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## **Third Evaluation Round**

### **Second 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 86<sup>th</sup> Plenary Meeting  
(Strasbourg, 26-29 October 2020)

## I. INTRODUCTION

1. The Third Round Evaluation Report (Greco Eval III Rep (2009) 5E, [Theme I](#) and [Theme II](#)) was adopted at GRECO's 46<sup>th</sup> 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 Situation Reports 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 54<sup>th</sup> Plenary Meeting (23 March 2012) it was concluded that Turkey had not implemented satisfactorily or dealt in a satisfactory manner with 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 consider 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 63<sup>rd</sup> 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 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 66<sup>th</sup> 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 70<sup>th</sup> 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, pointing to the need for the country to take determined action.

7. In the [Third Interim Compliance Report](#), adopted by GRECO at its 74<sup>th</sup> 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 78<sup>th</sup> Plenary Meeting (8 December 2018), 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 assessed as “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 remaining recommendations.
9. In the [Addendum to the Second Compliance](#) report, adopted by GRECO at its 82<sup>nd</sup> Plenary Meeting (22 March 2019), the situation remained unchanged as no progress had been made to implement any of the pending recommendations. GRECO therefore urged the authorities to give new impetus to the implementation of the pending recommendations.
10. This [Second 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 Addendum to the Second Compliance Report, and performs an updated overall appraisal of the level of compliance with these recommendations. This report was prepared based on the Situation Report received from the Turkish authorities on 5 June 2020.

## **II. ANALYSIS**

### **Theme I: Incriminations**

11. 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.**

12. *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).*
13. As pointed out by GRECO in its previous reports, the provision on private sector bribery was amended (revised article 252, paragraph 8 TPC) and the amendments took into account several elements of the recommendation. At the same time, GRECO was concerned that the list of entities covered by the above provision remained restricted to a limited number of entities with public participation or acting in the public interest. No progress was recorded in the First and Second *Interim* Compliance Reports. In the Third *Interim* Compliance Report, the authorities 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 particular under Article 155 of the Turkish Penal Code. However, GRECO noted that this provision concerned the incrimination of abuse of trust and was thus unrelated to the subject of the present recommendation. No new information was provided in subsequent reports.
14. The authorities reiterate their position as expressed in the Third *Interim* Report and maintained thereon.
15. GRECO regrets once more that Turkey has still not taken additional action to fully implement this recommendation and it concludes that recommendation v remains partly implemented.

#### **Recommendation vii.**

16. *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.*
17. GRECO considered the recommendation to be partly implemented in the Second Compliance Report. The provisions on effective regret were 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 were made to extend the judge’s control and to attenuate further 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 as well as in the Addendum to the Second Compliance Report.
18. The authorities reiterate that Turkey still maintains its position as expressed in the Second Compliance Report, and repeated thereon, with respect to the automatic – and mandatorily total – nature of the effective regret defence.

19. 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**

20. GRECO notes 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.**

21. *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).*

22. In connection with recommendations i, iii to vii and ix, GRECO took note in its Second Compliance Report of 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 was prepared by a working group established under the Ministry of Justice and submitted to the Prime Minister. However, according to the authorities, owing to a busy political agenda, the draft bill had not been transmitted to the Council of Ministers for approval, as required before transmission to the Parliament. GRECO regretted that the draft bill had still not been submitted to Parliament and noted that work regarding the preparation and supervision of party accounts was on-going, but not yet completed. GRECO 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 concluded that the parts of the recommendations needing to be implemented had not been tackled by reason of the pending new legislative steps needed to fully comply with them. No new developments were reported by the authorities within the framework of any of the subsequent reports concerning the aforementioned draft bill or any other developments responding to the pending recommendations.

23. The authorities still do not mention any progress regarding the “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”. In respect of recommendation i, they consider that the Court of Account in making audits in the name of the Constitutional Court, is ensuring that expenditures made individually are included. On recommendation vi, they indicate that the Constitutional Court may decide to appoint a sworn expert to assist it in the audit of political parties. In respect of recommendation viii, the authorities reiterate the information previously given on resources for supervision. They also report that a total of 359 criminal complaints were issued by the Constitutional Court concerning financial auditing in the last 10 years and that, from 2014 to 2019, 120 criminal complaints were issued against political parties for having failed to submit their final accounts with the Constitutional Court.
24. GRECO notes with regret that once again no new development have been reported on the above-mentioned “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections”, on which the pending recommendations depend greatly and which was first mentioned by the authorities in the context of the Second Compliance Reported adopted in 2014. Furthermore, GRECO has received no information from the authorities as to whether or not the process of examination of the draft law has been resumed and is ongoing under the current parliament’s legislature.
25. The specific information provided in respect of recommendation i, does not respond to the requirements of the recommendation, firstly, to ensure that party accounts include financial information in respect of both elected representatives and candidates of political parties for political activities linked to their party, including electoral campaigning, and, secondly, to increase transparency in respect of consolidated accounts of both political parties and entities which are closely related to or come under the influence of a party. Previously, the Turkish authorities had consistently stated that the above-mentioned bill would ensure compliance with this recommendation.
26. As to recommendation vi, the fact that the Constitutional Court may choose to appoint a sworn expert to assist it in the audit of political parties does not respond to the recommendation which concerns audit prior to monitoring is carried out. The Turkish authorities had previously referred to the aforementioned bill to respond to the requirements of this recommendation.
27. Regarding recommendation viii, GRECO takes note of the number of criminal complaints lodged against political parties by the Constitutional Court in connection with its auditing role. However,

GRECO had already pointed out in prior reports that the Constitutional Court was not informed of the follow-up given to criminal complaints, and it notes that no information has been provided on whether these complaints have led to any investigations into financial irregularities or sanctions.

28. 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 the above-mentioned draft bill that has still not been finalised; parts of recommendations iii, iv, vii and viii had been considered partly implemented owing to certain measures having been taken, while the remainder of these recommendations depends essentially on the aforementioned bill.
29. 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**

30. **In view of the findings 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.
31. 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.
32. In respect of Theme I, the majority of the recommendations have been complied with. More comprehensive criminal law corruption provisions are in place which make it clear that all the different forms of corrupt behaviour in the meaning of the Criminal Law Convention on Corruption (ETS 173) – including unilateral acts such as mere offers, promises or requests of a bribe – constitute completed bribery offences. Moreover, they explicitly include the indirect commission of bribery through intermediaries as well as instances where the advantage is intended for a third party. Bribery of foreign and international officials has been extended to a wide range of categories of persons and is no longer restricted to acts of active bribery committed within the context of international commercial activities. Private sector bribery has been criminalised more broadly and completely new provisions on trading in influence have been introduced. That said, GRECO regrets that several shortcomings remain in the corruption-related provisions of the Turkish Penal Code, as compared with the standards established by the Convention. There have been no new developments since the Second Compliance Report adopted in 2014, GRECO urges the authorities to fully comply with the two outstanding recommendations, concerning respectively private sector bribery and the special defence of effective regret.
33. Regarding Theme II, GRECO regrets the continued lack of progress recorded. The preparatory work on strengthening transparency in the financing of political parties and election campaigns the which was part of the 2010 “Strategy for Enhancing Transparency and Reinforcing the Fight Against Corruption” had led to decisions to prepare legal and administrative amendments which had the potential of addressing many of the concerns expressed in the Evaluation Report. However, no tangible results – with a few exceptions, such as the adoption of legislation on campaign funding of presidential candidates – were achieved thereafter. Following that, GRECO was informed in the

Second Compliance Report adopted in 2014 that a “Draft Bill on the Amendment of Certain Laws for the Purpose of Ensuring Transparency in the Financing of Elections” had been prepared by the Ministry of Justice, which was aimed at addressing GRECO’s recommendations. However, ever since, there has been no progress on this bill, and it has not been confirmed whether it is on the current Parliament’s agenda. A few recommendations have been found to be partly implemented as a result of measures having been taken to address certain aspects of these recommendations (e.g. publication of the audit of political parties, adoption of the Guidebook on the Financial Audit of Political Parties), while others remain not implemented pending the concrete legislative steps to be taken.

34. Overall, the current situation is not satisfactory; considerable progress is yet to be made in respect of transparency of political financing in Turkey. GRECO is disappointed at the very low level of progress achieved. GRECO can only regret that only one recommendation out of nine has been fully implemented over the last 10 years. It urges the Turkish authorities to take resolute action in particular in giving new impetus to their legislative efforts towards increased transparency of political financing, including in connection with elections, in accordance with GRECO’s recommendations.
35. The adoption of this Second Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Turkey. However, in view of the recommendations still pending in the field of incriminations and more particularly in the field of transparency of political financing, all but one being either partly or not implemented, GRECO invites the Turkish authorities to keep GRECO informed of future progress on the implementation of these recommendations.
36. 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.