



Adoption: 6 December 2019
Publication: 12 December 2019

Public
GrecoRC3(2019)7

Third Evaluation Round

Second Addendum to the Second Compliance Report on Italy

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

"Transparency of Party Funding"

Adopted by GRECO
at its 84th Plenary Meeting
(Strasbourg, 2-6 December 2019)

I. INTRODUCTION

1. This Second Addendum assesses the additional measures taken by the authorities of Italy, since the adoption of the Addendum to the Second Compliance Report, to implement the recommendations issued by GRECO in its Third Round Evaluation Report on Italy. 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. GRECO adopted the Third Round Evaluation Report on Italy at its 54th Plenary Meeting (20-23 March 2012) and made it public on 11 April 2012, following authorisation by Italy (Greco Eval III Rep (2011) 7E, [Theme I](#) and [Theme II](#)). The Third Round [Compliance Report](#) was adopted by GRECO at its 64th Plenary Meeting (16-20 June 2014) and made public on 20 June 2014, following authorisation by Italy (Greco RC-III (2014) 9E). The [Second Compliance Report](#) was adopted by GRECO at its 74th Plenary Meeting (28 November-2 December 2016) and made public on 2 December 2016, following authorisation by Italy. The [Addendum to the Second Compliance Report](#) was adopted by GRECO at its 80th Plenary Meeting (Strasbourg, 18-22 June 2018) and made public on 29 June 2018, following authorisation by Italy. It was concluded that Italy had implemented satisfactorily or dealt with in a satisfactory manner eight of the sixteen recommendations contained in the Third Round Evaluation Report: seven recommendations had been partly implemented and one had not been implemented.
3. In view of the fact that eight recommendations had not yet been fully implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asked the Head of the Italian delegation to submit additional information regarding the implementation of all pending recommendations. On 31 July 2019, the Italian authorities submitted a Situation Report concerning recommendations i-v and ix on Theme I – Incriminations, and recommendations iv and vi on Theme II – Transparency of Party Funding by 31 March 2019, which served as a basis for the present [Second Addendum](#) to the Second Compliance Report.
4. GRECO selected Austria and Montenegro to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Christian MANQUET, Head of Department, Directorate for Penal Legislation, Ministry of Justice (Austria) and Mr Dušan DRAKIC, Head of Section, Agency for Prevention of Corruption (Montenegro). They were assisted by GRECO's Secretariat in drawing up this Second Addendum to the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 9 recommendations to Italy in respect of Theme I. In the compliance procedure, until the preparation of the present report,

recommendations vi, vii and viii had been dealt with in a satisfactory manner; recommendations i, ii, iv, v and ix had been partly implemented; recommendation iii had not been implemented.

6. The authorities report on the adoption of Law No. 3 of 9 January 2019, so-called “Bribe Destroyer” (*Spazzacorrotti*) Law, which establishes additional provisions to fight public sector corruption and to increase transparency requirements in the private sector. On the penal front, the aforementioned Law introduces, *inter alia*, new powers for investigative authorities (use of special investigative techniques, e.g. undercover agents, wiretapping in respect of a broader range of corruption-related offences), increased sanctions for both physical and legal persons (including a permanent ban from holding public office or doing business with public administration), further adjustments to the offences of private bribery and trading in influence, a broader definition of foreign public official, new counting of statute of limitations (stop to prescription terms after a first-instance conviction as of 2020) and rehabilitation, leniency scheme for those who first denounce corruption, extra-territoriality, etc. Some of these novelties are explained below in more detail.

Recommendation i.

7. *GRECO recommended to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).*
8. GRECO recalls that the Criminal Law Convention on Corruption (ETS 173) was ratified by Italy on 13 June 2013 and entered into force on 1 October 2013 in respect of Italy. The ratification of the Additional Protocol to the Criminal Law Convention on Corruption was pending, and GRECO therefore considered that recommendation i had been partly implemented.
9. The authorities of Italy report no new developments in this respect. The draft legislative proposal to criminalise active and passive bribery of foreign arbitrators is still pending adoption; once this is done, there will be no obstacles for the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).
10. GRECO regrets the lack of any tangible progress regarding the process of ratification of the Additional Protocol to the Criminal Convention on Corruption (ETS 191) and therefore concludes that recommendation i remains partly implemented.

Recommendation ii.

11. *GRECO recommended to enlarge the scope of application of the legislation concerning active and passive bribery to all 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).*
12. GRECO recalls that the recommendation had been considered partly implemented. The criminalisation of active bribery of foreign public officials (which was only covered in the EU/OECD context), as well as active and passive bribery of officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts, was pending.
13. GRECO further notes that Italy had entered a reservation not to establish, as a criminal offence under its domestic law, the conduct of passive bribery of foreign public officials, as well as active

and passive bribery of members of foreign public assemblies, except for individuals of member states of the European Union. Since Italy renewed its reservation in 2017 and again in 2019 and therefore is under an obligation to reconsider this declaration within three years (under Article 38 of ETS 173), GRECO has not requested Italy to provide additional information regarding this part of the recommendation.

14. The authorities of Italy explain that, pursuant to the amendments introduced by Law No. 3/2019, active and passive bribery of public officials of other EU member States, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies as well as judges and officials of international courts are now criminal offences under Italian law (Article 1(1) of Law No. 3/2019).
15. GRECO is pleased to note the move taken by Italy to reconsider the reservation it entered in this domain and further criminalise foreign bribery. However, as far as passive bribery of foreign public officials is concerned, this is limited to officials of EU member States, which is more restrictive than foreseen in the Criminal Law Convention.
16. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

17. *GRECO recommended to (i) enlarge the scope of application of the legislation concerning active and passive bribery of foreign jurors in order to fully comply with the requirements of Article 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and (ii) criminalise active and passive bribery of domestic and foreign arbitrators.*
18. GRECO recalls that no progress had been reported by the Italian authorities in respect of this recommendation in the previous compliance reports, and that it had therefore been considered not implemented.
19. The authorities of Italy again refer to the information provided under recommendation i, i.e. that the Government has received draft legislation for consideration concerning the ratification of the Additional Protocol to the Criminal Law Convention on Corruption, also concerning the incrimination of bribery of arbitrators, but the adoption process is still pending at the Government. In addition, they report that, as a result of the adoption of Law 3/2019, Article 322 of the Penal Code, as amended, does not anymore comprise the so called “OECD restrictions” (i.e. limiting the scope of active bribery to business transactions). This means that active bribery of jurors (including foreign jurors) is now fully covered by the law.
20. GRECO regrets the lack of tangible outcome in respect of criminalising bribery of arbitrators. However, it recognises that bribery of foreign jurors is now covered by the law in line with the Additional Protocol to the Criminal Law Convention (ETS 191) and concludes that recommendation iii has been partly implemented.

Recommendation iv.

21. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption.*

22. GRECO welcomed, in the previous compliance report, the adoption of legislation criminalising bribery in the private sector. It, however, noted that the admissibility of prosecution was only possible upon individual complaint, which is not in line with the Convention. GRECO therefore considered recommendation iv as partly implemented.
23. The authorities of Italy now report that, pursuant to Law No. 3/2019, the complaint by the victim is no longer a requirement for the private bribery offence to be investigated and prosecuted (Article 1(5)a, Law No. 3/2019).
24. GRECO is pleased to note the action taken by Italy to fully align the offence of bribery in the private sector with the requirements the Criminal Law Convention on Corruption and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

25. *GRECO recommended to criminalise active and passive trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
26. GRECO acknowledged the changes introduced in domestic legislation to widen the scope of the criminalised activity in respect of trading in influence. A loophole, however, still remained since an existing relationship of influence between the peddler and the official was required under Italian law, while the mere assertion to this end is sufficient under the Convention. GRECO called upon the authorities to rectify this outstanding gap and assessed the recommendation as partly implemented.
27. The authorities of Italy indicate that, pursuant to Law No. 3/2019, both the active and passive trading in influence are now criminalised, even when the relationship between the peddler and the official is fraudulently asserted (Article 1(1)s and t, Law No. 3/2019).
28. GRECO is pleased to note the action taken by Italy to fully align the offence of trading in influence with the requirements of the Criminal Law Convention on Corruption and concludes that recommendation v has been implemented satisfactorily.

Recommendation ix.

29. *GRECO recommended (i) to abolish the condition, where applicable, that the prosecution of acts of corruption committed abroad must be preceded by a request from the Minister of Justice or a victim's complaint; (ii) to extend jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, nationals of Italy.*
30. GRECO noted that the need for the Minister of Justice's request to prosecute acts of corruption was an additional requirement under Italian law, which is not foreseen in the Criminal Law Convention on Corruption. In this connection, GRECO warned of risks of political interference, particularly, in those cases when the request or the victim's complaint is needed. The first part of the recommendation was assessed as partly implemented.
31. Further, GRECO recalls that, regarding the second part of the recommendation, in connection with the requirements of Article 17, paragraph 1, subparagraph c of the Convention, concerning jurisdiction over offences committed abroad by foreigners, but involving officials of international

organisations, members of international parliamentary assemblies and officials of international courts – who are at the same time Italian nationals – Italy would not be able to establish jurisdiction over corruption offences causing a detriment to a third country or one of its citizens, if the offence in question carries a punishment of less than 3 years' imprisonment. GRECO, in its Third Round Evaluation Report on Italy, conceded that this shortcoming refers to very specific (and a limited number of) situations but it, however, represents a shortcoming as compared to the standards under review.

32. Italy had introduced a declaration that it would apply without restriction the rules of jurisdiction defined in Article 17, paragraphs 1b and c of the Convention, under the conditions currently provided for in articles 9 and 10 of the Italian Penal Code. Since Italy renewed its declaration in July 2017 and therefore wavs under an obligation to reconsider this declaration within three years (under Article 38 of ETS 173), GRECO did not request Italy to provide additional information regarding this part of the recommendation.
33. The authorities of Italy now refer to Law No. 3/2019, which abolishes the condition that the prosecution of acts of corruption committed abroad must be preceded by a request from the Minister of Justice or a victim's complaint (Article 1(1)a and b, Law 3/2019). They also submit that due to several changes of the criminal law, no corruption offence is punished with less than three years of imprisonment.
34. GRECO welcomes that Italy has abolished completely the requirement of a request by the Minister of Justice for prosecution of corruption committed abroad. GRECO also notes that the three years threshold as mentioned above (paragraph 31) is no longer applicable in respect of corruption offences. It follows that this recommendation has been complied with entirely.
35. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

Theme II: Transparency of Party Funding

36. It is recalled that GRECO, in its Evaluation Report issued 7 recommendations in respect of Theme II. In the compliance procedure, until the preparation of the present report, recommendations i, ii, iii, v and vii had been implemented satisfactorily; recommendations iv and vi had been partly implemented.

Recommendation iv.

37. *GRECO recommended to (i) elaborate a coordinated approach for the publication of information on party and campaign finance; (ii) ensure that such information is made available in a coherent, comprehensible and timely manner and thereby provides for easier and meaningful access by the public, including by making best use of internet publishing.*
38. GRECO recalls that this recommendation was considered as partly implemented. GRECO welcomed the efforts made to facilitate information on political parties' finances, including through their online publication. GRECO however considered that additional efforts were required to establish a holistic approach to publication of campaign finance.

39. The authorities of Italy now indicate that, pursuant to Law No. 3/2019, political parties and movements must draw up a list of all donations received, in money or in kind, in excess of 500 EUR. The list is to be published on the website of the relevant party (and kept for five years), of the electoral roll, or of the candidate to the post of mayor in local elections in municipalities with more than 15,000 inhabitants. Such publication shall be made one month from the date on which the contribution was received, or within 15 days during the electoral campaign (or by no later than the end of March of the following year in case of “split” donations amounting in total to more than 500 EUR). Political foundations, associations and committees also fall under the above-mentioned transparency rules. Failure to comply with the publication obligation is punished with an administrative fine, the amount of which is no less than three times, and no more than five times, the value of the non-reported donation. Additionally, the list of donations must be sent to the Chamber of Deputies so that it is published as well on its institutional website. Pursuant to the 2019 aforementioned legislation, the consent of the donor to publish is no longer required.
40. GRECO underscores the significance of putting in place appropriate avenues to enable citizens to grasp, in a relatively simple and meaningful manner, information on political finances. The new rules, introduced in 2019 by Law No. 3/2019, are a step forward in this direction, particularly in relation to the transparency of election campaigns. They add to a number of positive measures already taken in recent years to publish information on party funding, including their routine operations and that of their regional branches and related entities. In connection to the latter, third parties (related political foundations, associations and committees) now fall under the same transparency requirements as political parties. This is of course a welcome development, but also entails significant implementation challenges ahead, in particular for the monitoring of the applicable rules.
41. GRECO understands that the rules are very recent and experience is yet to evolve therein. Time and practice will prove how and whether the existing rules will need to be refined and streamlined to make sure that, not only there is a coordinated approach for the publication of information on party and campaign finance, but that it is also consistently implemented in practice by all obliged subjects. Obviously, supervision and enforcement arrangements will be pivotal in this regard; key flaws remain in those areas as evidenced later in this report in relation to recommendation vi (see paragraphs 47 to 50).
42. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation vi.

43. *GRECO recommended (i) to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate, tenure stability, adequate powers and resources to carry out a proactive and efficient supervision, investigation and enforcement of political finance regulations; (ii) until that occurs, to ensure that the existing institutions with current responsibilities develop a practical working arrangement for the effective implementation of party and campaign funding rules; and (iii) to strengthen the cooperation and coordination of efforts on an operational and executive level between the authorities entrusted with the supervision of political finances and the tax and law enforcement authorities.*
44. GRECO recalls that this recommendation was considered as partly implemented. GRECO acknowledged the steps taken to strengthen the control of party finances through a reworked institutional set-up made up of the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements, the Court of Audit and the Regional Electoral

Guarantee Board. GRECO nevertheless asked for greater details as to how the aforementioned bodies were coordinating, on an operational level, their oversight roles among themselves, as well as with tax and law enforcement authorities, as required by the last component of recommendation vi.

45. The authorities of Italy now report on further operational measures set in place to facilitate and improve control of political finances. In particular, Law No. 3/2019 provides for direct access of the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements to the databases of the Court of Audit and the Regional Electoral Guarantee Board. It also foresees the establishment of memoranda of understanding among the aforementioned bodies, and with other public administration/law enforcement authorities, to exchange data, information and news concerning accounting records of political parties and candidates for election. Steps were taken in September 2019 in this respect: the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements initiated some meetings with other public administrations (in particular with the Revenue Agency) in order to draft working protocols enabling access to databases and crosschecks of information held by different public bodies.
46. GRECO takes note of the update provided. It recalls that the oversight system of political finances rests on effective coordination and cooperation of the information and activities of three different bodies: the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements, the Court of Audit and the Regional Electoral Guarantee Board. The latter two share key responsibilities regarding supervision of campaign finances. Given this repartition of competences, it is crucial that the aforementioned bodies effectively coordinate their roles.
47. In this connection, GRECO takes note of the new steps reported to improve cooperation among the relevant monitoring bodies, and of monitoring bodies with tax and law enforcement authorities. These tools, some of which are yet to be developed (*memoranda of understanding*), have to prove their workability and effectiveness in practice. GRECO is further concerned to hear outstanding criticism on the type of control performed over political finances (formalistic rather than substantial) and the shortage of resources experienced by the competent bodies¹. The latter have themselves highlighted important challenges ahead regarding the concrete implementation of Law 3/2019, its articulation with other existing norms (13 different legislative acts on political financing are currently in vigour) and the concrete understanding of its notions and obligations (e.g. in relation to political foundations/associations/committees, sanctioning responsibilities, etc.)². Further efforts are required to streamline and clarify the existing rules to better facilitate their supervision and enforcement.
48. No concrete details have been submitted (other than the ongoing plans to set in place cooperation protocols) as to how monitoring bodies and law enforcement authorities are coordinating their action nowadays. The Third Round Evaluation Report on Italy called for a more pro-active approach to the investigation of financial irregularities. Likewise, no information was submitted as to whether any monitoring body has ever alerted law enforcement bodies to irregularities concerning political finances. More clearly needs to be done in this important area.
49. GRECO concludes that recommendation vi remains partly implemented.

¹ See also [ODIHR Election Assessment Mission Final Report on the Italian Republic Parliamentary Elections, 4 March 2018](#).

² <https://www.radioradicale.it/scheda/586094/rinforzare-la-democrazia-e-vigilare-sul-finanziamento-ai-partiti-il-caso-italiano>.

III. CONCLUSIONS

50. **With the adoption of this Second Addendum to the Second Compliance Report on Italy and in light of the above, GRECO concludes that out of the sixteen recommendations issued to Italy, twelve in total have been implemented satisfactorily or dealt with in a satisfactory manner.** Of the remaining recommendations four have been partly implemented.
51. More precisely, with respect to Theme I – Incriminations – recommendations iv and v have been implemented satisfactorily and recommendations vi, vii, viii and ix have been dealt with in a satisfactory manner. Recommendations i-iii have been partly implemented. With respect to Theme II – Transparency of Party Funding – recommendations i, ii, iii, iv, v and vii have been implemented satisfactorily, recommendation vi has been partly implemented.
52. GRECO welcomes the measures progressively taken by Italy, in recent years, to step up its anticorruption policy. In 2019, Law No. 3/2019, so-called Bribe-Destroyer, entered into force. It introduces additional provisions to fight public sector corruption and to increase transparency requirements in the private sector.
53. More particularly, with regard to incriminations, GRECO congratulates Italy for its efforts to further align domestic legislation with the Criminal Law Convention on Corruption (ETS 173). Ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) remains a pending matter. Italy is one of only three countries (out of the 49 GRECO members) which have not ratified the Additional Protocol. The authorities are therefore invited to take action in this respect without further delay.
54. With regard to political financing, Italy has introduced major reforms in this area. One of the most salient is the move from public to private funding - with the abolishment of public financing in 2017. There are several valuable features in the new system, such as a general ban on anonymous donations, lowered disclosure thresholds, increased sanctions, etc. In such an evolving context of change, and given the primacy role that private funding is now given in the system, it is obvious that a holistic and integrated approach regarding oversight and accountability mechanisms acquire prime significance. To this end, GRECO welcomes the upgraded transparency and publication requirements for campaign donations introduced in 2019.
55. The new institutional arrangements to oversee political financing demand sound coordination between the various authorities involved and have yet to prove their workability and effectiveness in practice. In this connection, it is essential that supervision goes beyond formal to substantial in nature; for this to happen, additional improvements are required regarding the powers, coordination and resources of the different bodies with monitoring responsibilities over political finances (i.e. the Committee for the Transparency and Control of Financial Statements of Parties and Political Movements, the Court of Audit and the Regional Electoral Guarantee Board). Furthermore, time and practice will prove how and whether the existing rules will need to be refined and streamlined to better facilitate their efficient supervision and enforcement.
56. The adoption of this Second Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Italy. Given that some recommendations remain outstanding, both in the field of incriminations (recommendations i and iii) and the transparency of political party funding (recommendation vi), GRECO invites the Italian authorities to keep GRECO informed of future progress on the implementation of these recommendations.

57. GRECO invites the authorities of Italy to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make the translation public.