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Third Evaluation Round

Third *Interim* Compliance Report on Turkey

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 74th Plenary Meeting
(Strasbourg, 28 November - 2 December 2016)

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” in 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 encouraged, therefore, 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 that the reform process was too early to conclude that any substantial and tangible progress had been achieved since the Compliance Report. GRECO therefore assessed the overall situation as “globally unsatisfactory” in 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 recommendations found to be not or partly implemented in the Second Compliance Report – 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 recommendations found to be not or partly implemented (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 this Third Interim Compliance Report, drawn up by Mr Atle ROALDSØY (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 *Second Interim Compliance Report*, and performs an updated overall appraisal of the level of compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

8. GRECO recalls that up until now, six of the eight recommendations issued in the Evaluation Report have been categorised as implemented satisfactorily, whilst recommendations v and vii remain partly implemented.

Recommendation v.

9. *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).*
10. As pointed out in the previous report, according to the Second Compliance Report, 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.
11. The authorities now indicate that in their view, active and passive bribery in the private sector and the act of providing an undue advantage to others are criminalised also in another set of rules, namely article 155 of the Turkish Penal Code.
12. GRECO takes note of the information provided above, which actually concerns the incrimination of abuse of trust¹ and is thus unrelated to the subject of the present recommendation. It concludes that recommendation v remains partly implemented.

¹ "Abuse of Trust - Article 155

(1) Any person who denies the transfer to himself of moveable property belonging to another, or who enjoys the use of such property for a purpose not specified at the time of the transfer for the benefit of himself or another, where such property had been transferred for the purpose of protection or for a specified usage, shall be sentenced to a penalty of imprisonment from six months to two years and a judicial fine, upon complaint.

(2) Where the offence is committed in relation to property, which was submitted and delivered as a requirement to confer authority to administer such property, and this authority is derived from a professional, trade, commercial, or service relationship or any other reason the offender shall be sentenced to a penalty of imprisonment for a term of one to seven years and a judicial fine of up to three thousand days."

Recommendation vii.

13. *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.*
14. As pointed out in the previous report, 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 and Second *Interim* Compliance Reports.
15. The authorities reiterate that Turkey still maintains its position expressed in the Second Compliance Report with respect to the automatic – and mandatorily total – nature of the effective regret defence.
16. GRECO 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

Recommendations i to ix.

17. *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 take appropriate measures to ensure that annual accounts of political parties provide more detailed and comprehensive information on income and expenditure, including the introduction of a standardised format backed up by common accountancy principles, as well as the provision of guidance to parties by the monitoring body (recommendation ii);*
 - *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).*
18. As already pointed out in the Second Compliance Report and the First and Second *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. With respect to recommendation ii, a “Draft Guidebook to Financial Audit of Political Parties” was under preparation by the Court of Accounts. Finally, with respect to recommendation viii, the Court of Accounts had established a special unit – the “24th Group Presidency” – in order to carry out the financial audit of political parties. 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. It had concluded that recommendations ii, iii, iv, vii and viii remained partly implemented and that recommendations i, v, vi and ix remained not implemented.
19. The situation remained unchanged following the Third *Interim* Compliance Report, which took note of the following information which had no direct impact on the rating of recommendations: a) the existence of delays in the reform process due to the political situation (the interim government appointed in June 2015 was not entitled to transmit the above draft bill to Parliament); b) following the November 2015 elections, the new government presented to the Parliament its programme, which was foreseeing the rapid adoption and implementation of the “transparency package” prepared by the previous government; c) as regards recommendation ii, the authorities had indicated that work on the “Draft Guidebook to Financial Audit of Political Parties” was still on-going (it had been submitted to the Court of Accounts and revisions were in progress; in the

meantime, auditors inform political parties verbally and in writing about the principles of the Guidebook; d) as for recommendation vii, the Law on Presidential Elections adopted in 2012 was applied for the first time during the presidential elections of August 2014. Financial documents were submitted by candidates to the Supreme Board of Elections, which analysed them and made public its report on 22 November 2014 on its website².

20. The authorities indicate in their latest submission that in addition to the governmental programme presented in November 2015, a Circular on "Increasing Transparency and Enhancing the Fight Against Corruption" was issued on 23 April 2016 by the Prime Minister's Office with the purpose of developing a just, accountable, transparent and reliable understanding of administration and for curbing tendencies for corruption offences by raising public awareness against corruption (a copy was transmitted to GRECO). The circular includes risk and gap analyses regarding corruption and it establishes time frames for reforms. It also underlines the need for statutory amendments regarding transparency of political parties. The authorities take the view that this circular demonstrates the on-going commitment of the country to address GRECO's recommendations despite the general difficult context and many other priorities generated by two further general elections held since December 2015 and the on-going consequences of the refugee crisis and attempted coup of 15 July 2016 (which led to the declaration of state of emergency).
21. GRECO takes note of the information provided. For the time being, and in the absence of any new, meaningful development, GRECO can only maintain its earlier assessment.
22. GRECO concludes that recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.

III. CONCLUSIONS

23. In light of the above, GRECO concludes that since the previous *interim* report in the compliance procedure, Turkey has not made any new tangible progress in the implementation of the eleven recommendations found to be not or partly implemented in the said report. Therefore, the situation remains unchanged and up until now, out of a total of seventeen recommendations, six recommendations have been implemented satisfactorily. Seven recommendations remain partly implemented and four not implemented.
24. Specifically, 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, recommendations ii, iii, iv, vii and viii remain partly implemented and recommendations i, v, vi and ix not implemented.
25. The Third Round Evaluation Report was adopted in March 2010 that is almost seven years ago. In respect of Theme I, no further plans are announced with regard to the two outstanding recommendations concerning the provisions on private sector bribery and the special defence of effective regret: it is as if the reform process has stalled in this respect. As for Theme II, Turkey has still not managed after so many years to implement any of the recommendations on political financing. GRECO is not indifferent to the difficult times that the country is going through and it appreciates of course its renewed commitment to implementing these recommendations. However, the current result at this stage is clearly disappointing. GRECO can only urge the

² http://www.ysk.gov.tr/cs/groups/public/documents/document/ndq0/mda5/-edisp/yskpwc1_4444009133.pdf

authorities once again to enhance their efforts to carry through the reforms initiated and to pay particular attention to the effectiveness of measures planned.

26. In view of the above, GRECO concludes that the current level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
27. Pursuant to paragraph 2(i) of Rule 32 of the Rules of Procedure, GRECO requests the Head of Delegation of Turkey to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations v and vii regarding Theme I and recommendations i to ix regarding Theme II) by 30 September 2017.
28. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii) c), to invite 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.
29. 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.