tackles this issue (i.e. the jurisdiction rules established by Article 6 of the Criminal Code would also extend to the offences of private sector bribery, trading in influence and bribery of jurors and arbitrators). However, as already noted, it would be premature at this stage, given the very early phase of the legislative proposal, to presuppose any further.
17. GRECO concludes that recommendation vi has been partly implemented.

Theme II: Transparency of Party Funding

18. It is recalled that GRECO in its evaluation report issued four recommendations in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

19. *GRECO recommended providing the legal authority that would allow for: (i) developing systematised binding interpretative guidance/rules on how to account for (a) private funding, other than monetary donations (e.g. in-kind donations, loans at preferential rates, media discounts, etc.), (b) moneys of parties/political movements that cease their activity but are incorporated or merge with other parties, and (c) moneys of parties/political movements that cease their activity, but still have some remaining public subsidies at their disposal; and (ii) clarifying the application of the record keeping and financial reporting requirements of the legislation on political financing to the individual members of Parliament.*
20. The authorities of San Marino indicate, at the outset, that on 22 May 2017 the Parliament adopted Law No. 50 amending Law No. 170 - Funding of Political Parties and Movements, reportedly aimed at addressing the targeted shortcomings identified in GRECO's evaluation. Regarding the first component of recommendation i, the Auditing Committee is specifically provided with authority to issue binding interpretative accounting guidance, including regarding all sorts of private funding, remaining moneys of parties/political movements that cease their activity or merge with others. The authorities further confirm that breaches of these guidelines are subject to sanctions (from the available range of penalties established under Article 5 of Law No. 50/2017). In addition, in order to ensure broad dissemination of the aforementioned guidelines, the aforementioned guidance must be promptly published on the website of the Great and General Council (Parliament). The Auditing Committee has not developed any guidance as yet.
21. Regarding the second component of recommendation i, the amendments clearly subject individual members of Parliament to the same record keeping and financial reporting obligations as those required for political parties and movements.
22. GRECO welcomes the reported amendments providing for greater clarity on accounting requirements for not only political parties and movements, but also individual members of Parliament.

23. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

24. *GRECO recommended (i) providing legal authority and direction to the Institutional Secretariat to publish, in a timely fashion, the financial reports of political parties, as well as the Auditing Committee reports (and guidelines), on its website and finding suitable ways to ensure that the public is made aware that such reports are effectively available; and (ii) publishing, upon its determination, details on the spending limit for political parties.*

25. The authorities of San Marino report that Law No. 50 amending Law No. 170 - Funding of Political Parties and Movements places an obligation upon the Institutional Secretariat to promptly publish on the website of the Great and General Council the following documents: (i) balance sheets of political parties; (ii) Auditing Committee reports (and guidelines, see also paragraph 20), and (iii) details on the annual level of public funding for political parties and movements¹. The Institutional Secretariat has been providing exact details on the spending limit for political parties since 2015 (therefore, well before the legislative amendments were introduced)². The aforementioned documents and information must be simultaneously provided to the media.

26. GRECO is pleased with the steps taken to provide for greater publicity of, and easier access to, party accounts, auditing reports and spending limits.

27. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

28. *GRECO recommended (i) taking further measures to safeguard the independent and impartial functioning of the Auditing Committee; and (ii) ensuring it has appropriate powers and resources to investigate irregularities and to enforce political funding rules, as appropriate.*

29. The authorities of San Marino underline that Law No. 50 amending Law No. 170 - Funding of Political Parties and Movements sets new rules to assure a reinforced structure, powers and resources of the auditing of political finances. More particularly, regarding the composition of the Auditing Committee, it is composed of three auditors chosen by lot by the Bureau of the Great and General Council among the auditors who are enrolled in the Register of Auditors held at the Ministry of Industry and who are not members of the executive, the legislature or the governing bodies of political parties/movements. The term of office is set at two years, and in order to ensure policy continuity of the Committee, only the office of the first member drawn by the lot is for a three-year term. In the event of death, resignation or removal from office, the new member (alternate member) is to be drawn by lot and his/her office will end of the same day as that of the member who resigned, died or was removed (replaced member). Arrangements are also made in law to secure appropriate remuneration of members. Finally, the Auditing Committee is empowered to obtain any information it may require for verification purposes, notably, directly from the administrative managers and leaders of political parties/movements, including through the carrying-out of assessments and controls in their respective headquarters. It can also have access to the accounting information of political parties/movements held by public administration

¹ The spending limit of political parties and movements is tied to the annual level of public funding, i.e. each list participating in elections is subject to a limit of expenses which should not exceed 100% of the contribution given to the largest group in Parliament.

² <https://www.consigliograndeegenerale.sm/on-line/home/composizione/bilanci-partiti.html>

offices or financial institutions in San Marino, through the Central Bank of the Republic of San Marino.

30. GRECO is pleased to note the stipulations made in law to better guarantee independence and continuity of the Auditing Committee, as well as to clearly define its inspection powers.
31. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv.

32. *GRECO recommended (i) clearly defining infringements of political finance rules and coupling them with effective, proportionate and dissuasive sanctions; and (ii) ensuring that the corresponding limitation periods are sufficiently long to allow for the effective supervision and investigation of political funding.*
33. The authorities of San Marino refer to Law No. 50 amending Law No. 170 - Funding of Political Parties and Movements and the amendments introduced to detail infringements of political finance rules (e.g. false accounting, late reporting, serious violations, repeated violations) and to couple them with a broad range of both administrative and criminal sanctions (reduction or withholding of public funds, fines, disqualification and imprisonment). In addition, the statute of limitations for this type of offence has been increased (from three years) to five years. No sanctions have been imposed since the recent adoption of the law. The checks on party finances in 2016 did not reveal any infringements of the law; that said, it is anticipated that the corresponding auditing report will include some comments expanding on general principles of proper bookkeeping.
34. GRECO notes with satisfaction the steps taken by San Marino to strengthen the sanctioning system for breaches of political finance rules, including by better defining infringements and corresponding sanctions and by reviewing (extending) the applicable statute of limitations.
35. GRECO concludes that recommendation iv has been implemented satisfactorily.

III. CONCLUSIONS

36. **In view of the above, GRECO concludes that San Marino has implemented satisfactorily five of the ten recommendations contained in the Third Round Evaluation Report.** Out of the five remaining recommendations, one has been partly implemented and four have not been implemented as yet.
37. More specifically, with respect to Theme I – Incriminations, recommendation i has been implemented satisfactorily, recommendation vi has been partly implemented, and recommendations ii to v have not been implemented. With respect to Theme II – Transparency of Party Funding, all recommendations (i to iv) have been satisfactorily implemented.
38. GRECO congratulates San Marino on the steps it has taken to effectively address all recommendations on political financing. It must be recalled that GRECO had already acknowledged, in its previous Third Round Evaluation Report, the valuable measures in place for sound financial discipline in the day-to-day operations of political parties. With the adoption, in 2017, of Law No. 50 amending Law No. 170 - Funding of Political Parties and Movements further improvements have been made, notably, by addressing legislative gaps and unclear matters regarding accounting obligations for political parties/movements, as well as independent

members of Parliament (e.g. regarding non-monetary donations, events of mergers, splits or shutdowns of political parties and their remaining funds). Additional rules have been introduced to strengthen the supervision of political financing, the investigation of alleged infringements and, ultimately, the punishment of those through a broad system of criminal and administrative sanctions.

39. As regards incriminations, GRECO welcomes San Marino's ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191). Another positive move has been the amendment of penal legislation allowing for a broader basis of jurisdiction over public bribery offences. Having said that, further key adjustments are still required and some key gaps remain, notably, regarding the criminalisation of trading in influence, bribery in the private sector, bribery of jurors and arbitrators, as well as the corresponding jurisdiction arrangements over these offences. A draft addressing these matters is underway but has not yet reached parliamentary consultation; the authorities are urged to take more determined action in this respect.
40. GRECO invites the Head of Delegation of San Marino to submit additional information regarding the implementation recommendations ii to vi (Theme I – Incriminations) by 31 December 2019 at the latest.
41. Finally, GRECO invites the authorities of San Marino 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.