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**Confidential**  
**GrecoRC3(2021)2**

## **Third Evaluation Round**

### **Addendum to the Second Compliance Report on Denmark**

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

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#### **“Transparency of Party Funding”**

Adopted by GRECO  
at its 87<sup>th</sup> Plenary Meeting  
(Strasbourg, 22-25 March 2021)

## **I. INTRODUCTION**

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Denmark, since the adoption of the Second Compliance Report and subsequent interim reports, to implement the recommendations issued by GRECO in its Third Round Evaluation Report on Denmark. It is recalled that the Third Evaluation Round covers 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 Denmark was adopted at GRECO's 43<sup>rd</sup> Plenary Meeting (2 July 2009) (Greco Eval III Rep (2008) 9E [Theme I](#) / [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Danish authorities submitted situation reports on the measures taken to implement the recommendations prior to the adoption of each of the compliance reports referred to below. GRECO selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure.
4. In the [Compliance Report](#) which was adopted by GRECO at its 51<sup>st</sup> Plenary Meeting (27 May 2011), it was concluded that out of the five recommendations under Theme I - Incriminations, three had been implemented satisfactorily or dealt with in a satisfactory manner, one had been partly implemented and one had not been implemented. In respect of Theme II - Transparency of Party Funding, none of the nine recommendations had been implemented. The overall level of compliance was considered "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 Evaluation Report.
5. In the first [Interim Compliance Report](#) which was adopted by GRECO at its 55<sup>th</sup> Plenary Meeting (16 May 2012), the level of compliance was unchanged and was again assessed as "globally unsatisfactory" since there had been no improvement. Therefore, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to transmit a letter to the Head of Delegation of Denmark<sup>1</sup>, drawing attention to the non-compliance with the relevant recommendations and the need to take determined steps with a view to achieving decisive progress.
6. In the [Second Interim Compliance Report](#) adopted at the 61<sup>st</sup> Plenary Meeting (18 October 2013) GRECO noted a slight increase in Denmark's level of compliance (four of five Theme I recommendations had been implemented but none of the Theme II recommendations had been complied with). The level was again assessed as "globally unsatisfactory". In accordance with Rule 32, paragraph 2 subparagraph (ii) c), on 27 November 2013, the Secretary General of the Council

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<sup>1</sup> The letter was sent on 15 June 2012.

of Europe, invited by GRECO, sent a letter to the Minister of Foreign Affairs of Denmark drawing attention to the non-compliance of Denmark with pending recommendations.

7. In the [Third Interim Compliance Report](#) which was adopted by GRECO at its 65<sup>th</sup> 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 back.
8. In the [Fourth Interim Compliance Report](#) adopted by GRECO at its 69<sup>th</sup> Plenary Meeting (16 October 2015) it was again concluded that no concrete progress had been achieved and that the level of compliance remained “globally unsatisfactory”. Furthermore, GRECO requested that the authorities of Denmark receive a high-level mission in order to discuss - on the spot with the stakeholders concerned - ways to expedite pending legislative and policy changes concerning political financing.
9. On 25 May 2016, the [High-level meeting](#) was held at the Ministry of Justice in Copenhagen, at which the GRECO delegation (headed by the President of GRECO) met with the Minister of Justice, Mr Søren PIND, other representatives of the Ministry of Justice and the Ministry of Social Affairs and the Interior, and the Head of the Danish Delegation to GRECO. In a separate meeting, the GRECO delegation met with representatives of all political parties in the Danish Parliament (Folketinget). The Minister of Justice made a commitment to actions to be taken aimed at improving the level of compliance with GRECO’s recommendations (concerning political financing). It was also stated that discussions between all political parties represented in the Folketinget were about to start.
10. In the [Fifth Interim Compliance Report](#) adopted by GRECO at its 74<sup>th</sup> Plenary meeting (2 December 2016), GRECO again concluded that no tangible results had been achieved in respect of the pending recommendations.
11. In the [Sixth Interim Compliance Report](#) which was adopted by GRECO at its 79<sup>th</sup> Plenary Meeting (23 March 2018), some progress was noted in respect of Theme II - two recommendations had been implemented satisfactorily and three had been partly implemented. Four Theme I recommendations had been implemented previously. As a consequence, GRECO concluded that further efforts were required but the overall level of compliance was no longer “globally unsatisfactory”. The Danish authorities were requested to report on further actions taken to implemented pending recommendations, within the framework of the ordinary compliance procedure for the Second Compliance Report..
12. [The second Compliance Report](#) was adopted by GRECO at its 83<sup>rd</sup> Plenary Meeting (21 June 2019).GRECO concluded that although some limited progress was noted, this had no impact on the number of fully implemented recommendations. As before, in total only six recommendations had been implemented satisfactorily or dealt with in a satisfactory manner, four had been partly implemented and four remained not implemented.
13. On 8 December 2020, the GRECO Secretariat received further information from the Danish authorities on the implementation of the pending recommendations, which served as a basis for the present Report. The rapporteurs, Mr Nino STRATI (Albania) and Ms Marja VAN DER WERF (Netherlands), were assisted by GRECO’s Secretariat in drawing up the Addendum to the Second Compliance Report, which evaluates further steps taken by the authorities to comply with the

pending recommendations (i.e. recommendation i under Theme I and recommendations i-iii and vi-ix under Theme II) since the adoption of the Second Compliance Report.

## II. ANALYSIS

### Theme I: Incriminations

14. It is recalled that under Theme I, only recommendation i was pending as not having been implemented.

#### **Recommendation i.**

15. *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.*
16. It is recalled that this recommendation was not implemented in the previous compliance reports. To summarise, GRECO took 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 found that they fell short of the requirements of the recommendation and, moreover, that the Ministry of Justice’s booklet on “How to avoid corruption”, which had been updated in 2015 to be in line with the DPP’s Guidelines, represented a step backwards. The revised text of the booklet indicated that small facilitation payments were generally to be discouraged, and when made in connection with international business transactions in order to induce a public official to act in contravention of his/her duties (but only in this situation) would always be undue and thus constituted a criminal offence. Moreover, the situation concerning the different forms of bribery of officials of foreign assemblies and courts had not been clarified. The authorities also reported on some efforts to improve interagency and international cooperation, in particular through the interagency “Anti-Corruption Forum” and the SØIK unit investigating and prosecuting bribery of foreign public officials. Despite this information, GRECO could not conclude that all forms of “undue advantages” had been covered by the relevant bribery offences concerning foreign public officials.
17. The Danish authorities maintain their position from the time of the adoption of the Evaluation Report in 2009 and throughout the compliance procedure. They consider that Danish law criminalises bribery, including in respect of facilitation payments, to the extent required by the Criminal Law Convention. Therefore, Denmark has not, since the adoption of the Evaluation Report, made any legislative changes in this respect. The Danish authorities recall their position which was explained *inter alia* in the letter of the Danish Ministry of Justice to GRECO of 6 October 2015. In this letter, the authorities admit that small facilitation payments may in exceptional circumstances fall outside the scope of Section 122 of the Danish Criminal Code. However, their position is that in those cases small facilitation payments do not constitute an “undue advantage” within the meaning of the Criminal Law Convention on Corruption.
18. GRECO, while maintaining its position, notes again the absence of any progress and concludes that recommendation i remains not implemented.

## **Theme II: Transparency of Party Funding**

19. It is recalled that, in the Evaluation Report, GRECO addressed nine recommendations to Denmark in respect of Theme II. The Second Compliance Report concluded that recommendations iv and v had been dealt with in a satisfactory manner, recommendations i, iii, vi and vii had been partly implemented and recommendations ii, viii and ix had not been implemented.

### **Recommendation i.**

20. *GRECO recommended to introduce a ban on donations from donors whose identity is not known to the political party/election candidate.*
21. It is recalled that this recommendation was partly implemented in previous compliance reports. GRECO had welcomed new legislation which introduced a ban on donations to political parties and lists of candidates from donors whose identity is not known. However, this ban did not apply in respect of donations to individual candidates, as required by the recommendation. GRECO was also concerned by the high threshold (approx. EUR 2 750 in 2018) below which anonymous donations were acceptable.
22. The authorities indicate, as they did in the Second Compliance Report, that, currently, they do not plan to ban anonymous donations to individual candidates, nor to change the existing threshold. The amended rules, banning anonymous donations to political parties, entered into force on 1 July 2017, and they would need an overview of the extent to which anonymous donations are being used in respect of individual candidates before considering any further regulation in this area, including as regards the threshold. The authorities also explain that in practice it is more advantageous for parties (than for individuals) to receive donations, notably because they are tax free, which is not the case for donations to individual candidates.
23. GRECO takes note of the information provided. There are no new developments in respect of this recommendation. A ban on donations from unknown donors to political parties and lists of candidates is in place, but such donations to individual candidates is not banned at this moment. The rather high threshold for anonymous donations also remains a concern.
24. GRECO concludes that recommendation i remains partly implemented.

### **Recommendation ii.**

25. *GRECO recommended 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 donor, in addition to the identity of the donors.*
26. It is recalled that this recommendation was not implemented in the previous compliance reports.
27. The authorities of Denmark reiterate that there are no plans to implement this recommendation.
28. GRECO concludes that recommendation ii remains not implemented.

### **Recommendation iii.**

29. *GRECO recommended to provide further guidance on the reporting and valuation of in-kind contributions to political parties.*
30. It is recalled that this recommendation was partly implemented in the Second Compliance report. A political agreement between the Government coalition and the opposition aimed at enhancing transparency of party funding provided for the development of guidelines clarifying the existing regulations in respect of various forms of contributions, including in-kind contributions. Draft guidelines, which were subject to public consultations at the time, had been submitted to GRECO.
31. The authorities now report that the Ministry of Social Affairs and the Interior has established a guide (“Vejledning, nr. 9338” of 9 June 2020, 79 pages) that contains guidance for the understanding of when various forms of contributions to political parties are subject to the existing regulation.
32. GRECO welcomes the establishment of guidelines concerning political party financing (“Vejledning om visse spørgsmål vedrørende partistøtte”, nr 9338) dated 9 June 2020. The Guidelines complement the Accounts of Political Parties Act, and, as such, provides detailed clarifications on a large number of issues regulated in law, including what constitutes in-kind donations, their value and when they are to be taken into account. GRECO has seen the text and is satisfied that the issue on in-kind contributions have now been subject to further guidance as required by the recommendation.
33. GRECO concludes that recommendation iii has been implemented satisfactorily.

### **Recommendation vi.**

34. *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.*
35. It is recalled that this recommendation was partly implemented in the Sixth Interim Compliance Report and remained so in the Second Compliance Report. GRECO welcomed that private funding to lists of candidates as well as to individual candidates had become more transparent and in line with what applies to political parties. However, GRECO regretted that only the identities of the donors were to be revealed, not the value of the donations to the lists of candidates and individual candidates (similar criticism of the situation with respect to political parties was also expressed, see recommendation ii).
36. The authorities maintain their position that, currently, there are no plans to go any further in respect of this recommendation, i.e. to introduce an obligation to report the actual value of received donations.
37. GRECO takes note of the information provided and concludes that recommendation vi remains partly implemented.

### **Recommendation vii.**

38. *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.*

39. It is recalled that this recommendation was partly implemented in the Sixth Interim Compliance Report. GRECO welcomed the new legislation (Section 4(3) APPA) which made the accounts of political parties participating in national or European elections subject to audit by an independent officially approved auditor as a general rule. However, it noted that no rules/guidelines had been established to ensure the necessary independence of auditors from the political party (for example, in relation to party membership and how many times (years) the same auditor could audit the same political party, etc.), as a complement to the rules in the Approved Auditors and Audit Firms Act. The situation remained the same in the Second Compliance Report.
40. The authorities now report that, in the Guidelines (“*Vejledning om visse spørgsmål vedrørende partistøtte*”, nr 9338) dated 9 June 2020, Section 9.3.1., it is stated that the accounts of political parties are to be audited by an auditor who is not a member of the party concerned. The same applies to all members of an audit team. Moreover, Section 9.3.2. of the guidelines stipulate that the same auditor may not be used for more than 7 years consecutively and cannot audit the accounts of the same again earlier than 3 years later.
41. GRECO takes note of the new information provided. It reiterates that the first part of this recommendation was complied with at an earlier stage of the compliance procedure through the amended legislation (Section 4(3) APPA), which establishes that the accounts of political parties participating in national or European elections are subject to audit by an independent officially approved auditor as a general rule. With the more recent establishment of the Guidelines of 9 June 2020, it is now stipulated that auditors shall not be members of the party they are to audit, and that the same auditor may not audit the same party for more than 7 seven years consecutively. These measures taken together correspond to the requirements of this recommendation.
42. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation viii.**

43. *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.*
44. It is recalled that this recommendation was not implemented in the Second Compliance Report. The authorities referred to the obligation for political parties to have their accounts monitored by an independent auditor, as required in recommendation vii. GRECO considered this an insufficient response to the concerns of the current recommendation.
45. The authorities of Denmark maintain their intention not to implement this recommendation, while also referring to the Guidelines of 9 June 2020, which promotes auditors’ independence.
46. GRECO reiterates that the current recommendation is aimed at changing a prevailing unsatisfactory situation in Denmark, where Parliament plays a passive role and the State Audit body which is responsible to Parliament has never checked party accounts, and where the Ministry for Economic Affairs and the Interior (which is not independent as such) only checks the accounts with respect to state funding matters. No progress has been reported.

47. GRECO concludes that recommendation viii remains not implemented.

**Recommendation ix.**

48. *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.*

49. It is recalled that this recommendation was not implemented in the Second Compliance Report as the legal situation remained unchanged since the adoption of the Evaluation Report.

50. The authorities of Denmark maintain their position - while explaining that the matter has been re-considered by the Committee on Transparency of Party Funding - that, currently, they do not plan to implement this recommendation.

51. GRECO notes that this recommendation is closely related to recommendation viii. It regrets the absence of any progress and concludes that recommendation ix remains not implemented.

**III. CONCLUSIONS**

52. **GRECO concludes that Denmark has made some further progress in the implementation of the recommendations contained in the Third Round Evaluation report. Eight of the fourteen recommendations have now** been implemented satisfactorily or dealt with in a satisfactory manner, two recommendations remain partly implemented and four remain not implemented.

53. With respect to Theme I – Incriminations, recommendations ii-v have been implemented satisfactorily or dealt with in a satisfactory manner; only recommendation i has not been implemented. Concerning Theme II – Transparency of Party Funding, recommendations iii and vii have been implemented satisfactorily, recommendations iv and v have been dealt with in a satisfactory manner, recommendations i and vi have been partly implemented and recommendations ii, viii and ix remain not implemented.

54. As for incriminations, GRECO reiterates its concern that it has not been made clear beyond any doubt that all forms of “undue advantages” are covered by the relevant bribery offences concerning foreign and international public officials.

55. With regard to transparency of party funding, GRECO notes some further progress in that new Guidelines have been established in respect of political party financing, which clarify, among others, the issue of how so called in-kind donations are to be accounted for. Moreover, it is noticeable that the same Guidelines also have an impact on auditors independence vis-à-vis the party they are to audit, namely that they cannot be members of that party, nor can they continue auditing the same party for longer periods than seven consecutive years. While this is good progress, GRECO remains concerned by the lack of progress in response to a number of other recommendations aimed at enhancing the overall transparency of political financing in Denmark, in particular to introduce a ban on anonymous donations to individual election candidates, to require more transparency as to the value of certain donations and to improve the supervision of political financing (which goes beyond the pure auditing of their accounts). GRECO urges the Danish authorities to further pursue the implementation of the pending recommendations.



56. Pursuant to Rule 31 revised, paragraph 9 of its Rules of Procedure – GRECO asks the Head of Delegation of Denmark to submit additional information, regarding the implementation of recommendation i (Theme I) and of recommendations i, ii, vi, viii and ix (Theme II), by 31 March 2022 at the latest.
57. Finally, GRECO invites the authorities of Denmark to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.