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Groupe d'États contre la corruption

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4th Interim

Third Evaluation Round

Fourth Interim **Compliance Report** **on Denmark**

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 69th Plenary Meeting
(Strasbourg, 12-16 October 2015)

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](#)). In accordance with its Rules of Procedure, GRECO had selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure.
2. In the Compliance Report, which was adopted by GRECO at its 51st Plenary Meeting (Strasbourg, 23-27 May 2011), it was concluded that out of the five recommendations under Theme I - Incriminations, three (iii-v) had been implemented satisfactorily or dealt with in a satisfactory manner, recommendation ii had been partly implemented and recommendation i had not been implemented. In respect of Theme II – Transparency of Party Funding, none of the nine recommendations had been implemented. Despite discernible progress achieved under Theme I, the non-implementation of the recommendations under Theme II made the overall level of compliance “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO had therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
3. In the first Interim Compliance Report, which was adopted by GRECO at its 55th Plenary Meeting (Strasbourg, 14-16 May 2012), the level of compliance was again assessed as “globally unsatisfactory” since the compliance rating of pending recommendations had not improved. Therefore, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO had instructed its President to transmit a letter to the Head of Delegation of Denmark¹, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined steps with a view to achieving decisive progress.
4. In the Second Interim Compliance Report, adopted at GRECO's 61st Plenary Meeting (Strasbourg, 14-18 October 2013), the rating of Denmark's performance again remained “globally unsatisfactory”. In accordance with Rule 32, paragraph 2 subparagraph (ii) c), on 27 November 2013, the Secretary General of the Council of Europe, invited by GRECO, had sent a letter to the Minister of Foreign Affairs of Denmark, drawing his attention to the non-compliance of Denmark with pending recommendations.
5. In the Third Interim Compliance Report, which was adopted by GRECO at its 65th Plenary Meeting (10 October 2014), GRECO maintained its assessment that the level of compliance with the recommendations was “globally unsatisfactory” and the authorities were again requested to report on this matter. The authorities submitted new information on 24 August 2015.
6. The current Fourth Interim Compliance Report was drawn up by Ms Iva NATHANAILI, Adviser to the Minister, Minister of State on Local Issues/National Coordinator against Corruption, Prime Minister's Office (Albania) and Mr Richard HAGEDOORN, Policy officer, Directorate of Labour Affairs Public Sector, Ministry of the Interior and Kingdom Relations (Netherlands), with assistance from the GRECO Secretariat. It evaluates further steps taken by the authorities to comply with the pending recommendations (i.e. recommendations i under Theme I and recommendations i-ix under Theme II) since the adoption of the Third Interim Compliance Report.

¹ The letter was sent on 15 June 2012.

II. ANALYSIS

Theme I: Incriminations

Recommendation i.

7. *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.*
8. This recommendation had been assessed as not implemented in the Third Interim Compliance Report. GRECO had taken note of the authorities' interpretation of Section 122 of the Criminal Code (CC), which remained the same as analysed and criticised in the Evaluation Report. As for the Guidelines issued by the Director for Public Prosecution (DPP), GRECO had found that they fell short of the requirements of the recommendation and, moreover, contradicted the Ministry of Justice's earlier booklet on “How to avoid corruption”. More specifically, the 2007 booklet indicated that all facilitation payments in a foreign context were undue and thus punishable. Whereas the DPP's guidelines, while recalling the main rule under Section 122 CC – that small facilitation payment were “undue” and thus constituted a criminal offence – also referred to a possibility of exemption outlined in the *travaux préparatoires*; the only novel element they had introduced was that of excluding from exemption payments made in the context of international business transactions with a view to inducing a foreign public official to breach his/her duties which, under all circumstances, were to be qualified as unlawful and punishable under Section 122 CC. In the absence of any related court cases, GRECO had agreed that the coexistence of the two contradictory guidelines was confusing. Also, in view of the foregoing, it could still not be concluded that all forms of “undue advantages” had been covered by the relevant bribery offences concerning foreign public officials. Moreover, the situation concerning the different forms of bribery of officials of foreign assemblies and courts had not been clarified.
9. The authorities of Denmark now refer once again to Section 122 CC, which criminalises domestic and foreign facilitation payments, and to the principle of “material atypicality” reflected in the related *travaux préparatoires*, which suggests that in “exceptional” circumstances certain token gratuities will fall outside the scope of Section 122 CC. Reference is also made to the three court cases resulting in a conviction for bribery adjudicated in Denmark in the last five years.
10. The authorities also inform that in September 2014 an “Anti-Corruption Forum” was launched with the goal of attaining improved co-ordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption. The Forum brings together representatives of the Ministry of Justice, the Director for Public Prosecutions (DPP), the State Prosecutor for Serious Economic and International Crime (SØIK), the Ministry of Foreign Affairs, the Ministry of Finance, etc. The first meeting of the Forum² was dedicated to strengthening coordination in the area of guidance to the private sector concerning bribery, as well as raising awareness with respect to foreign bribery in the public and private sector.
11. In February 2015, the Ministry of Justice revised the booklet “How to avoid corruption” in accordance with the 2014 DDP's Guidelines and invited other authorities to do the same with respect to their guidelines on bribery to ensure that a co-ordinated and consistent message is sent. In April 2015, the revised booklet was published in Danish and English and sent to the relevant stakeholders. The revised text indicates that the use of small facilitation payments is

² The first meeting was held on 22 September 2014 and the second – on 27 May 2015.

generally discouraged, that such payments must in all cases be accurately accounted for in companies' books and financial records, and that the payments made in connection with international business transactions in order to induce a public official to act in contravention of his/her duties will always be undue and thus constitute a criminal offence.

12. Finally, in September 2015, the SØIK will establish a new reinforced international unit for investigating and prosecuting cases with an international dimension, including all cases in Denmark concerning bribery of foreign public officials. The purpose is to bring about new synergy and to build up knowledge and routines with respect to the specific issues that typically occur in international cases. The new unit will also be responsible for obtaining legal assistance from foreign countries.
13. GRECO underscores the lack of a qualitative improvement of the situation as compared to the previous Interim Report. It notes, in particular, that the booklet of the Ministry of Justice, which had previously qualified all facilitation payments – as a form of an “undue advantage” – in a foreign context as always being undue and punishable, constitutes a step backwards in the sense that – similarly to the DPP’s Guidelines - it no longer excludes that in exceptional circumstances (the notion of “exceptional circumstances” being open to interpretation) that may prevail in some countries, giving certain gratuities will fall outside the scope of Section 122 CC and thus not be punished, even if such acts would constitute criminal bribery if committed in Denmark. As for the cited court cases, they are not relevant to the bribery of foreign public officials (or officials of international assemblies and courts). No other pertinent developments have been reported with regard to the latter categories.
14. GRECO concludes that recommendation i remains not implemented.

Theme II: Transparency of Party Funding

15. It is recalled that in the Evaluation Report GRECO had addressed nine recommendations to Denmark in respect of Theme II and that all of them had been considered not implemented in the Third Interim Compliance Report.
16. 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);*
 - *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);*
 - *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);

- 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);

- 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);

- 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

- 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).

17. At the beginning of 2013, a review of the national rules on party funding had been announced by the Speaker of Parliament. In March 2014, a Committee of experts on the transparency of financial contributions to the Danish political parties had been appointed by the Government to revise the political financing rules and to draw up models for possible future regulation in this area. Consideration had to be given *inter alia* to GRECO's recommendations and relevant international trends. This work was expected to be completed by October 2014. In the absence of any further details, GRECO had previously concluded that all the pending recommendations remained not implemented.
18. The authorities of Denmark now report that, in March 2015, the aforementioned Committee produced a *Report on openness concerning financial support to political parties*, an English summary of which was promptly shared with GRECO. The Report contains a set of recommendations aimed at increasing transparency with respect to private and public sources of financing to political parties and reinforcing the accounting duty of parties and candidates. Different models for future regulation in this sphere are also proposed. In April-May 2015, following the Report's publication, the Government held initial consultations with all political parties represented in parliament. However, following general elections on 18 June 2015, a new government was formed on 28 June 2015 and has as yet to decide on the exact follow-up to be given to the Committee's Report.
19. GRECO commends the authorities for the development and publication of an in-depth report on the state of political financing in Denmark, accompanied by a set of recommendations and three alternative proposals for future regulation in this field. In the opinion of GRECO, the Report represents a suitable basis for launching a comprehensive legal reform³ and it uses the opportunity to express its support, in particular, for the proposed Model 2, which envisages

³ The Report is broken down in ten sections, which contain *inter alia* a general description of the existing legislation on party funding, outline the principle features of the political debate in the Danish Parliament on the current provisions governing the political financing, reviews the funding provisions for political parties in several European countries and discusses the recommendations emanating from GRECO and the European Commission.

deep reforms broadly in line with GRECO's recommendations. The authorities are urged to proceed swiftly with the requisite follow-up steps and are reminded that any legal reform is to be compliant with the standards included in Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns. In the meantime, given the lack of progress on the fulfilment of all of the above recommendations, it is concluded that they remain not implemented.

III. CONCLUSIONS

20. In light of the foregoing, GRECO concludes that no concrete progress has yet been achieved by Denmark as regards the implementation of the ten recommendations found not to be implemented in the Third Interim Compliance Report (out of the fourteen included in the Third Round Evaluation Report).
21. With respect to Theme I – Incriminations, recommendation i remains not implemented as do all nine recommendations under Theme II – Transparency of Party Funding.
22. GRECO notes the lack of progress in the position taken by the authorities with regard to small facilitation payments – as a form of an “undue advantage” – offered to foreign public officials (and officials of international assemblies and courts). Except when these are made in the context of international business transactions with a view to inducing a foreign public official to breach his/her duties, such payments may, in undefined “exceptional circumstances”, fall outside the scope of the Criminal Code and thus escape punishment. GRECO insists that it still has to be ensured beyond doubt that all small facilitation payments are covered by the relevant bribery provisions.
23. As for the transparency of political financing, GRECO commends the authorities for the preparation and publication of the “Report on openness concerning financial support to political parties”, which represents a suitable starting point for conceiving a comprehensive legal reform. Out of the options suggested therein, GRECO welcomes in particular Model 2 as the most far-reaching attempt to enhance clarity and transparency in the sphere of political financing. It encourages the authorities to initiate the reform without further delay and to ensure its compliance with the relevant Council of Europe anti-corruption standards and GRECO's recommendations.
24. 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) and that discernible progress is still to be achieved.
25. Pursuant to Rule 32, paragraph 2 subparagraph (i) 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. recommendation i under Theme I and recommendations i-ix under Theme II) by 31 July 2016.
26. In accordance with Rule 32, paragraph 2(iii), GRECO requests the authorities of Denmark to receive a high-level mission in order to discuss on the spot with all stakeholders concerned ways to expedite the legislative and policy changes highlighted by this Report.
27. 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 the translation public.