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## **Third Evaluation Round**

### **Compliance Report on the Republic of Moldova**

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

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#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 59<sup>th</sup> Plenary Meeting  
(Strasbourg, 18-22 March 2013)

## **I. INTRODUCTION**

1. The Compliance Report assesses the measures taken by the Moldovan authorities to implement the 17 recommendations issued in the Third Round Evaluation Report on Moldova (see paragraph 2), which covers two themes:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1 to 6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (incrimination 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 was adopted at GRECO's 50th Plenary Meeting (1 April 2011) and was made public on 6 April 2011, following authorisation from the Republic of Moldova (Greco Eval III Rep (2010) 8E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Moldovan authorities have submitted a Situation Report on measures taken to implement the recommendations. That report, received on 5 November 2012, has formed the basis for the Compliance Report.
4. GRECO selected Belgium and Luxembourg to appoint rapporteurs for the compliance procedure. The appointed rapporteurs were Mr Frederik DECRUYENARE, for Belgium, and Ms Doris WOLTZ, for Luxembourg. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and provides an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

6. In its Evaluation Report GRECO addressed 8 recommendations to the Republic of Moldova concerning Theme I. Compliance with these recommendations is considered below.
7. The authorities of the Republic of Moldova state that, so as to comply with GRECO's recommendations, the Criminal Code (CC) was amended by Act No. 245 of 2 December 2011, which entered into force on 3 February 2012, and Act No. 78 of 12 April 2012, which entered into force on 25 May 2012. These amendments concern in particular the definitions of possible perpetrators of corruption offences ("persons holding a position of responsibility" and "foreign public persons and international public officials"), contained in sections 123 and 123<sup>1</sup> CC, and the definitions of active and passive bribery in the public sector (contained in sections 324 and 325

CC) and the private sector (contained in sections 333 and 334 CC) and of trading in influence (contained in section 326 CC).

### **Recommendation i.**

8. *GRECO recommended to take the necessary legislative measures to ensure that active and passive bribery of all categories of public officials (within the meaning of the Criminal Law Convention on Corruption, ETS 173) are criminalised, including bribery of any civil servants covered by the legislation on the civil service and of any public officials who do not exercise the functions of a public authority or functions related to administrative management or economic/organisational activities.*
9. The authorities state that Act No. 245 of 2 December 2011 amended section 123 CC, which is now entitled "Persons holding positions of responsibility, public persons and persons holding positions of public dignity". Whereas paragraph 1 of this section concerning "persons holding positions of responsibility" is unchanged, paragraph 2 introduces a new category, that of "public persons". Sections 324 and 325 CC now refer to this new category when designating the possible perpetrators of corruption offences. The authorities specify that the concept of "public persons" is autonomous and separate from that of "persons holding positions of responsibility". According to the explanatory report to the draft law, a new concept of this kind should help to meet the requirements of international standards on combating corruption, in particular those of the Criminal Law Convention on Corruption. Lastly, paragraph 3 of section 123 CC defines the new category "persons holding positions of public dignity", which is a sub-category of "public persons"<sup>1</sup>; under sections 324, paragraph 3a and 325, paragraph 3a<sup>1</sup> CC, as amended, active or passive bribery involving "persons holding positions of public dignity" constitutes an aggravated corruption offence. The authorities add that section 330 CC, concerning receipt of illicit rewards by a civil servant, which encompassed certain categories of persons who, before the reform, were not covered by the provisions on bribery, has been repealed. Section 123 CC, as amended, is worded as follows.

**Section 123 CC: Persons holding positions of responsibility, public persons and persons holding positions of public dignity**

*(1) Persons holding positions of responsibility shall mean persons who in an enterprise, institution or organisation under the authority of the State or local public administration or in a subdivision thereof are assigned, either permanently or temporarily, by law, appointment, election or delegation, certain rights and obligations with a view to exercising the functions of a public authority or functions related to administrative management or to economic/organisational activities.*

*(2) Public person shall mean any civil servant, including civil servants with special status (staff of the diplomatic service, the armed forces, customs, the police and the security services or any other person of special or military rank); any member of staff of autonomous or regulatory public authorities, of State or municipal undertakings or of any legal entity under public law, any member of the private office of a person holding a position of public dignity; and any person authorised or entitled by the State to perform, on its behalf, activities or services in the public interest.*

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<sup>1</sup> In support of this reading of the law, the authorities also refer to the December 2012 study "On offences provided for in chapters XV and XVI of the Special Part of the Criminal Code", whose author, Ruslan Popov, is currently the chief prosecutor in the anti-corruption unit of the Public Prosecutor's Office (and which was approved by the chair of the "Criminal Science" faculty of Moldova University of European Studies).

*(3) Persons holding positions of public dignity shall mean persons whose appointment or election is governed by the Constitution of the Republic of Moldova or who holds office by virtue of his/her election or appointment by the Parliament, the President of the Republic of Moldova or the Government; local councillors or members of the People's Assembly of Gagauzia, and persons to whom persons holding positions of public dignity delegate their authority.*

10. The authorities point out that, following the amendments, the concept of "public persons" – who, in accordance with sections 324 and 325 CC, may be held liable for corruption offences – includes anyone who has the status of a public official (whether they are a mere doctor, teacher or civil servant or a minister, judge, member of Parliament, and so on), and in this connection they refer, *inter alia*, to the phrase "any member of staff ... of any legal entity under public law" used to define this concept in section 123, paragraph 2 CC.
11. GRECO takes note of the information provided, according to which the possible perpetrators of corruption offences are now designated by the new category "public person", which covers all civil servants and public employees. The authorities have therefore taken into account the main concern on which the recommendation was based, namely the restrictive nature of "functions of a public authority or functions related to administrative management or to economic/organisational activities" required by the definition of "persons holding positions of responsibility", which, in the new version of the legislation, is no longer key to determining the scope of the provisions on corruption.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

#### **Recommendation ii.**

13. *GRECO recommended to take the necessary legislative measures to ensure that active and passive bribery of foreign public officials, members of foreign public assemblies, international officials, members of international parliamentary assemblies and judges and officials of international courts are explicitly criminalised in accordance with Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*
14. The authorities state that Act No. 245 of 2 December 2011 introduced in the CC a section 123<sup>1</sup>, paragraph 1 of which defines the status of "foreign public persons" and paragraph 2 that of "international officials". These categories of persons are included in the scope of the provisions on corruption, namely sections 324 and 325 CC. More specifically, "foreign public persons" are included in the general definition of corruption offences (paragraph 1 of section 324 and paragraph 1 of section 325 CC), whereas "international officials" are mentioned in the provisions on aggravated offences of corruption (section 324, paragraph 2a<sup>1</sup> and section 325, paragraph 3a<sup>1</sup> CC). Section 123<sup>1</sup> CC is worded as follows.

#### **Section 123<sup>1</sup> CC: Foreign public persons and international officials**

*(1) Foreign public person shall mean any person who is appointed or elected to a legislative, executive, administrative or judicial office in a foreign State and any person who performs a public function in a foreign State, including for a foreign public authority or public undertaking, and persons serving as jurors within the judicial system of a foreign State.*

*(2) International official shall mean any official of an international or supranational public organisation or any person authorised by such an organisation to act on its behalf; any member of a parliamentary assembly of an international or supranational organisation; or any person who performs judicial functions in an international court, including registry officials.*

15. GRECO notes that criminalisation of corruption has been expressly extended to foreign public officials and members of foreign public assemblies, as well as to officials of international organisations, members of international parliamentary assemblies and judges and officials of international courts.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

### **Recommendation iii.**

17. *GRECO recommended to explicitly criminalise active and passive bribery of domestic and foreign arbitrators and of foreign jurors in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*
18. The authorities state that Act No. 78 of 12 April 2012 amended the provisions on active and passive bribery in the private sector, namely sections 333 and 334 CC, so as to include in their scope "arbitrators elected or appointed to settle a dispute". They add that, according to the explanatory report to Act No. 78, this amendment was made in response to GRECO's recommendation and the concept of arbitrator used in these provisions includes national and foreign arbitrators. The amended provisions are worded as follows:

#### **Section 333 CC: Taking bribes**

*(1) Any person seeking, accepting or receiving, directly or through an intermediary, from an arbitrator elected or appointed to settle a dispute, a manager of a business or social organisation or other non-governmental organisation, or a person working for such an organisation, goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, or accepting an offer or promise thereof, in order to perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, shall be liable to a fine of between 500 and 1,500 conventional units or up to 3 years' imprisonment and in both cases shall be disqualified from holding office or from engaging in certain activities for a period of up to 5 years. (...)*

#### **Section 334 CC: Giving bribes**

*(1) Promising, offering or giving a bribe, directly or through an intermediary, to an arbitrator elected or appointed to settle a dispute, a manager of a business or social organisation or other non-governmental organisation or a person working for such an organisation, in the form of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto,*

*shall be punishable with a fine of between 500 and 1,000 conventional units or up to 3 years' imprisonment in the case of a natural person, and a fine of between 500 and 2,500 conventional units with disqualification from performing certain activities in the case of a legal person. (...)*

19. Concerning foreign jurors, the authorities refer to paragraph 1 of the new section 123<sup>1</sup> CC, which makes express mention of "persons serving as jurors within the judicial system of a foreign State"; the provisions on corruption in the public sector therefore apply to such persons (see recommendation ii above).
20. GRECO observes that foreign jurors have been expressly designated as possible perpetrators of corruption offences in the public sector, and arbitrators as possible perpetrators of corruption offences in the private sector. It regrets that the new definition of corruption offences in the private sector does not state explicitly that it also covers foreign arbitrators, but accepts the authorities' explanation that, according to the explanatory report to Act No. 78, foreign arbitrators are also concerned by these offences. Lastly, GRECO notes that the offences contain the elements required by Article 2 of the Additional Protocol to the Criminal Law Convention on Corruption.
21. GRECO concludes that recommendation iii has been implemented satisfactorily.

#### **Recommendation iv.**

22. *GRECO recommended to align in a consistent manner the criminalisation of bribery in the public sector, as provided for in sections 324 and 325 CC, with Articles 2 and 3 of the Criminal Law Convention on Corruption (ETS 173), notably in order to ensure that these provisions cover, without any possible doubt, a) the request, receipt or acceptance of advantages, material or immaterial; b) instances of bribery committed through intermediaries or for the benefit of a third party; and c) all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the public official's authority.*
23. The authorities state that Act No. 78 of 12 April 2012 amended the provisions on active and passive bribery in the public sector. The main provisions of sections 324 and 325 CC read as follows in their amended version:

#### **Section 324 CC: Passive bribery**

*(1) A public person or foreign public person who seeks, accepts or receives, directly or through an intermediary, goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, or accepts an offer or promise thereof, in order to perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, shall be liable to a fine of between 1,000 and 3,000 conventional units and 3 to 7 years' imprisonment, with a disqualification from holding office or from engaging in certain activities for a period of 2 to 5 years. (...)*

### **Section 325 CC: Active bribery**

*(1) Promising, offering or giving a bribe, directly or through an intermediary, to a public person or foreign public person, in the form of goods, services, privileges or advantages of any kind to which he or she is not entitled, for himself or herself or for anyone else, with a view to having him or her perform or refrain from performing an act, or delay or facilitate the performance of an act, in the exercise of his or her duties or contrary thereto, shall be punishable with a fine of between 1,000 and 3,000 conventional units and up to 6 years' imprisonment in the case of a natural person, and a fine of between 2,000 and 4,000 conventional units with disqualification from performing certain activities in the case of a legal person. (...)*

24. GRECO notes that the provisions on active and passive bribery in the public sector have been amended in a number of respects. In particular, it has been clarified that all the various forms of corrupt behaviour<sup>2</sup> refer to any kind of advantage (regardless of its material or immaterial nature); that corruption offences may be committed through an intermediary or for the benefit of a third party; and that all the cases where a public official performs or refrains from performing an act in the exercise of his or her duties are covered, without it being necessary – as was the case prior to the legislation's reform – that this act should fall within the scope of his or her authority.

25. GRECO concludes that recommendation iv has been implemented satisfactorily.

#### **Recommendation v.**

26. GRECO recommended to align the criminalisation of bribery in the private sector, as provided for in sections 333 and 334 CC, with Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), in particular as regards the categories of persons covered, the different forms of corrupt behaviour and the coverage of indirect commission of the offence and of instances involving third party beneficiaries.

27. The authorities state that the provisions on active and passive bribery in the private sector have been amended by Act No. 78 of 12 April 2012 (see the wording of sections 333 and 334 CC, as amended, under recommendation iii above).

28. GRECO notes that, following the 2012 legislative reform, the categories of persons covered by the provisions on bribery in the private sector are no longer confined to those "responsible" for a business, social or other organisation, but include managers and any "person working for such an organisation", as required by Articles 7 and 8 of the Criminal Law Convention on Corruption. According to the authorities, this new concept also includes persons without employee status or who do not work permanently for an undertaking but can engage its corporate responsibility, such as lawyers, consultants, sales agents, etc. In addition, sections 333 and 334 CC have been supplemented to include the different forms of corrupt behaviour (in particular, seeking or accepting any advantage and offering or promising any advantage), so as to cover all the cases where a manager or employee of a private entity performs or refrains from performing an act in the exercise of his or her duties (whether or not this act falls within the scope of his or her

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<sup>2</sup> Regarding the interpretation of the terms utilised in Moldovan law to designate the different forms of corrupt behaviour – which were not covered by the recommendation and are not concerned by the reform, see paragraph 55 of the Evaluation Report.

authority), and to cover cases where corruption offences are committed through intermediaries or for the benefit of third parties.

29. GRECO concludes that recommendation iv has been implemented satisfactorily.

**Recommendation vi.**

30. *GRECO recommended (i) to criminalise active trading in influence as a principal offence; and (ii) to align the criminalisation of passive trading in influence with Article 12 of the Criminal Law Convention on Corruption (ETS 173), in particular as regards the categories of persons targeted and the different forms of corrupt behaviour.*
31. The authorities state that Act No. 245 of 2 December 2011 introduced a number of amendments in section 326 CC on trading in influence. In particular, paragraph 1<sup>1</sup> has been added so as to criminalise active trading in influence and paragraph 1 on passive trading in influence has been brought into line with the requirements of Article 12 of the Criminal Law Convention on Corruption. These two paragraphs of section 326 CC are worded as follows:

**Section 326 CC: Trading in influence**

*(1) Any person having or claiming to have some influence over a public person, a person holding a position of dignity, a foreign public person or an international official who seeks, accepts or receives money, securities, goods, services or advantages, either personally or through an intermediary, for himself or herself or for anyone else, with a view to having that public person or official perform or refrain from performing an act in the exercise of his/her duties or delay or facilitate the performance of such an act, irrespective of whether these acts have or have not been performed,*

*shall be liable to a fine of between 500 and 1,500 conventional units or up to 5 years' imprisonment, in the case of a natural person, and a fine of between 2,000 and 4,000 conventional units with disqualification from performing certain activities in the case of a legal person.*

*(1<sup>1</sup>) Any person who, with the aim set out in paragraph (1), promises, offers or gives goods, services or advantages listed in paragraph (1) to another person, either personally or through an intermediary, for himself or herself or for anyone else, where this other person has or claims to have some influence over a public person, a person holding a position of dignity, a foreign public person or an international official,*

*shall be liable to a fine of between 500 and 1,500 conventional units or up to 3 years' imprisonment, in the case of a natural person, and a fine of between 2,000 and 4,000 conventional units with disqualification from performing certain activities in the case of a legal person. (...)*

32. GRECO takes notes of the information provided, which shows that active trading in influence has been criminalised and that the provisions on passive trading in influence have been amended. In particular, following the reform of 2012, the provisions of section 326 CC apply to all domestic public officials, and foreign and international officials (public persons, persons holding positions of public dignity, foreign public persons or international officials); they include the different forms of trading in influence (seeking, accepting, receiving, promising, offering or giving advantages) and they cover all the cases involving a public official's performance or non-performance of an act in the exercise of his/her duties (whether or not this act falls within the scope of his/her authority).



33. GRECO concludes that recommendation vi has been implemented satisfactorily.

**Recommendation vii.**

34. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public sector and private sector in cases of “effective regret”.*
35. The authorities report that the working group established in September 2010 to draw up the draft law amending the CC in accordance with GRECO's recommendations held lengthy discussions on the issue of "effective regret" at a number of its meetings. The working group (which brought together, among others, representatives of the Ministry of Justice, the judiciary and the public prosecution service, including in particular representatives of the Ministry of the Interior, the Centre for Fighting Economic Crime and Corruption and the anti-corruption unit of the Public Prosecutor's Office) then proposed that the provisions on "effective regret" should be either repealed or amended, in particular so as to set a time-limit from the commission of the offence within which the perpetrator must report it.
36. However, the working group's proposals were rejected in the course of the subsequent public debate on the draft law. The various prosecutorial and judicial bodies raised a number of arguments against repealing or amending the relevant provisions (sections 325, paragraph 4 and 334, paragraph 4 CC). In particular, they pointed out that this reform would conflict with the general principle established in section 57 of the CC, whereby criminals are encouraged to repent by guaranteeing that they will be exempt from criminal liability in certain circumstances (in addition, "effective regret" and confessing to an offence are listed as mitigating circumstances in section 76 CC). The proposal to eliminate the automatic nature of the defence of "effective regret" (by stipulating that the offender "could be" exempted from criminal liability) was also rejected on the ground that there would then be no sufficiently precise criteria to determine in which cases the defence might apply. This would result in inconsistent judicial decisions, since the courts' discretion would be too broad and too vague. Lastly, the authorities state that, as things stand at present, a person accused of taking bribes is entitled to challenge any decision to exempt the bribe-giver from punishment before the higher-ranking prosecutor or court, who may vary the decision.
37. GRECO takes note of the information provided, stating that the legislation on the special defence available under sections 325, paragraph 4 and 334, paragraph 4 CC was examined by the working group responsible for drawing up the draft law amending the CC, as recommended by GRECO, but this working group's proposals to repeal or amend the above-mentioned provisions were rejected during the public debate on the draft law. GRECO understands that the prosecutor's decision to apply the defence can be challenged, and that in such cases the question whether the conditions are met must be re-examined. However, GRECO reiterates its doubts about the automatic – and mandatorily total – nature of this exemption, as mentioned in the Evaluation Report. If the conditions for this defence are met a bribe-giver will be systematically and fully exempted from criminal liability, regardless of the particular circumstances of the case. GRECO takes note of the authorities' concerns with regard to any possible amendment that might grant the competent authorities discretion to determine whether a bribe-giver should be exempt from criminal liability (in particular regarding the establishment of sufficiently precise criteria for taking the decision), but is convinced that an appropriate solution can be found in light of the fact that such rules exist in other countries. GRECO urges the

authorities to continue their efforts to revise the automatic and mandatorily total nature of this exemption, in line with the recommendation.

38. GRECO concludes that recommendation vii has been partly implemented.

**Recommendation viii.**

39. *GRECO recommended to take further measures (specialised training, circulars and other awareness raising initiatives) to ensure that full use is made of the criminal law provisions on the offences of corruption and trading in influence in practice.*
40. The authorities indicate that, on 15 October 2012, the National Institute of Justice (NIJ) held a seminar on the theme "Offences against the proper conduct of activities in the public sector" (the new title of the chapter of the CC dealing with corruption offences in the public sector), in which 16 prosecutors and 10 judges participated. This seminar focused in particular on the amendments made to the CC concerning bribery and trading in influence. The authorities also refer to the above-mentioned<sup>3</sup> December 2012 study "On offences provided for in chapters XV and XVI of the Special Part of the Criminal Code", which was forwarded to the anti-corruption unit of the Public Prosecutor's Office and to the territorial subdivisions and information on which was provided to all prosecutors.
41. The authorities add that, in view of the very short timeframe within which the recent amendments to the CC are being implemented, other training courses will be run in future and other awareness-raising measures targeting criminal investigation officers, prosecutors and judges will be implemented. In particular, the further training programme for prosecutors and judges for 2013 (approved by the NIJ Council on 20 August 2012 following proposals from the Superior Councils of Judges and Prosecutors) includes a two-day training course for 200 prosecutors and 100 judges on the theme of the criminal investigation and trial of cases of corruption and related cases.<sup>4</sup>
42. GRECO notes that, among other things, a seminar on recent amendments to the CC concerning, *inter alia*, corruption, has already taken place with the participation of 26 judges and prosecutors and that other training courses and awareness-raising measures are planned. GRECO invites the authorities to carry these projects through to completion and pursue their efforts in relation to the implementation of the provisions on corruption, such implementation being of key importance.
43. GRECO concludes that recommendation viii has been partly implemented.

**Theme II: Transparency of political party funding**

44. In its Evaluation Report GRECO addressed nine recommendations to the Republic of Moldova concerning Theme II. Compliance with these recommendations is examined below.
45. The authorities state that in November 2011 a working group responsible for drawing up amendments to the legislation on funding of political parties and election campaigns was set up by the Central Electoral Commission (CEC), with a view, *inter alia*, to implementing GRECO's recommendations. This working group included representatives of the CEC, the Ministry of Justice, the Centre for Combating Economic Crime and Corruption, the Ministry of Finance, the

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<sup>3</sup> See under recommendation i, above.

<sup>4</sup> The authorities indicate that those training courses will take place on 20-22 May and 11-13 June 2013.

Tax Inspectorate and the Court of Auditors, the head of the Moldovan delegation to GRECO, and representatives of the parties present in Parliament, non-governmental organisations and a number of international bodies. It prepared a draft "Law amending and supplementing legislative instruments", which contains amendments to eight pieces of legislation, notably the Electoral Code (EC), the Law on Political Parties (LPP), the Criminal Code (CC), the Code of Criminal Procedure, the Code on Minor Offences, the Broadcasting Code, the Tax Code and the Law on the Court of Auditors. The draft legislation was then publicly debated and should shortly be transmitted to the Government for approval before being brought before Parliament. The authorities add that, in February 2012, Parliament approved an action plan for implementing the National Anti-Corruption Strategy (2011-2015) in 2012 and 2013, which also covers the preparation of measures necessary to implement GRECO's recommendations.

### **Recommendation i.**

46. *GRECO recommended to make it obligatory for political parties' annual financial reports destined for publication and submission to the supervisory authorities to include more precise information, guaranteeing a full overview of the party's assets and its income and expenditure.*
47. The authorities indicate that, under section 29, paragraph 4 LPP, as provided for by the above-mentioned draft law, the CEC – whose supervisory role in political funding matters is moreover reinforced (see recommendation viii) – is to prepare standard forms for political parties' annual financial reports, which must at least include information on parties' assets and income, by category; on all donations received by a party, indicating the amounts and donors' identities; and on parties' financial obligations and expenditure, broken down between operational expenditure and expenditure incurred for asset management (this list is not exhaustive). The authorities add that the forms will need to be prepared by the CEC in agreement with the Ministry of Finance, bearing in mind that they will have to reflect the specific features of party funding and at the same time meet the requirements of the general accounting standards. In particular, the Accounting Act<sup>5</sup> requires that an explanatory memorandum including more detailed information be submitted together with the financial report. Whereas the political party's financial report will describe the assets, income, expenditure, financial obligations, etc. by category, the explanatory memorandum will provide individual details.
48. Under section 29, paragraph 2 LPP, as provided for by the draft law, the CEC will be called upon to verify and examine in detail the financial reports submitted by parties. The authorities stipulate that this supervision extends to the information contained in the explanatory memorandum to the financial report, of which it forms an integral part. In addition, within two weeks of receiving and accepting parties' financial reports, the CEC shall publish information on their income and expenditure, as reported, including the identity of donors, along with a summary of the auditors' findings and conclusions.
49. GRECO takes note of the proposed amendments to the LPP, which expressly determine the minimum content of political parties' annual financial reports to be submitted to the supervisory authorities (the CEC and, in some cases, the Court of Audit) and published. In particular, the draft legislation requires that all of a party's assets, income, financial obligations and expenditure should be listed individually. GRECO considers that the proposed amendments go in the direction recommended.
50. GRECO concludes that recommendation i has been partly implemented.

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<sup>5</sup> Act No. 113 of 27 April 2007.

### **Recommendation ii.**

51. *GRECO recommended to require that all donations received by political parties outside election campaigns that exceed a given amount, as well as the identity of the donors, are disclosed to the supervisory authorities and are made public.*
52. The authorities state that, under section 29, paragraph 4 LPP, as provided for by the draft law, political parties' annual financial reports must contain detailed information on all donations received, including the value of each donation and the identities of all donors (first name and surname, or for legal entities the name and legal form, address or registered office, occupation, place of work, or nature of their activity). The draft law requires that the financial reports containing this information on donations and donors should be submitted to the CEC, which shall verify them and publish the information on its own website, in addition to its possible disclosure on the party's website (paragraphs 1 to 3 of section 29 LPP as amended).
53. GRECO notes that the draft amendments, if adopted, would go even further than the requirements of the recommendation, since they provide for the disclosure of detailed information on all donations received by a party (rather than simply donations exceeding a certain amount).
54. GRECO concludes that recommendation ii has been partly implemented.

### **Recommendation iii.**

55. *GRECO recommended to take appropriate measures to limit the risk that members' subscriptions received by parties may be used to circumvent the transparency rules applicable to donations.*
56. The authorities indicate that the amended provisions on donations (see section 26 LPP, as set out in the draft law) draw a distinction between members' subscriptions and donations (paragraph 1). Nonetheless, where a donor is a party member subscriptions paid are taken into account for calculating whether the donor has exceeded the maximum amount that can be contributed to political parties during a given year, namely 20 times the average monthly wage. Under the draft law donations and subscriptions must be recorded separately in a party's accounts and in its financial reports (see paragraph 4). The authorities add that subscriptions and donations must be disclosed individually in order to show that the provisions on the maximum amount that can be donated have been observed and prevent larger donations from being made by disguising them as subscriptions.
57. GRECO considers that the new requirement under the draft law that donations and subscriptions are to be recorded separately in a party's accounts and in its financial reports could help to limit the risk that parties may use the subscriptions they receive from members to circumvent the transparency rules applicable to donations. GRECO also welcomes the fact that, under the draft law, subscriptions paid by a member to a political party are taken into account in calculating whether the maximum annual limit on contributions to political parties has been exceeded and that the amount of this maximum contribution is to be considerably reduced compared with that provided for in the current version of the LPP (from 500 times the average monthly wage to 20 times the average monthly wage).
58. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

59. *GRECO recommended to take appropriate measures (i) to ensure that all donations and services provided to parties or candidates in kind or on advantageous terms are properly identified and recorded in full, at their market value, in both parties' annual reports and campaign funding reports; and (ii) to clarify the legal situation regarding loans.*
60. Concerning the first part of the recommendation, the authorities firstly indicate that the draft law includes amendments to the definition of a donation set out in section 26, paragraph 1 LPP. According to this definition, under the law a donation shall include – in addition to financial donations – donations in the form of moveable or immoveable assets, services provided free of charge or on favourable terms compared with market rates, or spending on goods or services utilised by a political party (see letter b) of this paragraph). These types of donations must be entered in the party's accounts at their market value and subject to the limits on donations. Secondly, with regard to election campaigns, the authorities refer to the new section 38<sup>1</sup> of the amended EC, as provided for by the draft law, which lists the information that electoral contestants must include in the financial reports they submit to the CEC every two weeks during the election campaign. Among other things, electoral contestants must specify in their reports the nature and value of any sums of money, goods, objects, assets, work or services donated to them (see paragraph 1b of this section). The accuracy of the data, and the prices, will be verified by the CEC. The CEC may request, where appropriate, further information on the value and origin of any deposit made in the electoral contestant's account (see paragraph 6 of the said section). The authorities add that the above requirements fall within the well-developed framework of the Accounting Act, which governs the recording and economic assessment of transactions (including donations and services provided in kind, etc.) and the justification of accounting entries.
61. With regard to the second part of the recommendation, the authorities firstly state that, under section 29, paragraph 4, letter c) LPP, as provided for by the draft law, parties' annual financial reports must include information on their financial obligations and expenditure, which also covers loans extended to them. The authorities add that the financial obligations, and hence loans, must be entered individually in the explanatory memorandum to the financial report, in accordance with the Accounting Act. Secondly, the authorities refer to the new section 38<sup>1</sup> of the amended EC, as provided for by the draft law, which requires electoral contestants to include information on the amount of their debts, the numbers of the relevant financial deeds and other related information in their campaign financing reports (see paragraph 1, letter f).
62. GRECO notes that the draft law contains provisions on the recording of in-kind donations and services provided on advantageous terms or of financial obligations – including loans – in the financial reports of political parties and electoral contestants. GRECO considers that the proposed amendments go in the direction recommended.
63. GRECO concludes that recommendation iv has been partly implemented.

#### **Recommendation v.**

64. *GRECO recommended to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable.*

65. The authorities indicate that, in accordance with the amendments to section 26 LPP under the draft law, political parties are required to open a special bank account into which monetary contributions and members' subscriptions must be paid (see paragraph 8 of this section). Under the new paragraph (2) of the same section, monetary donations must be made via the banking system using the various modern means of payment available (bank card, direct transfer, and so on). If a donor has no bank account, the sum can be paid in cash into the party's account, but the donor must sign a declaration under his/her personal responsibility confirming that he/she has made a donation. These documents must be included among the supporting records that accompany the accounts of the party concerned. The authorities add that, for campaign financing purposes, section 38 EC as amended by the draft law requires electoral contestants to complete a form showing cash donations received from natural persons (see paragraph 1, letter f) of this section). Such donations must moreover be paid into the electoral bank account and the form must be included among the supporting accounting records.
66. Concerning political parties' expenditure, the authorities emphasise that such expenditure is easier to track as, under the draft law, all receipts accumulate in a bank account and supporting vouchers must be produced for all withdrawals. They add that Government Decision No. 191 of 6 March 2001 "on the implementation of cashless payment instruments" recommends that all legal entities under private law make use of the various payment instruments and avoid cash.
67. GRECO notes that the draft law provides for the payment of donations to political parties via the banking system, and that the draft – together with the existing regulatory framework – likewise encourages the use of the banking system for any expenditure incurred by parties. GRECO considers that the proposed amendments go in the direction recommended.
68. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation vi.**

69. *GRECO recommended to explore the possibilities of consolidating political parties' annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control.*
70. Concerning campaign financing reports, the authorities indicate that section 38 EC, as amended by the draft law, requires electoral contestants (in particular political parties) to include in their financial reports full accounting information in respect of legal entities established by the party concerned or otherwise under its control (paragraph 1, letter g) of this section). The authorities add that the concept of a "legal entity under a party's control" will be explained in greater detail by the CEC in the forms and other documents (e.g. guides or guidelines). In the case of political parties' annual financial reports, the authorities reiterate that section 29, paragraph 4 LPP as amended by the draft law requires the CEC to draw up forms for these reports that must contain certain types of information provided for in the law. At the same time, the list of information required is not exhaustive and could be supplemented by the CEC when it prepares these forms (together with the Ministry of Finance), in particular so as to include information on entities related to parties.
71. GRECO takes note of the information provided. The draft law would seem to take part of the recommendation's requirements into account by requiring electoral contestants (in particular political parties) to include in their financial reports (that is their campaign accounts) information on legal entities established by the party concerned or otherwise under its control. In the case of

parties' annual financial reports, the mere fact that the CEC (and the Ministry of Finance) could possibly take such entities into account when drawing up the standard forms does not meet the recommendation's requirements.

72. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

73. *GRECO recommended to introduce independent auditing of party accounts by certified experts.*
74. The authorities point out that, under section 31 LPP as amended by the draft law (entitled "Audit and verification of political parties' financial reports"), political parties whose annual income or expenditure exceeds MDL 1 million (about €63,000) are required to undergo an external audit at least once every three years, to be carried out in accordance with the requirements of domestic law and national and international audit standards. The audit report is sent to the CEC and, if the party has received subsidies from the State budget, to the Court of Auditors as well. As regards the frequency of the audit, the authorities state that private-law entities in Moldova are not required to conduct an external audit every year and that any audit report can be compiled over a specific period; it was deemed appropriate to set a time-frame of three years for political parties.
75. The auditor chosen by the party must neither be a party member nor have stood as a candidate on the list of a political party in the last five years and he or she must confirm in writing that he/she is familiar with the relevant legislation on political funding. The authorities add that Act No. 61-XVI of 16 March 2008 deals in greater detail with auditing and the activities of auditors, who must be certified accountants. Under the draft law, the CEC must provide auditors with special forms together with guidelines, setting out the necessary information on verifying financial reports' compliance with the legislation on the funding of political parties and election campaigns (including the precise purpose of the audit, the structure of the audit report, risk factors relating to donations and expenses, etc.). Under section 29, paragraph 3 LPP as provided for by the draft law, the conclusions of external audits must be published on the CEC website and, possibly, the website of the party concerned.
76. GRECO notes that the draft law provides for the introduction of a compulsory external audit on parties' financial reports, except for parties whose transactions volume remains under a certain level. GRECO considers that the proposed amendments go in the direction recommended. It nonetheless notes that audits are required only every three years and invites the authorities to consider imposing more regular audits.
77. GRECO concludes that recommendation vii has been partly implemented.

**Recommendation viii.**

78. *GRECO recommended to mandate an independent central body, endowed with sufficient powers and resources and assisted by other authorities where necessary, so as to allow the exercise of effective supervision, the conduct of investigations and the implementation of the regulations on political funding.*
79. The authorities indicate that the draft law supplements section 22, paragraph 2 EC to give the CEC the following mandate: "an independent body responsible for supervising and monitoring the

funding of political parties and election campaigns”.<sup>66</sup> It also provides that the CEC shall have monitoring and verification powers: it collects and analyses political parties’ annual financial reports and audit reports and the financial reports filed by electoral contestants; it ensures that these reports are published; it has the right to access information held by public authorities and in State registers, even including personal data (all public authorities have specific databases, which the CEC can access directly without the assistance of the authorities concerned); and it exercises other supervisory and monitoring powers assigned to it under the EC and the LPP. The draft law empowers the CEC to apply the sanctions provided for in the EC and the LPP and to refer cases to the relevant bodies where infringements may qualify as minor offences, tax offences or criminal offences. More specifically, the CEC can under certain circumstances caution electoral contestants, deprive them of budget subsidies or request that they be barred from elections by the Court of Appeal; it may issue orders to pay to political parties which have infringed the rules on donations; it has the authority to identify offences committed by political parties or electoral contestants (by drawing up reports which it sends to the court for consideration and decision); and where it discovers elements of a criminal offence, it is required to refer the matter to the criminal prosecution authorities.

80. With regard to the resources made available to the CEC to enable it to perform the supervisory and monitoring functions described above, under the amendments to sections 23 and 24 EC as provided for by the draft law, the CEC is authorised to approve the structure and number of personnel who assist it in its work. It has its own budget, which it plans itself on the basis of the estimated expenditure and which is approved by Parliament; the Government merely gives an opinion on this budget.
81. GRECO notes that the draft law mandates the CEC to supervise the funding of both election campaigns and political parties in general and assigns it new powers to fulfil this role, including the right to apply certain sanctions to political parties and electoral contestants if they have violated the relevant rules. It therefore seems that the draft law addresses one of the major concerns expressed in the Evaluation Report, namely the number of bodies responsible for supervising political funding, some of which belong to the executive branch and cannot therefore be regarded as independent. Bearing in mind that, under the draft law, the CEC receives financial information from parties and electoral contestants as well as from other State bodies, and thus has an overview of various aspects of political finances, and given that the CEC offers more statutory guarantees of independence than other bodies such as the Tax Inspectorate of the Ministry of Finance, GRECO welcomes this approach. In view of the fact that under the draft law, the CEC is to have its own budget, prepared by the CEC itself, GRECO is confident that after the planned reform, the CEC will also have sufficient human and financial resources to carry out, proactively and efficiently, a substantive review of the various financial reports submitted.
82. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

83. *GRECO recommended to ensure that (i) all infringements of the rules on party funding in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can, if necessary, be imposed after the Constitutional Court has validated the elections; and (ii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding.*

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<sup>66</sup> See also section 30, paragraph 1 LPP as provided for by the draft law.



84. The authorities report firstly that the draft law added a new chapter VII<sup>1</sup> to the LPP entitled “Responsibility for infringement of political party funding rules”. Under the draft law, section 31<sup>1</sup> LPP defines the penalties for the infringement of rules on donations and section 31<sup>2</sup> defines those for the infringement of rules on financial management. If the party has received donations in breach of the rules set out in section 26 LPP (for example exceeding the statutory upper limits), the CEC issues a written summons requiring the party to end the infringement and to inform the CEC of the measures taken within three days. Failure to comply with the summons is sanctioned under the rules of the Code on Minor Offences. If more than one such infringement is committed, and a penalty imposed, in the course of a calendar year, the CEC can adopt a decision whereby the party concerned is stripped of its entitlement to public subsidies for a six-month period. A party that infringes the financial management rules set out in section 31<sup>2</sup> of the LPP also incurs liability under the Code on Minor Offences.
85. The authorities also state that the draft law provides for the following amendments to the Code on Minor Offences: Under the new section 48<sup>1</sup> entitled “Infringements of the legislation on funding of political parties and election campaigns”, a political party that fails to submit an annual financial report by the deadline and in line with the requirements of the standard form or to provide the full data required shall incur a fine of 300 to 500 conventional units (MDL 6,000 to 10,000 or about €380 to €630) as well as ineligibility to engage in certain activities for a period of three to six months. Similar penalties are provided for in the following cases: failure by independent candidates to submit campaign finance reports; infringement of the rules on financial evidence and management of political parties’ assets and campaign funds, including failure to submit donor identification data; assigning subsidies from the State budget to uses contrary to their intended purpose; illegal use of public resources or facilitating or consenting to their illegal use during election campaigns. Lastly, the authorities refer to the new version of section 48 of the Code on Minor Offences, which provides for similar penalties in the event of use during elections and referendums of funds from foreign or undeclared sources or failure to comply with CEC instructions concerning transfer to the State budget of sums received by election candidates in excess of the upper ceiling set for election campaigns. As regards the amounts of the fines envisaged by the draft law, the authorities explain that these were set taking into account the level of wages<sup>7</sup> and Moldova’s policy on minor and criminal offences.
86. With regard to criminal liability, the draft law provides for a new section 181<sup>2</sup> CC entitled “Illegal funding of political parties and election campaigns”. Forgery of political parties’ financial reports and/or reports on election campaign funding with a view to substituting or concealing donors’ identities or concealing the amount of sums accumulated or used is punished with a fine of 200 to 500 conventional units (about €250 to €630) or up to three years’ imprisonment and in both cases ineligibility for certain offices or to engage in certain activities for a period of up to five years. Similar penalties are provided for, *inter alia*, for obtaining donations through extortion or blackmail (whether this occurs during election campaigns or between elections), accepting funds from a criminal organisation and unlawful use of administrative resources where this has caused major loss or damage (in the latter cases fines of up to 5,000 conventional units or about €6,300 can be imposed).
87. Regarding the second part of the recommendation, the authorities indicate that the Ministry of Justice has drawn up a specific draft law amending the Code on Minor Offences which foresees,

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<sup>7</sup> For the year 2013, the average wage was set at MDL 3,850 (about €235) and the minimum wage at MDL 1,300 (about €80).

*inter alia*, the extension of the limitation period for minor offences from three to six months. This draft bill is currently the subject of public debate.

88. GRECO notes that the draft law includes a whole series of new provisions on the penalties for minor and criminal offences which may be imposed on political parties and election candidates for breaching various political financing rules. The proposed amendments go in the direction recommended (first part of the recommendation), particularly by defining breaches of the relevant rules and introducing a broader range of penalties. As far as the second part of the recommendation is concerned, GRECO takes note of the distinct draft bill aimed at extending the limitation period for minor offences and it invites the authorities to speed up their efforts to legislate in this area.
89. GRECO concludes that recommendation ix has been partly implemented.

### III. CONCLUSIONS

90. **In view of the above, GRECO concludes that the Republic of Moldova has implemented satisfactorily or dealt with in a satisfactory manner six of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendations i, ii, iii, iv, v and vi have been implemented satisfactorily and recommendations vii and viii have been partly implemented. With respect to Theme II – Transparency of Party Funding – the nine recommendations (i to ix) have all been partly implemented.
91. Concerning incriminations, considerable efforts have been made to act upon most of the recommendations. New legislation is already in place to extend the scope of the provisions on corruption to domestic public officials, foreign officials and officials of international organisations, foreign arbitrators and jurors and persons carrying on an activity in the private sector. The provisions on bribery in the public and private sectors and on trading in influence have been brought into line with the standards of the Criminal Law Convention on Corruption (ETS 173), *inter alia*, by expressly extending the offence to all the different forms of corrupt behaviour and trading in influence and by referring to any kind of advantage likely to be the subject of bribery, whether material or immaterial in nature. Active trading in influence has also been criminalised as a principal offence. Lastly, GRECO welcomes the training and awareness-raising measures targeting the authorities responsible for enforcing the legislation and invites the Moldovan authorities to continue their efforts, as planned, so as to ensure that full use is made in practice of the criminal law provisions relating to bribery and trading in influence offences. GRECO nonetheless regrets that no substantial progress has been made regarding the automatic exemption from punishment granted to perpetrators of active bribery offences who bring these offences to the law enforcement authorities' attention before the latter learn of their existence. GRECO invites the authorities to redouble their efforts in this area.
92. Concerning transparency of party funding, GRECO welcomes the significant, wide-ranging reform process presented by the Republic of Moldova, in which almost all the concerns raised by GRECO in the Evaluation Report have been closely examined. If adopted, the draft "Law amending and supplementing legislative instruments" presented by the Central Electoral Commission should address most of these concerns. However, the draft legislation has not yet been brought before Parliament. The authorities are encouraged to pursue their laudable efforts in this respect, so as to establish a sound legal basis for political financing in the Republic of Moldova. GRECO also reiterates the call it made in the Evaluation Report to seek to ensure that the existing rules, and those to come, are applied in practice, notably by verifying that the

supervisory mechanism – which according to the draft law will be concentrated in the hands of the Central Electoral Commission – has the necessary resources to implement substantive, proactive oversight of the financing of election campaigns and of political parties in general.

93. In the light of what is said in paragraphs 90 to 92, GRECO notes that the Republic of Moldova has been able to show that far-reaching reforms are under way, such as to enable it to achieve an acceptable level of compliance with the recommendations within the next 18 months. GRECO accordingly concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It encourages the Republic of Moldova to pursue its efforts to implement the outstanding recommendations. GRECO invites the head of the Moldovan delegation to submit, by no later than 30 September 2014, additional information regarding the implementation of recommendations vii and viii (Theme I – Incriminations) and recommendations i to ix (Theme II – Transparency of party funding).
94. Lastly, GRECO invites the Moldovan authorities to authorise the publication of the present report as soon as possible and to translate it into the national language.