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Third Evaluation Round

Second Compliance Report on Croatia

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

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"Transparency of Party Funding"

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

I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Croatia taken since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Croatia. 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 was adopted at GRECO's 45th Plenary Meeting (30 November – 4 December 2009) and made public on 9 December 2009, following authorisation by Croatia (Greco Eval III Rep (2009) 1E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 53rd Plenary meeting (5 – 9 December 2011) and made public on 19 December 2011, following the authorisation by Croatia (Greco RC-III (2011) 12E). It is recalled that all six recommendations adopted in respect of Theme II were considered as implemented satisfactorily in the compliance procedure. The focus of this report is thus on Theme I.
3. As required by GRECO's Rules of Procedure, the Croatian authorities submitted their Second Situation Report with additional information regarding actions taken to implement the recommendations that were partly implemented or not implemented, according to the Compliance Report. This report was received on 16 June 2013 and served as a basis for the Compliance Report.
4. GRECO selected Denmark to appoint a rapporteur for the compliance procedure on Theme I. The rapporteur appointed was Ms Marie TULLIN, Senior Prosecutor, State Prosecutor for Serious Economic and International Crime (Denmark). She was assisted by the GRECO Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It was recalled that GRECO in its evaluation report addressed 5 recommendations to Croatia in respect of Theme I and that recommendation iv was considered implemented satisfactorily in the Compliance Report. The remaining recommendations are dealt with below.

Recommendation i.

6. *GRECO recommended to ensure that the offences of active and passive bribery in the public sector are construed in such a way as to cover instances unambiguously where the advantage is not intended for the official him/herself but for a third party.*

7. GRECO recalls that this recommendation had been assessed as partly implemented in the Compliance Report, as the offences of active trading in influence and passive bribery in the public sector, as foreseen in the draft Criminal Code, made specific reference to instances in which the advantage is intended for a third party, as requested in the recommendation. However, this reference was missing from article 294 on active bribery and GRECO called upon the Croatian authorities to remedy this lacuna.
8. The authorities of Croatia now report that the draft Criminal Code referred to above was amended (Law on amendments published in the Official Gazette 144/2012) in order to expressly include in article 294 a reference to third parties¹. The new Criminal Code, together with the Law on amendments, entered into force on 1 January 2013.
9. GRECO welcomes the entry into force of the new Criminal Code and of its amendments, according to which the offence of active bribery now makes specific reference to instances in which the advantage is intended for a third party, as requested in the recommendation.
10. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation iii.

11. *GRECO recommended (i) to ensure that current legislation in respect of bribery in the private sector covers in an unequivocal manner the full range of persons who direct or work for – in any capacity – private sector entities; and (ii) to amend this legislation in such a way as to cover unambiguously all instances implying a breach of duty by the bribed person as well as instances where the advantage is not intended for the bribee him/herself but for a third party.*
12. GRECO recalls that this recommendation had been assessed as partly implemented in the Compliance Report on account of the fact that the *rationae personae* scope of the offences of articles 252 and 253 of the draft new Criminal Code had been enlarged, as requested by the first part of the recommendation. As regards the second part of the recommendation, GRECO had considered that articles 252.2 and 253.2 were broad enough to cover cases in which no damage occurred as a result of the action or omission of the bribed person. It had also welcomed the introduction of the expression "for himself or another person" in article 252 and of the word "anyone" in article 253.1 CC, which adequately meet the requirement of the recommendation

¹ Giving a Bribe - Article 294, CC

(1) Whoever offers, gives or promises bribe to an official or responsible person, intended to this or other person, in order to persuade them to perform an official or another act which should not be done or omit to perform an official or another action which should be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of one to eight years.

(2) Whoever offers, gives or promises bribe to an official or responsible person, intended to this or other person, in order to persuade them to perform an official or another act which should be done or omit to perform an official or another act which should not be done, within or outside of the limits of his authority, or whoever intercedes in giving such bribe to an official or responsible person, shall be punished by imprisonment of six months to five years.

(3) The perpetrator of a criminal offence from paragraphs 1 and 2 of this Article, who has given bribe upon request by an official or responsible person and reported the offence before it has been discovered or before the discovery of the offence has become known, can be remitted.

regarding cases in which the advantage is meant for a third party. However, it observed that such words were still missing in article 253.2.

13. The Croatian authorities state that the new Criminal Code which entered into force on 1 January 2013 contains an amended 252.2 on active bribery in the private sector (Law on amendments published in the Official Gazette 144/2012), which expressly includes a reference to situations in which the bribe is intended for a third party².
14. GRECO takes note of the amended version of article 252.2, which has entered into force, and is satisfied that this article now meets all requirements of both parts of the recommendation.
15. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendations ii. and v.

16. *GRECO recommended*

to take the legislative measures necessary to ensure that the offences of active and passive bribery in the public sector cover all acts/omissions in the exercise of the functions of a public official, whether or not within the scope of the official's competences (recommendation ii) and

to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and in the private sector who report to law enforcement authorities, and to abolish the restitution of the bribe to the bribe-giver in such cases (recommendation v).

17. GRECO recalls that it had considered in the Compliance Report that draft articles 293 and 294 of the Criminal Code covered all acts and omissions of a public official within the scope of his/her competences, as requested by recommendation ii. Likewise, the automatic – and mandatorily total – exemption from punishment granted to perpetrators of active bribery in the public and private sectors who report bribe-giving to the authorities, as well as the restitution of the bribe to the bribe-giver, had been abolished in draft articles 293 and 294 of the new Criminal Code, in conformity with the requirements of recommendation v. However, as the new Criminal Code had not entered into force yet, GRECO concluded that these recommendations had been partly implemented.
18. The Croatian authorities report, as explained above, that the new Criminal Code (NN 125/2011), together with the Law on Amendments to the Criminal Code (NN 144/2012), entered into force on 1 January 2013.
19. GRECO notes with satisfaction the entry into force of the new Criminal Code and concludes that recommendations ii and v have been implemented satisfactorily.

² **Offering a Bribe in Economic Business - Article 252, para.2, CC**

(2) *Whoever in economic business operations offers, promises or confers a bribe to another person, intended to this or other person, as a counter favour for concluding or executing business or providing services or whoever intermediates in so bribing, shall be punished by imprisonment not exceeding three years.*

III. CONCLUSIONS

20. **In view of the above, GRECO concludes that Croatia has implemented satisfactorily all of the eleven recommendations contained in the Third Round Evaluation Report.**
21. As regards the compliance with the recommendations concerning incriminations assessed in this report, GRECO welcomes the entry into force, on 1 January 2013, of the new Criminal Code, which was further amended to take into account the requirements of all of GRECO's recommendations, notably as regards the express reference in bribery offences of cases in which the advantage is intended for third parties.
22. In so far as the transparency of political funding is concerned, GRECO recalls that the Compliance Report had already concluded that all recommendations had been complied with. New legislation is in place to enhance the transparency of general party funding, including as regards publication of reports, and the provisions contained in various legal instruments have been harmonised. Supervision over the annual financial reports of political parties, independent lists and candidates has been complemented with specific campaign finance monitoring, carried out by the State Audit Office and the State Election Commission respectively, and the roles of both bodies have been clarified. These institutions now appear to have adequate authority, as well as financial and personnel resources to be able to carry out an effective monitoring of campaign finances. Finally, the existing sanctions for violations of the political financing provisions have been complemented with more flexible administrative sanctions.
23. GRECO congratulates the authorities of Croatia on the reforms carried out with regard to both themes under the Third Round Evaluation, which suitably address all of GRECO's recommendations. It commends, in particular, the remarkable efforts undertaken to thoroughly amend – in only two years – the legislation and institutional arrangements regarding the transparency of political funding. These achievements are impressive and may well serve as an inspiration for other GRECO members in the same situation.
24. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of Croatia.
25. Finally, GRECO invites the authorities of Croatia to translate this report into the national language and to make the translation public.