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**Interim Report**

## **Third Evaluation Round**

### ***Interim Compliance Report*** **on the Czech Republic**

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

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**"Transparency of Party Funding"**

Adopted by GRECO  
at its 62<sup>nd</sup> Plenary Meeting  
(Strasbourg, 2-6 December 2013)

## **I. INTRODUCTION**

1. The *Interim* Compliance Report assesses further measures taken by the authorities of the Czech Republic since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on the Czech Republic (see paragraph 2), covering 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); and
  - **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 was adopted at GRECO's 50th Plenary Meeting (28 March – 1 April 2011) and made public on 29 April 2011, following authorisation by the Czech Republic (Greco Eval III Rep (2010) 10E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 59th Plenary Meeting (18-22 March 2013) and made public on 4 April 2013, following authorisation by the Czech Republic ([Greco RC-III \(2013\) 1E](#)).
3. As required by GRECO's Rules of Procedure, the authorities of the Czech Republic submitted their Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the Compliance Report. This report was received on 28 September 2013 and served as a basis for the *Interim* Compliance Report.
4. GRECO selected Italy and Hungary to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Dražen JELENIC, Deputy State Attorney General, Croatia, and Mr Ákos KARA, Head of Department, Ministry of Public Administration and Justice, on behalf of Hungary. They were assisted by GRECO's Secretariat in drawing up the *Interim* Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that, in its Evaluation Report, GRECO addressed four recommendations to the Czech Republic in respect of Theme I. In its Compliance Report, GRECO concluded that recommendation ii had been dealt with in a satisfactory manner, recommendations iii and iv had been partly implemented and recommendation i had not been implemented. Compliance with recommendations i, iii and iv is dealt with below.

#### **Recommendation i.**

6. *GRECO recommended to clarify that bribery of all categories of employees in the public sector is covered, regardless of whether they are able to fundamentally influence a final decision in connection with procuring affairs in the public interest or not.*

7. It is recalled that, in the Compliance Report, this recommendation had been considered as not implemented. Although the authorities had indicated that all officials and employees of the public sector were covered by bribery-related provisions of the Criminal Code, GRECO had insisted that it remained unclear whether ordinary public sector employees who do not have public official status (such as secretaries, spokespersons, archivists, etc. who are not in a position to “fundamentally influence the final decision” in the meaning of the 2004 Resolution of the Supreme Court<sup>1</sup>) in the exercise of their functions were covered by the bribery-related provisions of the Criminal Code which extend to bribery of everyone as long as it is “in connection with procuring affairs in the public interest” or “his/her or someone else’s business activities.”
  
8. The authorities of the Czech Republic report that the interpretation of the public sector bribery offences remains the same as presented in the Compliance Report. They furthermore state that recent judicial practice has confirmed the broad interpretation given to the concept of “procurement of affairs in the public interest” as covering all activities related to the implementation of tasks important to society and not limited to the tasks within the competence of a public official. The authorities refer in particular to the following four cases. Case № 1 concerned a former employee of the customs service who had paid bribes to customs administration officials in order to obtain the release of goods in transit without a physical check being carried out. The two public officials in question were convicted of passive bribery and failure to perform official duties and the bribe-giver - no longer an employee of the public service - was convicted of active bribery and abetting the criminal offence of abuse of office. In case №2, a municipal employee (an administrative assistant) who did not have the status of public official, had accepted bribes for influencing the execution of authority by public officials in abuse of their official powers and was convicted of a criminal offence of trading in influence. In case № 3, a person had been convicted of active bribery for offering and paying a bribe to players of a football team for them to influence the results of a football tournament. In case № 4, the owner (and instructor) of a driving school had been convicted of passive bribery for extorting a bribe from students taking the driving test in order to secure a successful test result from the examiner (a public sector employee). The authorities consider that this jurisprudence illustrates convincingly that the national legislation allows for the criminal prosecution of public sector employees for bribery “in connection with procuring affairs in the public interest” even if their functions would not normally mean that they are in a position to “fundamentally influence the final decision”, i.e. irrespective of whether they have the status of public official or not.
  
9. It is with interest that GRECO notes this judicial practice which illustrates the broad interpretation given to the concept “in connection with procuring affairs in the public interest” which allows for the criminal prosecution of persons who do not have the status of public official for the offences of bribery and trading in influence. It welcomes in particular case No. 2 as a step in the right direction with respect to the offences committed by public service employees. Nevertheless, GRECO recalls that, bribing someone “in connection with procuring affairs in the public interest” is still understood by the Supreme Court as referring to “a person deciding or co-deciding on the affair in the public interest” or “a person who does not have any decision-making authority but – for example – prepares background information for a decision” or conducts other activities which have the ability to “fundamentally influence the final decision.”<sup>2</sup> Nearly identical interpretation is also contained in the 2010 “Methodological guidance for prosecutors in cases of criminal offences related to corruption” issued by the Supreme Public Prosecutor’s Office. In this light, GRECO doubts that a single court case can establish, with sufficient precision and certainty, the rule that

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<sup>1</sup> Resolution of the Supreme Court of 15 July 2004, no. 5 Tdo 796/2004, [www.nsoud.cz](http://www.nsoud.cz); Judgment RNs T 723/2004 (Supreme Court).

<sup>2</sup> Resolution of the Supreme Court of 26 November 2002, no. 4 Tz 77/2002; Judgment RNs T 723/2004 (Supreme Court), Resolution of the Supreme Court of 15 July 2004, no. 5 Tdo 796/2004, [www.nsoud.cz](http://www.nsoud.cz); Judgment RNs T 723/2004 (Supreme Court).

all public sector employees, in particular those exercising ancillary jobs, whose tasks or actions cannot be considered as “fundamentally influencing the final decision”, would fall within the scope of the bribery and trading in influence provisions, as interpreted by the Supreme Court. GRECO reiterates therefore that the underlying concern of this recommendation is still to be addressed and invites the authorities to deploy additional efforts to achieve full compliance with this recommendation, in particular by providing for a non-contradictory interpretation of the existing legal provisions.

10. GRECO concludes that recommendation i has been partly implemented.

**Recommendation iii.**

11. *GRECO recommended to amend Section 333 of the Criminal Code on trading in influence, ensuring that all the requirements of Article 12 of the Criminal Law Convention on Corruption (ETS 173) are met, in particular as regards the acceptance of an offer or promise of an undue advantage and instances of supposed influence.*
12. It is recalled that a draft proposal amending Section 333 of the Criminal Code had been presented to the Government for consideration with a view to its entry into force in July 2013. In the Compliance Report, GRECO concluded that the recommendation had been partly implemented due to the fact that the law had not been formally adopted.
13. The authorities of the Czech Republic report that, on 17 April 2013, the Government had approved the draft amending Section 333 of the Criminal Code and forwarded it to the Chamber of Deputies (i.e. lower Chamber of Parliament). The first reading took place on 10 May 2013, and the Constitutional and Legal Committee had been instructed to discuss it further. However, the adoption process had been stalled when, on 28 August 2013, Parliament had been dissolved, with the effect that all drafts not approved by 28 August 2013 (including the aforementioned draft) would have to be presented to the new Chamber of Deputies to be convened after the October 2013 elections (first session took place on 25 November 2013).
14. GRECO acknowledges the efforts taken by the authorities to amend Section 333 of the Criminal Code in line with the recommendation. It looks forward to the resumption of the legislative activity of the Chamber of Deputies and urges it to approve without further delay the above-mentioned draft.
15. GRECO therefore concludes that recommendation iii remains partly implemented.

**Recommendation iv.**

16. *GRECO recommended to clarify in an unequivocal manner the way in which bribery of foreign arbitrators and foreign jurors is criminalised in the Czech Republic and to sign and ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*
17. It is recalled that, in the Compliance Report, GRECO had found this recommendation to be partly implemented due to the lack of progress with respect to the signature and ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

18. The authorities of the Czech Republic report that the ratification process is underway, and the proposal for the signature and ratification of the Addition Protocol to the Criminal Law Convention on Corruption is to be presented to the new Government in early 2014.
19. GRECO welcomes the launching of the ratification process and encourages the authorities to comply with the related part of the recommendation as soon as possible.
20. GRECO concludes that recommendation iv remains partly implemented.

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

21. It is recalled that, in its Evaluation Report, GRECO addressed nine recommendations to the Czech Republic in respect of Theme II. All of them had been considered as not implemented in the Compliance Report.
22. *GRECO recommended:*
  - *(i) to take measures to ensure that donations by party members are adequately reflected in the financial reports of political parties and movements.*
  - *(ii) to establish precise rules for the valuation and reporting of in-kind donations, including loans (whenever their terms or conditions deviate from customary market conditions or they are cancelled) and other goods and services (other than voluntary work by non-professionals) provided below market value.*
  - *(iii) to seek ways to consolidate the books and accounts of political parties and movements to include the accounts of entities related, directly or indirectly, to a political party or movement or otherwise under its control.*
  - *(iv) to ensure that the financial reports of political parties and movements are published in a way that provides for easy access by the public.*
  - *(v) to require (i) more detailed disclosure of campaign expenditure in the annual financial reports and (ii) more frequent reporting on and disclosure of donations above a certain value received by political parties and movements, in connection with election campaigns.*
  - *(vi) to subject, to the greatest extent possible, election candidates campaigning separately from political parties/movements to transparency standards, which are comparable to those applying to the political parties/movements themselves.*
  - *(vii) to consider taking further measures to strengthen the independence of auditors who are to certify the accounts of parties and movements.*
  - *(viii) to (i) ensure that an independent mechanism is in place for the monitoring of the funding of political parties/movements and election campaigns (including those of candidates), in line with Article 14 of Recommendation Rec (2003)4 on common rules against corruption in the funding of political parties and election campaigns; (ii) provide this mechanism with the mandate, the authority, as well as adequate resources to effectively and pro-actively supervise the funding of political parties/movements and election campaigns, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions, and (iii) establish a clear process*

*for the submission (and subsequent) investigation of citizens' and media complaints as regards the funding of political parties/movements and election campaigns.*

- *(ix) to (i) introduce appropriate (flexible) sanctions for all infractions of the Political Parties Law, in addition to the current range of sanctions and (ii) provide for the possibility to impose sanctions for violations of Law No. 424/1991 Coll. on the Association in Political Parties and Movements on candidates on an electoral list.*
23. It is recalled that, in the Compliance Report, GRECO had expressed its concern over the rejection by Government of a draft law which had the potential of meeting the requirements of almost all of the above recommendations. Furthermore, the Government's objection to the establishment of a new independent supervisory authority, as set out in recommendation (viii) and the preservation of a supervisory institution solely composed of political party representatives was criticised by GRECO.
25. The authorities of the Czech Republic report on the preparation of draft amendments to the Assembly in Political Parties and Movements Act (no. 424/1991 Coll.) which are supposed to implement most of GRECO's recommendations. Following approval by the Government on 10 April 2013, the draft amendments were forwarded to the Chamber of Deputies. The first reading took place on 17 May 2013, then the draft was transmitted to the Control and Constitutional and Legal Committees for further discussion. Due to the dissolution of Parliament the discussions did not take place. The draft would be presented to the new Chamber of Deputies following the October 2013 elections. As concerns the elaboration of rules on the financing of election campaigns, a separate draft (the so-called "Election Code") is currently in preparation. Lastly, the authorities recall that, in January 2013, the establishment of an independent supervisory body had been refused by the Government on the grounds of budgetary cuts.
28. GRECO takes note of the reported legislative initiatives and commends the authorities for an overall positive shift with regard to the implementation of recommendations under Theme II. It regrets that the procedure for carrying through such important legislative reforms had been postponed due to the dissolution of the Chamber of Deputies. It therefore calls upon the authorities to proceed with the swift adoption of the proposed legislative package once the newly composed lower Chamber of Parliament resumes its sessions in late 2013. As GRECO has not received the texts of the aforementioned drafts for examination, it is not in a position to assess whether they meet the requirements of the recommendations. Moreover, GRECO is greatly concerned by the Government's reticence to establish an independent supervisory body to monitor the financing of political parties and election campaigns in the Czech Republic. It therefore reiterates its earlier position on the importance of reforming the currently ineffective and non-independent supervision system.
24. GRECO concludes therefore that recommendations i-ix remain not implemented.

### III. CONCLUSIONS

25. **In view of the above, GRECO concludes that no tangible progress has been achieved by the Czech Republic as regards the implementation of the recommendations found to be not or partly implemented in the Third Round Compliance Report.** With respect to Theme I – Incriminations, recommendations i, iii and iv have been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations i-ix remain not implemented.
26. As far as incriminations are concerned, it has still not been established with sufficient precision and certainty that all public sector employees, in particular those exercising ancillary jobs, whose actions or tasks cannot be considered as being “in connection with procuring affairs in the public interest”, fall within the scope of the bribery and trading in influence provisions of the Criminal Code. GRECO also regrets that the processes for developing amendments to Section 333 of the Criminal Code (on trading in influence) and for the ratification of the Additional Protocol to the Criminal Law Convention on Corruption have been suspended due to the dissolution of the Chamber of Deputies in mid-2013. GRECO encourages the authorities to address the issues pending under Theme I as a matter of urgency.
27. Regarding the transparency of political funding, GRECO expresses its satisfaction with the actions taken by the authorities towards developing a new legislative framework covering most of the recommendations issued under Theme II. It therefore encourages the authorities to bring this reform to a successful and speedy completion. However, bearing in mind that the provisions of the new legislative package have not yet been submitted to GRECO for formal assessment, it is premature to conclude on even partial compliance with the recommendations. The lack of progress on the establishment of an independent mechanism to supervise the political financing is a source of particular concern. GRECO therefore urges the authorities to review their position on this issue and to provide for a monitoring body that is independent and objective and ensures greater transparency and public trust.
28. 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.
29. In accordance with Rule 32, 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 the Czech Republic, drawing her attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving discernible progress as soon as possible.
30. Pursuant to Rule 32, paragraph 2, subparagraph (i) of the Rules of Procedure, GRECO requests the Head of Delegation of the Czech Republic to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii and iv regarding Theme I, and recommendations i-ix regarding Theme II) by 30 September 2014.
31. Finally, GRECO invites the authorities of the Czech Republic 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.