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Interim Report

Third Evaluation Round

Interim **Compliance Report** **on Greece**

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 60th Plenary Meeting
(Strasbourg, 17-21 June 2013)

I. INTRODUCTION

1. The Third Round Evaluation Report on Greece was adopted at GRECO's 47th Plenary Meeting (7-11 June 2010) and made public on 7 July 2010, following authorisation by Greece (Greco Eval III Rep (2009) 9E, [Theme I](#) and [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Greek authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Georgia and the United States to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Nino SARISHVILI, Head of the Research and Analysis Unit, Analytical Department, Ministry of Justice, on behalf of Georgia, and Ms Jane LEY, Deputy Director, U.S. Office of Government Ethics, on behalf of the United States of America. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the Compliance Report, which was adopted by GRECO at its 56th Plenary Meeting (Strasbourg, 20-22 June 2012), it was concluded that Greece had implemented satisfactorily only one of the twenty-seven recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the current very low level of compliance with the recommendations as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report and asked the Head of the Greek delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i-viii, x and xi regarding Theme I, and recommendations i-xvi regarding Theme II) by 31 December 2012, pursuant to paragraph 2(i) of that Rule.
4. The current Interim Compliance Report assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs an overall appraisal of the level of Greece's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its evaluation report addressed 11 recommendations to Greece in respect of Theme I. One of these – recommendation ix – was assessed as satisfactorily implemented in the Compliance Report. Compliance with the other recommendations is dealt with below.

Recommendations i-ii, iv-v, vii-viii and x-xi.

6. GRECO recommended:

- to consolidate all relevant provisions on bribery and trading in influence, preferably within the Penal Code (recommendation i);

- to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences (recommendation ii);

- to incriminate more broadly bribery of domestic, foreign and international judges, arbitrators and jurors, in accordance with Articles 2, 3, 5, 11 of the Criminal Law Convention (ETS 173), as well as Articles 2 to 6 of its Additional Protocol (ETS 191), in particular as regards intermediaries, third party beneficiaries and the scope of the bribe-taker's actions/omissions (recommendation iv);

- to incriminate more broadly bribery of domestic, foreign and international members of public assemblies, in accordance with Articles 4, 6 and 10 of the Criminal Law Convention (ETS 173), in particular as regards the "giving" and "receipt" of an undue advantage, intermediaries, third party beneficiaries and the scope of the bribe-taker's actions/omissions (recommendation v);

- to ensure that bribery of foreign public officials, judges, members of public assemblies, arbitrators and jurors is criminalised in respect of bribe-takers from any foreign State, in line with Articles 5 and 6 of the Criminal Law Convention (ETS 173) and Articles 4 and 6 of its Additional Protocol (ETS 191) (recommendation vii);

- to incriminate trading in influence in a consolidated manner, making sure that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the elements of improper influence, the active side of trading in influence, the requesting of an undue advantage, immaterial advantages, intermediaries and third party beneficiaries (recommendation viii);

- to abolish the special statute of limitation for the prosecution of members of government and former members of government (recommendation x);

- to amend current legislation to expressly exclude the operation of Article 30 (2) of the Code of Penal Procedure concerning the postponement or suspension of prosecution of "political acts" and "offences through which international relations of the State may be disturbed" in the context of all domestic and foreign bribery offences (recommendation xi).

7. With the exception of recommendations iii and vi, the Greek authorities do not provide information detailing the action taken in respect of individual pending recommendations. Instead, they indicate that the Ministry of Justice convened in November 2012 a special law-drafting committee, with the express purpose of addressing all the outstanding GRECO recommendations, including reviewing entirely the anti-corruption provisions of the Penal Code and the Code of Criminal Procedure; streamlining control and monitoring procedures; and making recommendations for an overall national anti-corruption strategy. The committee is expected to produce a new draft Penal Code by July 2013 and a final report by September 2013. After completing the first phase of its work, the committee opted for bringing together all corruption provisions in the Penal Code and expunging in parallel the different laws of ratification of the international instruments on corruption to which Greece is a party. The committee considers that this choice would ensure maximum visibility of the relevant provisions for all practitioners.
8. In the meantime, articles 235, 236 and 237 of the Penal Code on active and passive bribery of domestic public officials and on bribery of judges have been amended by Law 4055/2012, which entered into force on 2 April 2012 and Law 4139/2013, which came into force on 20 March 2013. The former law increased the value of financial benefits – from 73,000 to 120,000 € – triggering the application of aggravated penalties. The latter law added compulsory financial penalties, ranging from 10,000 to 150,000 €, to the penalty of imprisonment for all these bribery offences and introduced in the Greek legal system the institution of Prosecutor for Corruption Crimes, who has an extended capacity regarding the investigation and prosecution of corruption. Provision has

also been made in the law for an expedited investigation – which must be concluded within four months of the case assignment – and adjudication of corruption cases.

9. The authorities add that a workshop on “Transparency – fighting corruption” was held in the Greek Parliament on 28 November 2012, with the participation of Members of Parliament and representatives of central institutions responsible for fighting corruption, namely the President of the Court of Auditors, the General Commissioner of State in the Court of Auditors, the Deputy Prosecutor of the Supreme Court, the President of the Anti-Money Laundering Counter-Terrorist Financing and Source of Funds Investigation Authority, the President of the Public Procurement Independent Authority and the Central Electronic Registry of Public Procurement, the Inspector-General of Public Administration, the Special Secretary of the Financial and Economic Crime Unit (SDOE) and the Greek Ombudsman, as well as the President of the Greek Chapter of Transparency International. During this workshop, the participants indicated the difficulties they face in their anti-corruption work and made proposals for a more effective fight against corruption.
10. GRECO takes note of the general information provided above, and considers that, with the exception of recommendations iii and vi, which will be dealt with individually below, there is no need to analyse the situation of the outstanding recommendations one by one. As regards recommendations i-ii, iv-v, vii-viii and x-xi, GRECO recalls that in the Compliance Report, the Greek authorities had provided information on the preparation of a new draft Penal Code, which allowed GRECO to consider at least certain recommendations as partly implemented. This was particularly the case for recommendation i, which called for a consolidation of the bribery and trading in influence provisions within the Penal Code, of recommendations iv, v and vii on bribery of domestic, foreign and international judges, arbitrators, jurors and members of public assemblies, as well as of recommendation viii on trading in influence. According to the information submitted, Greece had taken steps in the new draft Penal Code to remove some of the deficiencies identified by GRECO in its Evaluation Report. However, due to the political situation in Greece at the time, the draft Penal Code had not been submitted to Parliament. As regards recommendation ii, the explanations provided on the intention of the drafters of the draft Penal Code, not to consider as bribery the acts/omissions of an official outside of his/her competences, were considered by GRECO as not responding to the concerns of the recommendation. As regards recommendation x, GRECO noted with interest that some former ministers had been indicted for offences of money laundering and false asset declarations, but that the special statute of limitation for the prosecution of members and former members of government still remained in force. Finally, in respect of recommendation xi, no action had been taken.
11. GRECO welcomes the establishment of the special law-drafting committee and the intention of the Greek authorities to amend criminal legislation to address all pending recommendations. However, this intention had already been stated in the Compliance Report and GRECO regrets that the draft Penal Code has still not been presented to Parliament. It can only conclude that there has been no concrete progress in the implementation of recommendations i-ii, iv-v, vii-viii and x-xi.
12. GRECO concludes that recommendations i, iv, v, vii and viii remain partly implemented and that recommendations ii, iii, vi, x and xi have not been implemented.

Recommendation iii.

13. *GRECO recommended to take the appropriate measures, such as circulars or training, to make it clear to or to remind those concerned that the offences of active and passive bribery are autonomous and do not necessarily require an agreement between the parties.*
14. GRECO recalls that it had assessed this recommendation as not implemented in the Compliance Report, as no action had been taken by the Greek authorities in this respect.
15. The Greek authorities now report that two decisions of the Supreme Court (decisions 1202/2011 and 253/2012) have clarified the fact that the offences of active and passive bribery do not require an agreement between the parties. They recall that, in the Greek legal system, one of the responsibilities of the Supreme Court is the interpretation of the law and the harmonisation of case-law.
16. They also point out that the Hellenic Criminal Bar Association organised on 31 May – 1 June 2013 a seminar on “The criminal management of corruption – possibilities and limitations”, with the participation of more than 200 judges, prosecutors, lawyers and law professors. It addressed all aspects of bribery offences, and the recommendations of GRECO were the topic of one of the presentations.
17. GRECO takes note of the information provided. It agrees that the decisions of the Supreme Court referred to by the Greek authorities establish that the existence of an agreement between the parties is not required as one of the conditions for the commission of the offence of passive bribery. This conclusion is, however, implicit, as it is not explicitly spelled out in the decisions that such an agreement is not necessary and that the offences of active and passive bribery are autonomous. As to the seminar organised by the Hellenic Criminal Bar Association, GRECO takes the view that this is not sufficient to fulfil the objectives of the recommendation. Additional measures are necessary and ought to be also – if not mainly – directed towards the police and the prosecution service, who are in charge of the investigation and the prosecution of bribery offences. GRECO encourages therefore the Greek authorities to pursue their efforts of clarification in the sense requested by the recommendation.
18. GRECO concludes that recommendation iii has been partly implemented.

Recommendation vi.

19. *Greco recommended to carry out a proper assessment of the effectiveness of the provisions concerning bribery and trading in influence.*
20. GRECO recalls that it had also assessed this recommendation as not implemented in the Compliance Report, in the absence of any action taken by the authorities to address it.
21. The authorities of Greece state that the 2012 Annual Report of the Department of Internal Affairs of the Police was published on 4 April 2013. It showed a marked increase in the number of criminal charges for corruption offences, following recent legal amendments. The effectiveness of the investigation of corruption-related offences has been improved, as corruption crimes may now be reported anonymously by e-mail or by telephone. All reported information or complaints are forwarded to the competent Appeals Prosecutor, who conducts an investigation. As a result, the

number of reports has increased by 30,33% compared to the 2011 figures, and the number of reports about bribery of public officials has increased by 94,64%.

22. The authorities add that a National Action Plan against Corruption was adopted in January 2013 and that it places emphasis on new factors and strategies to fight corruption. A National Coordinator against Corruption was established by Law 4152/2013 as an independent authority, appointed by the Prime Minister for five years and reporting to him and to the Parliament. The National Coordinator is assisted by a nine-member Advisory Body, providing guidance at policy level, and by a Coordinating Committee, comprised of the Secretaries General of the Ministries of Finance, Public Administration, Development, and Justice; the Head of the Fiscal Information Unit at the Ministry of Finance; the Public Prosecutor against Corruption; the Head of the Financial Intelligence Unit; the Ombudsman; the Inspector-General for Public Administration and the Director of the Economic Police. The Coordinating Committee's task is to ensure the coordination of policies, cooperation and information-sharing among different services at operational level. The first National Coordinator against Corruption, Mr Ioannis Tentes, formerly public prosecutor at the Supreme Court, was appointed in May 2013. As a single authority with access to all levels of public administration, the mission of the National Coordinator is to co-ordinate sustained action against corruption, constantly review the effective implementation of measures and actions undertaken in that context and ensure proper and direct accountability, including criminal sanctions, at all levels of government.
23. GRECO welcomes the measures taken to increase the effectiveness of the investigation of corruption offences – among which the establishment of the Prosecutor for Corruption Crimes and the arrangements for a speedier investigation mentioned in paragraph 21 – as well as the reported increase in reports. That said, the Annual Report communicated focuses on the activity of the Department of Internal Affairs of the Police, which does not deal only with bribery and trading in influence cases. GRECO also welcomes the establishment of the National Coordinator against Corruption, whose action will hopefully improve in the future the effectiveness of anti-corruption policies and the necessary coordination between relevant agencies. It is, however, too early to assess the results of his action. In the meantime, it does not appear that a proper assessment of the bribery and trading in influence provisions has been carried out, as requested by the recommendation.
24. GRECO also recalls that this recommendation had been given in response to the fact that there were no centrally available data or statistics on cases involving bribery, nor studies into possible factors hampering the effectiveness of the provisions on bribery and trading in influence, such as the absence of an effective control mechanism on public administration, the lack of sufficient evidence, the excessive slowness of the justice system and the division of tasks between the law enforcement authorities responsible for the investigation of corruption offences. Even if some of these factors may have been addressed by the measures reported by the Greek authorities, they do not as such respond to the requirements of the recommendation.
25. GRECO concludes that recommendation vi remains not implemented.

Theme II: Transparency of Party Funding

26. It is recalled that GRECO in its evaluation report addressed 16 recommendations to Greece in respect of Theme II. All of these recommendations were considered as not implemented and are dealt with below.

Recommendations i-xvi.

27. *GRECO recommended to extend the financial reference period applicable to election campaigns so that the financial activity during this period is accurately and comprehensively recorded (recommendation i);*

(i) to abolish the possibility to use anonymous coupons for donations to political parties, coalitions and candidates and (ii) to introduce a requirement that all donations above a certain threshold to political parties and coalitions and, if appropriate, to election candidates, be made by bank transfer (recommendation ii);

to take appropriate measures to ensure that loans granted to political parties, coalitions and candidates are not used to circumvent political financing regulations, by ascertaining in particular whether loans are reimbursed in conformity with the terms under which they were granted (recommendation iii);

to ensure that all goods and services provided in kind to political parties, coalitions, members of the Hellenic and European Parliaments and election candidates (other than voluntary work by non-professionals) are properly identified and comprehensively recorded, at their market value, both as regards parties' and coalitions' operational activities and as regards election campaigns (recommendation iv);

to properly reflect in party accounts the value of the services rendered by public officials seconded to assist members of the Hellenic or the European Parliament and to make sure this information is readily available to the public (recommendation v);

to increase the transparency of accounts and activities of entities related, directly or indirectly, to political parties, or otherwise under their control (recommendation vi);

to introduce requirements for the timely publication of private donations to political parties, coalitions and candidates above a certain threshold (recommendation vii);

to increase considerably the transparency of the financing of election campaigns, in particular by (i) making apparent the financial support by political parties and coalitions to candidates in local and regional elections and (ii) by introducing reporting and publication requirements for all election candidates or lists of candidates at all levels (recommendation viii);

to facilitate easy public access to published information on the financing of political parties and election campaigns (recommendation ix);

to ensure independent auditing in respect of political parties obliged to keep books and accounts (recommendation x);

to strengthen considerably the independence of the Control Committee from the political parties and coalitions (recommendation xi);

to ensure a more substantial and on-going monitoring of the financial documents of political parties, coalitions and candidates (recommendation xii);

(i) to ensure the publication of and easy access by the public to the reports of the Control Committee, including the appendices containing the reports of the chartered auditors and (ii) to introduce the possibility for members of the Control Committee to express and publish dissenting or minority opinions on the Committee's report (recommendation xiii);

to ensure that files may be re-opened when new information comes to light and to modify the rules on the retention of financial documentation by the parties, coalitions, candidates, as well as by the Control Committee itself, accordingly (recommendation xiv);

to ensure that political funding at sub-national level is subject to monitoring by an independent and effective control mechanism, ideally under the supervision of the Control Committee (recommendation xv);

(i) to introduce a requirement for the Control Committee and the auditors to report suspected violations of the rules on political financing to the law enforcement authorities and (ii) to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding works effectively in practice (recommendation xvi).

28. The authorities of Greece do not provide information detailing the action taken in respect of each individual pending recommendation. Instead, they indicate that the legislative committee, set up within the Ministry of Home Affairs, Decentralisation and E-governance with the express mandate to reform the party funding legislative provisions to comply with GRECO recommendations, has not yet finished its work and no new draft law on party funding is yet available.
29. The Greek authorities also highlight that a first step in the reform of party funding legislation was achieved with Law 3870/2010 on "Election expenses of coalitions and candidates and control thereof in the prefectural and municipal elections", which entered into force on 9 October 2010. This law regulates the funding and expenditure of coalitions and candidates in these elections. It establishes prohibitions and limits for funding and expenditure and stipulates an obligation, for coalitions and candidates to elections in municipalities having a population of more than 10,000 inhabitants, to disclose their revenue and expenditure on a central database kept by the Ministry of Home Affairs, Decentralisation and E-governance. This online database is accessible to the public¹. In addition, elected prefects, vice-prefects, mayors and members of the district and municipal councils have to submit to a Committee on Expenditure Control and Election Violations, within 30 days from the announcement of the election results, an analytical list of their election revenue and expenses, with accompanying supporting documents. A committee is established in each district, composed of the President of the Administrative Court of Appeal in that district, a judge of the Court of Appeal, a member of the Council of State, the Commissioner of the Audit Council and the Head of the district Directorate of the Economic Crime Unit (SDOE). It is assisted by five detached officials of the district. The committee reviews the financial situation of the elected coalitions and candidates, within five and ten months from the announcement of the election results respectively, by examining the documents submitted and requesting, if necessary, access to the central database. The law also foresees penalties, ranging from administrative fines

¹ <http://www.ekloges.ypes.gr/diafaneia/index.html>

from 3,000 to 10,000 € to imprisonment and forfeiture of the list or candidate for violation of its provisions. Administrative fines and forfeiture are pronounced by the committee, while imprisonment is imposed by the competent criminal court.

30. GRECO takes note of the general information provided above, and considers that under these circumstances, there is no need to analyse the situation of the outstanding recommendations one by one. It recalls that reference to the preparation of a new draft law on party funding had already been made in the Compliance Report and regrets that progress on this issue appears slow. On the other hand, it welcomes the adoption of Law 3870/2010, which appears to contain measures to add a degree of transparency over the financing of election campaigns at local and regional level, as requested as a part of recommendation vii and the second part of recommendation viii. That said, it is not quite clear whether these measures do contribute to the first objective of recommendation viii, namely to make more apparent the financial support of political parties to coalitions and candidates in elections at local and regional level. GRECO urges the Greek authorities to take determined action to address each pending recommendation and concludes that recommendations vii and viii are partly implemented and that recommendations i-vi and ix-xvi remain not implemented.

III. CONCLUSIONS

31. **In view of the above, GRECO concludes that little progress has been achieved by Greece as regards the implementation of the recommendations found not to have been implemented or partly implemented in the Third Round Compliance Report.** With respect to Theme I – Incriminations, recommendations i, iii, iv, v, vii and viii have been partly implemented and recommendations ii, vi, x and xi remain not implemented. With respect to Theme II – Transparency of Party Funding, recommendations vii and viii have been partly implemented and recommendations i-vi and ix-xvi have still not been implemented.
32. GRECO notes that some steps have been taken to address some of the recommendations. As regards Theme I, some attempts have been made to clarify the fact that offences of bribery do not require an agreement between the parties and measures have been taken to increase the effectiveness of the investigation of corruption offences. With respect to Theme II, the reform of the legal framework for election campaigns at local and regional level introduces a degree of transparency over the financing of these campaigns. However, despite repeated declarations of good intentions regarding the preparation of new legislation to address all pending recommendations with respect to both themes – declarations that were already made at the time of the adoption of the Compliance Report – there is no more concrete information available as to the content of the planned legislation than at that time. GRECO regrets that progress in the preparation of this new legislation remains slow and urges the Greek authorities to take determined action to translate their good intentions into concrete results.
33. In view of the above, and despite some first positive signals concerning the implementation of recommendations in the future, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
34. Pursuant to paragraph 2(i) of Rule 32 (revised) of the Rules of Procedure, GRECO requests the Head of Delegation of Greece to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i-viii and x-xi regarding Theme I and recommendations i-xvi regarding Theme II) by 31 March 2014.

35. In accordance with Rule 32 (revised), paragraph 2, subparagraph (ii.a), GRECO instructs its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of Delegation of Greece, drawing her 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.
36. Finally, GRECO invites the authorities of Greece 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.