

Adoption: 23 March 2018
Publication: 31 May 2018

Public
GrecoRC3(2018)1

Third Evaluation Round

Second Compliance Report on the Czech Republic

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 79th Plenary Meeting
(Strasbourg, 19-23 March 2018)

I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of the Czech Republic since the adoption of the Compliance Report and four interim compliance reports to implement the recommendations issued in the Third Round Evaluation Report on the Czech Republic (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 on the Czech Republic, comprising a total of thirteen recommendations (four recommendations in respect of Theme I and nine in respect of Theme II), was adopted at GRECO's 50th Plenary Meeting (28 March – 1 April 2011) and made public on 29 April 2011, following authorisation by the Czech authorities (Greco Eval III Rep (2010) 10E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Czech authorities have submitted situation reports on the measures taken to implement the recommendations prior to the adoption of each of the compliance reports below. GRECO selected Italy and Hungary to appoint Rapporteurs for the compliance procedure.
4. In the [Compliance Report](#), adopted at its 59th Plenary Meeting (22 March 2013), GRECO concluded that of the four recommendations under Theme I, recommendation ii had been dealt with in a satisfactory manner, recommendations iii and iv had been partly implemented and recommendation i had not been implemented. In respect of Theme II, none of the nine recommendations had been implemented. This made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore applied Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
5. In the First [Interim Compliance Report](#) adopted at its 62nd Plenary Meeting (6 December 2013), GRECO concluded that, with respect to Theme I, in addition to recommendations iii and iv, recommendation i had been partly implemented and, in respect of Theme II, recommendations i-ix remained not implemented. The level of compliance was assessed again as “globally unsatisfactory” and, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to send a letter to the Head of Delegation of the Czech Republic to GRECO, drawing her attention to the non-compliance with the relevant recommendations.
6. In the [Second Interim Compliance Report](#) adopted at GRECO's 66th Plenary Meeting (12 December 2014) the rating of the pending recommendations remained unaltered. Therefore, the level of compliance was again assessed as “globally unsatisfactory” and, as per Rule 32, paragraph 2 subparagraph (ii) b), GRECO instructed the President of the Statutory Committee to send a letter to the Permanent Representative of the Czech Republic to the Council of Europe, emphasising the need to achieve tangible progress as soon as possible.

7. In the [Third Interim Compliance Report](#) adopted at its 70th Plenary Meeting (4 December 2015), GRECO acknowledged the satisfactory implementation of recommendation iii in respect of Theme I (recommendations i and iv had remained partly implemented) and the partial implementation of recommendations i-ix under Theme II. The level of compliance therefore remained “globally unsatisfactory” yet again and, in pursuance of Rule 32, paragraph 2 (ii) c), GRECO invited the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs of the Czech Republic encouraging expeditious action.
8. In the [Fourth Interim Compliance Report](#) adopted at its 74th Plenary Meeting (on 2 December 2016), GRECO regretted the lack of progress in respect of Theme I but was pleased with the revision of the Political Parties and Movements Act and of several electoral laws, which had led to the upgrading of recommendations i, ii, iv, v-vii and ix under Theme II to implemented satisfactorily. This had prompted GRECO’s conclusion that the level of compliance was no longer “globally unsatisfactory”. On 29 September 2017, the Czech authorities submitted additional information regarding actions taken to implement the outstanding recommendations which served as a basis for the current Second Compliance Report, drawn up by the Rapporteurs, Ms Emma RIZZATO (Italy) and Mr Bálint VARRÓ (Hungary) with assistance from the GRECO Secretariat.

II. **ANALYSIS**

9. It is recalled that the following recommendations remain partly implemented: recommendations i and iv (of Theme I - Incriminations) and recommendations iii and viii (of Theme II – Transparency of party funding). These recommendations are dealt with below.

Theme I: Incriminations

Recommendation i.

10. *GRECO recommended to clarify that bribery of all categories of employees in the public sector is covered, regardless of whether they are able to fundamentally influence a final decision in connection with procuring affairs in the public interest or not.*
11. Since the adoption of the First *Interim Compliance Report*, this recommendation has remained partly implemented. The authorities have maintained that the existing bribery provisions of the Criminal Code cover all categories of public sector employees. However, bribing someone “*in connection with procuring affairs in the public interest*” has been interpreted by the Supreme Court as referring to “*a person deciding or co-deciding on the affair in the public interest*” or “*a person who does not have any decision-making authority but – for example – prepares background information for a decision*” or conducts other activities which could “*fundamentally influence the final decision*”. An almost identical interpretation is found in the Methodological guidance issued by the Supreme Prosecutor’s Office. Although the authorities have referred to one court case where a broader interpretation was given to the concept “*in connection with procuring affairs in the public interest*”, GRECO was not convinced that it has established with certainty that all public sector employees, in particular those exercising ancillary jobs, whose tasks or actions cannot be considered as “*fundamentally influencing the final decision*”, fall within the scope of the bribery and trading in influence provisions as required by the Criminal Law Convention on Corruption.

12. The authorities reiterate their position on the broad interpretation given to the bribery-related provisions of the Criminal Code.
13. GRECO underscores the absence of concrete action and urges the authorities to fully implement the present recommendation.
14. GRECO concludes that recommendation i remains partly implemented.

Recommendation iv.

15. *GRECO recommended to clarify in an unequivocal manner the way in which bribery of foreign arbitrators and foreign jurors is criminalised in the Czech Republic and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*
16. In the previous compliance report this recommendation was assessed as partly implemented due to a persisting lack of progress in respect of the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption.
17. The authorities signed the Additional Protocol during an official ceremony held in the margins of the conference on “Corruption Prevention in respect of Parliamentarians, Judges and Prosecutors: main trends and lessons learned from the GRECO Fourth Evaluation Round” (Prague, 9-10 November 2017) organised under the auspices of the Czech Republic’s Chairmanship of the Committee of Ministers of the Council of Europe. The ratification process is now pending in Parliament.
18. GRECO welcomes the signature of the Additional Protocol and encourages the authorities to accelerate the ratification process.
19. GRECO concludes that recommendation iv remains partly implemented.

Theme II: Transparency of Party Funding

20. It is recalled that, in the Fourth *Interim* Compliance Report, GRECO welcomed the adoption of amendments to the Political Parties and Movements Act (AAPP) and several electoral laws. Most of those amendments entered into force on 1 January 2017.

Recommendation iii.

21. *GRECO recommended to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control.*
22. In the Fourth *Interim* Compliance Report this recommendation was considered partly implemented. GRECO had taken note of amendments to the AAPP which increased the transparency of the shareholdings of political parties/movements in commercial companies in the sense that all corporations/co-operatives in which a party/movement holds shares are to be listed in its annual financial statements along with the number of shares. Nonetheless, since the reporting of income generated by the shareholding was not required, GRECO concluded that a meaningful picture of the parties’/movements’ actual financial capacity could not be formed.

23. The authorities insist that political parties' accounts are sufficiently consolidated, as required by the recommendation. They indicate that parties may not engage in any business activities under their own name but only form (or own a share in) a corporation/co-operative active in the spheres of: a) publishing, printing, radio or TV broadcasting, b) publication and promotional activities, c) organisation of cultural, social, sport related, recreational, educational or political activities, d) manufacture and retail of promotional items of relevance to that party's activities. A party's annual financial statement is to include the total income, including from any business activity, whereas the income of each corporation is disclosed via the public register of legal persons.
24. GRECO takes note of the information included in the previous compliance reports and of the additional explanations given by the authorities. The measures and clarifications taken together (i.e. the consolidation of party accounts in respect of directly or indirectly related entities and the restrictions on business activities for political parties) appear sufficient to comply with the recommendation, which is limited to "seeking ways" to consolidate books and accounts.
25. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation viii.

26. *GRECO recommended to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns.*
27. This recommendation was qualified as partly implemented in the Fourth *Interim* Compliance Report. While welcoming the adoption of amendments providing for the establishment of the independent Office for the Supervision of the Finances of Political Parties and Movements, GRECO had concerns regarding the eligibility criteria for the Office members¹ and was not in a position to assess the comprehensiveness of its mandate and sufficiency of resources for in-depth financial monitoring of political parties and election campaigns.
28. With respect to part (i) of the recommendation, the authorities now state that the Office for the Supervision of the Finances of Political Parties and Movements was established on 1 January 2017 as an independent institution regulated by law. The Office has the status of a central administrative authority (accounting entity), with its own budget, and is competent *inter alia* to: a) supervise, monitor and control the financing of political parties/movements; b) publish their annual reports and its findings in this regard; c) sanction any breaches of political financing rules; and d) fulfil other tasks as required by acts regulating the financing of political campaigns. In respect of the latter, the Office is competent to supervise parliamentary, presidential and regional elections

¹ GRECO noted that Article 19e(3)(f) AAPP on the eligibility criteria for Office members requiring them not to be active in political parties in the past two years, would enter into force only on 1 January 2019 and that Article 19c(3)(f) AAPP, regarding eligibility criteria for the Office Chair not to be politically active in the past three years, would enter into force on 1 January 2020. GRECO took the view that this situation must be considered in conjunction with factors such as the lack of a clear requirement to organise selection tenders and a fairly long and still renewable mandate of the Office Chair and members.

and elections to the European Parliament. There is an obligation on all campaigning political parties/movements, coalitions and independent candidates to establish transparent electoral accounts to finance their election campaigns, whereas any other persons who intends to campaign without a candidate's knowledge is to register with the Office and to establish, as well, a transparent election account prior to entering the election campaign. Ceilings on campaigning expenses apply to political parties/movements, coalitions, independent candidates as well as third persons and are complemented with the disclosure duties towards the Office (submission and publication of a standardised Report on election campaign finances) and the public at large.

29. Regarding part (ii) of the recommendation, the authorities state that the Office is composed of the Chair, four Office members and other employees. In 2017, the total number of employees was 12, of whom 8 were public servants and of those 6 were assigned to the Department for supervision and administrative operations. All Office positions are filled and the Office's resources are considered appropriate and its mandate/authority indisputable. All information relating to the Office can be found on its website (<https://udhpsch.cz/o-nas/>). In response to GRECO's specific concerns about the postponement of the entry into force of the eligibility criteria, the authorities state that the Office's Chair and members nevertheless comply with them in practice. They furthermore note the absence of any problems and mention that the key reasons for postponing the entry into force of those criteria was the intention to exclude retroactivity² and avoid loopholes.
30. Finally, with respect to part (iii) of the recommendation, it is recalled that the Office is to act *ex officio* or upon complaint. The investigation of complaints made by the public and the media is said to form part of the Office's daily activities.
31. GRECO had previously welcomed the adoption of amendments to the AAPP establishing the Office for the Supervision of the Finances of Political Parties and Movements. While this body's independence and mandate, as provided for by law, fully meet the requirements underlying the recommendation, the true independence, the effective exercise of its mandate in practice and the appropriateness of its resources would benefit from being reconsidered in light of the allegations of opacity and insufficient transparency of financial information which surrounded the October 2017 Parliamentary and the January 2018 presidential election campaigns.³ Also, GRECO considers that a clear process for the submission (and subsequent) investigation of citizens' and media complaints with respect to the funding of political parties/movements and election campaigns has not been established as required by the third element of the recommendation.
32. GRECO concludes that recommendation viii remains partly implemented.

² The authorities explain that, when drafting the AAPP, their efforts were driven by the idea that equal access to functions must be guaranteed to all potential candidates so as to avoid situations where a candidate would be excluded from running for office due to his/her joining a political party at a time when the AAPP was not even being adopted.

³ See, for example, <http://www.radio.cz/en/section/curraffrs/watchdog-monitors-uneven-openness-in-czech-presidential-campaign>

III. CONCLUSIONS

33. **In view of its previous compliance reports and the above, GRECO concludes that the Czech Republic has implemented satisfactorily or dealt with in a satisfactory manner ten of the thirteen recommendations issued in the Third Round Evaluation Report.**
34. With respect to Theme I – Incriminations, recommendations i and iv remain partly implemented and, with regard to Theme II – Transparency of Party Funding, recommendation iii has been dealt with in a satisfactory manner and recommendation viii remains partly implemented.
35. As for incriminations, GRECO welcomes the long awaited signature of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and is hopeful that it will soon be followed through with ratification. GRECO regrets however the authorities' reluctance to clarify that bribery of all categories of public employees is criminalised, regardless of whether or not they are able to fundamentally influence a final decision in connection with "procuring affairs in the public interest".
36. With regard to transparent political financing, GRECO welcomes the entry into force of the new legislation, which redresses most problems highlighted in the Evaluation Report and which is applicable to all types of elections, except for municipal ones. In this context, the establishment of an independent Office for the Supervision of the Finances of Political Parties and Movements, which signifies a change from parliamentary control to independent oversight, is an important achievement conducive to greater transparency of political financing in the Czech Republic. Given the relatively early stage of enforcement of the new legislation and in light of concerns raised in the context of the October 2017 Parliamentary and the January 2018 presidential election campaigns, this new Office would benefit from being re-examined regarding its true independence, efficiency, resources and proactive response to complaints.
37. The adoption of this Second Compliance Report terminates the Third Round compliance procedure in respect of the Czech Republic. The authorities may, however, wish to inform GRECO of further developments with regard to the implementation of the pending recommendations.
38. Finally, GRECO invites the authorities of the Czech Republic 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.