



Groupe d'Etats contre la corruption
Group of States against Corruption



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 16 May 2012

Confidential
Greco RC-III (2012) 11E
Interim report

Third Evaluation Round

Interim Compliance Report on Denmark

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 55th Plenary Meeting
(Strasbourg, 14-16 May 2012)

I. INTRODUCTION

1. The Third Round Evaluation Report on Denmark was adopted at GRECO's 43rd Plenary Meeting (2 July 2009) and made public on 25 February 2010, following authorisation by Denmark (Greco Eval III Rep (2008) 9E Theme I / Theme II)¹.
2. As required by GRECO's Rules of Procedure, Denmark submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Helena PAPA, Inspector, Department of Internal Administrative Control and Anti-Corruption, Council of Ministers (Albania) and Mr Don O'FLOINN, Policy Advisor, Ministry of Security and Justice Law Enforcement Department (Netherlands). 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 51st Plenary Meeting (Strasbourg, 23-27 May 2011), it was concluded that among the 14 recommendations addressed to Denmark, 3 recommendations of Theme I - Incriminations had been implemented satisfactorily or dealt with in a satisfactory manner and 1 recommendation of Theme I had been partly implemented. Despite the progress noted in respect of Theme I, GRECO concluded that the total non compliance with the recommendations under Theme II – Transparency of Party Funding made the overall level of compliance "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 Delegation of Denmark to provide a report on the progress made in implementing the pending recommendations (i.e. recommendations i and ii regarding Theme I and recommendations i to ix, regarding Theme II) by 30 November 2011, 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 Denmark's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 5 recommendations to Denmark in respect of Theme I. Recommendations iii, iv and v were assessed as satisfactorily implemented or dealt with in a satisfactory manner in the Compliance Report, recommendation i was considered as not implemented and recommendation ii as partly implemented.

Recommendation i.

6. *GRECO recommended to put beyond doubt that all forms of "undue advantages" are covered by the relevant bribery offences concerning foreign public officials and officials of international organisations/assemblies/courts.*

¹ Cf. http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp.

7. The authorities of Denmark maintain their position as described in the Evaluation Report and the Compliance Report, namely that the Danish legislation does not criminalise small facilitation payments made to foreign public officials performing their tasks, for example, the processing of a passport in countries where this is the tradition. In their opinion, this does not contradict the Criminal Law Convention on Corruption, since the advantage is not seen as undue in the meaning of paragraph 38 of the Explanatory report to the Convention.
8. GRECO maintains its position as expressed in the Compliance Report, i.e. that the "double standards" between domestic and foreign bribery of public officials have no justification under the Criminal Law Convention. Consequently, the situation remains the same as it was at the time of the adoption of the Compliance Report.
9. GRECO concludes that recommendation i remains not implemented.

Recommendation ii.

10. *GRECO recommended (i) to increase the maximum criminal sanctions in respect of active and passive bribery in the private sector (section 299.2 of the Criminal Code) as well as active and passive bribery of arbitrators (section 304a); (ii) to consider increasing the maximum criminal sanction in respect of active bribery offences in the public sector (domestic, foreign and international) covered by section 122 of the Criminal Code.*
11. The authorities of Denmark now report that following the general elections to the Danish Parliament (the Folketing) which were held on 15 September 2011 and after the Danish chairmanship of the European Union during the first half of 2012, the implementation of this recommendation in its entirety will be dealt with in the course of the second half of 2012.
12. GRECO takes note of this information and concludes that the implementation of recommendation ii, which had already been viewed as partly implemented in the Compliance Report - since the second part of the recommendation had been given consideration by the authorities - remains the same.
13. GRECO concludes that recommendation ii remains partly implemented.

Theme II: Transparency of Party Funding

14. It is recalled that GRECO in the Evaluation Report addressed 9 recommendations to Denmark in respect of Theme II and that all of them were considered not implemented.
15. GRECO recommended:
 - *to introduce a ban on donations from donors whose identity is not known to the political party/election candidate (recommendation i);*
 - *that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the Accounts of Political Parties Act, be complemented with an obligation upon political parties to report the total value of donations provided by each donator, in addition to the identity of the donors (recommendation ii);*

- to provide further guidance on the reporting and valuation of in-kind contributions to political parties (recommendation iii);
 - GRECO recommended to consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public (recommendation iv);
 - GRECO recommended to consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible, regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties (recommendation v);
 - GRECO recommended to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed (recommendation vi);
 - GRECO recommended to ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties (recommendation vii);
 - GRECO recommended to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns (recommendation viii); and
 - GRECO recommended that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive (recommendation ix).
16. It is recalled that according to the Compliance Report, the Danish authorities stated that they saw no need for any measures to be taken in order to amend the current legislative framework of political financing.
 17. The Danish authorities now report that in the Government programme ("Et Danmark, der står sammen") of October 2011, it is stated that the Government will initiate the preparation of recommendations on how to increase the transparency concerning funding of Danish political parties.
 18. GRECO welcomes the first positive signals in respect of the recommendations relating to political financing but concludes that no results have been achieved to date.
 19. GRECO reiterates its conclusion that recommendations i – ix have not been implemented.

III. CONCLUSIONS

20. **In view of the above, GRECO concludes that no tangible progress has been achieved by Denmark 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 – recommendation i remains not implemented and recommendation ii partly implemented. All recommendations pertaining to Theme II – Transparency of Party Funding – i.e. recommendations i-ix, remain not implemented.
21. 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.
22. GRECO furthermore decides, in accordance with Rule 32, paragraph 2 subparagraph (ii), that the President of GRECO will send a letter, with a copy to the President of the Statutory Committee, to the Head of Delegation of Denmark, drawing his attention to non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
23. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of Delegation of Denmark to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i and ii regarding Theme I and recommendations i to ix regarding Theme II) by 28 February 2013.
24. Finally, GRECO invites the authorities of Denmark to authorise, as soon as possible, the publication of the present report, to translate it into the national language and to make this translation public.