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Third Evaluation Round

Compliance Report on Hungary

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 56th Plenary Meeting
(Strasbourg, 20-22 June 2012)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Hungary to implement the 15 recommendations issued in the Third Round Evaluation Report on Hungary (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).
 - **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 47th Plenary Meeting (7–11 June 2010) and made public on 29 July 2010, following authorisation by Hungary (Greco Eval III Rep (2009) 8E, Theme I and Theme II).
3. As required by GRECO's Rules of Procedure, the Hungarian authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 12 January 2012 and served as a basis for the Compliance Report.
4. GRECO selected Poland and Switzerland to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Rafał KIERZYŃKA, Criminal Law Department of Ministry of Justice, on behalf of Poland, and Mr Olivier GONIN, International Criminal Law Unit of Federal Office of Justice, on behalf of Switzerland. 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 establishes an overall appraisal of the level of the member's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed 5 recommendations to Hungary in respect of Theme I. Compliance with these recommendations is dealt with below.
7. The Hungarian authorities report that the Act IV of 1978 on the Criminal Code (hereinafter CC) has been modified and the amended provisions became effective as of 1 January 2012. The modifications include new provisions which have been inserted into Chapter XV CC entitled Crimes against the Integrity of Public Life and the Integrity of International Public Life (Sections 250-258/G) in order to meet the requirements of certain recommendations issued by GRECO.

Recommendation i.

8. *GRECO recommended i) to explicitly criminalise foreign passive bribery in the private sector and ii) to consider withdrawing or not renewing the reservation concerning Article 8 of the Criminal Law Convention on Corruption (ETS 173).*
9. The authorities of Hungary indicate that two new provisions have been added to section 258/C of the CC, dealing with foreign bribery. Pursuant to these new provisions foreign passive bribery in the private sector has been criminalised, according to the following.

Section 258/C of CC

(3) Any employee or member of a foreign economic undertaking who – in connection with his duties – requests an undue advantage, or accepts such advantage or a promise thereof in exchange for breaching his/her duties or agrees with the party requesting or accepting the undue advantage, is guilty of a felony punishable by imprisonment for up to three years.

(4) If the perpetrator of the criminal act defined in Subsection (3) breaches his/her duties in exchange for the undue advantage, he/she is guilty of a felony punishable by imprisonment between one to five years, or between two to eight years if the act is committed in a criminal conspiracy or for regular financial gain.

10. The authorities furthermore report that since the legal amendments defining foreign passive bribery as an offence have been adopted, the current reservation concerning Article 8 of the ETS 173 will not be renewed.
11. GRECO welcomes the fact that with the introduction of new subsections in the article 258/C, foreign passive bribery in the private sector has become an explicit offence, as requested in the recommendation. GRECO is also pleased that the authorities are planning not to renew their reservation concerning article 8 of ETS 173.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended to ensure that active trading in influence under Hungarian criminal law is in full conformity with Article 12 of the Criminal Law Convention on Corruption.*
14. The Hungarian authorities report that two new sections (256/A and 258/E), in connection with active trading in influence, have been inserted into the CC as part of the legal modifications referred to above (paragraph 7). The new provisions read as follows.

Section 256/A of CC

(1) Any person who gives or promises undue advantage to a person purporting to influence a public official or to another person on account of the person purporting to influence a public official, is guilty of a felony punishable by imprisonment of up to three years.

(2) Any person who commits the criminal act defined in Subsection (1):

- a) *in connection with an employee or a member of an economic undertaking or an association is guilty of a misdemeanour punishable by imprisonment for up to one year;*
- b) *in connection with an employee or a member authorised to act independently of an economic undertaking or a civil society, is guilty of a misdemeanour punishable by imprisonment for up to two years.*

Section 258/E of CC

(1) Any person who - purporting to influence a foreign public official - requests or accepts an undue advantage for himself/herself or on behalf of another person, is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person who gives or promises undue advantage to a person purporting to influence a foreign public official or to another person on account of the person purporting to influence a public official, is guilty of a felony punishable by imprisonment of up to three years.

15. GRECO welcomes the adoption of the two new provisions concerning active trading in influence. Besides criminalising active trading in influence in conformity with Article 12 of the Criminal Law Convention on Corruption (ETS 173), these new provisions do not appear to limit the offence of active trading in influence as was found to be the case in the Evaluation Report (Paragraph 92). More particularly, the new provisions define active trading in influence as a unique offence and eliminate the need to apply provisions on active bribery to situations of active trading in influence which doubtlessly enhances legal certainty.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.
- Recommendation iii.**
17. *GRECO recommended to ensure that the Criminal Code covers the offence of bribery of domestic arbitrators and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).*
18. The authorities of Hungary report that Section 137 point 1 CC has been amended in order to cover arbitrators under the notion of public officials for the purpose of the CC. The amendment entered into force on 1 January 2011.
19. The authorities stress that no further obstacle is left concerning the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS No. 191), the process of which is underway.
20. GRECO takes note of the information provided and welcomes that bribery of domestic arbitrators is now effectively criminalised under Hungarian criminal law and that the Hungarian authorities are proceeding with the ratification of the Additional Protocol to the Criminal Law Convention of Corruption (ETS No. 191).
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *GRECO recommended to extend the three year minimum limitation period provided for in section 33 of the Criminal Code regarding bribery and trading in influence.*
23. The authorities of Hungary report that on the basis of this recommendation, the minimum period of the statute of limitation regarding bribery and trading in influence has been increased from 3 to 5 years with the recent amendments (paragraph 7) made in sections 258 and 258H CC which expressly state that “the minimum period of statute of limitation is five years” in relation to bribery and trading in influence offences.
24. GRECO notes with satisfaction that the Hungarian authorities have extended the minimum period of statute of limitation for bribery and trading in influence offences, as requested by the recommendation.
25. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

26. *GRECO recommended to analyse and accordingly revise the automatic – and mandatorily total – exemption from punishment granted to perpetrators of domestic active and passive bribery in the public and in the private sector in cases of “effective regret”.*
27. The authorities of Hungary state that the “effective regret” provision, namely article 255/A, of the CC has been revised as part of the legal modifications referred to above (paragraph 7), and that the automatic and mandatory application of the provision has thus been abolished. According to the revised version of the provision, Judges have now a clear discretionary power to decide whether to grant exemption from punishment to the perpetrator by taking into account the specifics of each case. The amended provision reads as follows.

Section 255/A of CC

(1) The punishment can be reduced without limitation – in cases deserving special consideration, it can be disregarded – against the perpetrator of the criminal act defined in Section 250 (1)-(2), Section 251 (1), Section 252 (1), Section 255 (2), if he/she – before the authority becomes aware of the act – confesses the act to the authorities, surrenders the obtained undue financial advantage in any form to the authorities and reveals the circumstances of the commission.

(2) The punishment can be reduced without limitation – in cases deserving special consideration, it can be disregarded – against the perpetrator of the criminal act defined in Section 253, Section 254 and Section 255 (1), if he/she – before the authority becomes aware of the act – confesses the act to the authorities and reveals the circumstances of the commission.

28. GRECO welcomes the fact that the provision of the Criminal Code concerning effective regret has been analysed in conformity with the requirements of the recommendation and that, in addition, legislation abolishing the mandatory character of this defence has been enacted.
29. GRECO concludes that recommendation v has been implemented satisfactorily.

Theme II: Transparency of Party Funding

30. It is recalled that GRECO in its evaluation report addressed 10 recommendations to Hungary in respect of Theme II. Compliance with these recommendations is dealt with below.

Recommendation i.

31. *GRECO recommended to review the need for the two thirds majority requirement in respect of adoption of legislation concerning financial management and operation of political parties contained in Article 63 of the Constitution, with a view to providing a simple majority requirement for passing such legislation.*
32. The authorities of Hungary report that before the adoption of the new Hungarian Constitution in April 2011, Parliament had listed the so-called “cardinal acts” (acts that need two thirds majority of the votes in Parliament to be adopted or amended) and that the new Constitution decreased the number of “cardinal acts” but it was held indispensable to preserve the two thirds majority criteria for laws regulating the basic questions of state organisation (system of government) including the operation and economic management of political parties.
33. The Hungarian authorities add that currently the two thirds majority requirement has no practical impact on the adoption of acts concerning political parties since the governing party has more than two thirds of votes in Parliament.
34. GRECO takes note of the information provided and recalls that the reason for issuing this recommendation was the failure of several reform initiatives since the adoption of the current legislation in 1989 (cf. paragraph 85, Evaluation Report). GRECO notes that maintaining the two thirds majority rule in respect of legislature concerning financing of political parties will make reforms in this area very difficult, also in the future. That said, GRECO acknowledges that the issue has been reviewed by the authorities as required in the recommendation.
35. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

36. *GRECO recommended to ensure that political parties and connected foundations can be readily identified in the registries of associations and that contact details concerning their headquarters and key-representatives contained in these registries are regularly updated.*
37. The authorities of Hungary report that after more than one year of preparation and public and professional consultation, Parliament adopted in December 2011 the Act on the Right of Association, Non-profit Status, and the Operation and Funding of Civil Society Organisations (NGO Act) and the Act on Registration of Civil Society Organisations (Registration Act). These acts entered into force on 22 December 2011 and 1 January 2012, respectively. The new acts have made the registration procedure of NGOs and political parties more transparent, accurate and precise, by ensuring that political parties and connected foundations can be identified in the registry and that contact details concerning their headquarters and key-representatives contained in these registries are regularly updated. The authorities also stress that article 4 paragraph 1 of the new NGO act ensures that special NGOs, such as political parties, are to be readily identified from their name, as registered.

38. GRECO welcomes the adoption of the new legislation which will permit the differentiation of political parties from other NGO's in the registries of associations and the gathering of up-to-date information about the headquarters and representatives of political parties.
39. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendations iii-x.

40. **Recommendation iii:** *GRECO recommended to introduce a legal requirement for political parties – bearing in mind factors such as the size of parties and their level of activity – (i) to keep proper books and accounts in accordance with accepted accounting standards and (ii) to ensure that appropriate information contained in the annual books and accounts is made public in a way which provides for easy and timely access by the public.*

Recommendation iv: *GRECO recommended to seek ways to consolidate the books and accounts of political parties to include the accounts or other relevant information of entities which are related directly or indirectly to a political party or otherwise under its control (for example, party foundations proper and other foundations).*

Recommendation v: *GRECO recommended (i) to ensure that political parties and party foundations are subject to equivalent legal requirements in respect of donations over a certain value, in particular, that political parties are obliged to publish the identity of such donors; (ii) to establish precise rules for the evaluation of in-kind donations; and (iii) to take measures to prevent the ban on anonymous donations to political parties from being circumvented through such donations via other entities or election candidates.*

Recommendation vi: *GRECO recommended (i) to review the length of the election campaign period and to ensure that the financial campaign income and expenditure during that period is properly accounted for and (ii) to consider the introduction of reporting of income and expenditure during election campaigns to the public at appropriate interval.*

Recommendation vii: *GRECO recommended to introduce, as a main rule, independent auditing of party accounts by certified experts.*

Recommendation viii: *GRECO recommended to ensure that the supervision of political parties be extended to cover the books and accounts of entities which are related directly or indirectly to a political party or are otherwise under the control of a political party.*

Recommendation ix: *GRECO recommended (i) to ensure more frequent, pro-active and swift monitoring of political financing by the State Audit Office, including preventive measures as well as more in-depth investigations of financing irregularities; and (ii) to adjust the financial and personnel resources accordingly.*

Recommendation x: *GRECO recommended to review current sanctions relating to infringements of political financing rules and to ensure that existing and yet-to-be-established rules on financing of political parties and election campaigns are accompanied by appropriate (flexible) sanctions, which are effective, proportionate and dissuasive.*

41. The authorities of Hungary state that the Hungarian Parliament has adopted more than 200 laws in 2011 in order to bring legislation into line with the requirements of the new Constitution,

adopted in 18 April 2011. The authorities add that amendments to the legislation relevant to political parties and election campaigns are to be prepared within 2012

42. GRECO regrets that no measures have been taken to implement recommendations iii-x since the adoption of the Evaluation Report. GRECO notes, however, the stated commitment of the authorities to deal with the recommendations in 2012.
43. GRECO concludes that recommendations iii-x have not been implemented.

III. CONCLUSIONS

44. **In view of the above, GRECO concludes that Hungary has implemented satisfactorily or dealt with in a satisfactory manner six of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation i, ii, iv and v have been implemented satisfactorily and recommendation iii has been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendation ii has been implemented satisfactorily, recommendation i has been dealt with in a satisfactory manner and recommendations iii-x have not been implemented.
45. Concerning incriminations, GRECO is pleased that all recommendations except recommendation iii have now been implemented. Hungary has adopted amendments to the Criminal Code which explicitly criminalise foreign passive bribery, active trading in influence and bribery of domestic arbitrators. Moreover the minimum limitation periods for bribery and trading in influence have been increased to five years and the automatic and mandatory character of ‘effective regret’ provisions has been abolished as requested by GRECO. However, GRECO notes that the ratification process of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and the withdrawal of the reservation concerning Article 8 of the Criminal Law Convention on Corruption (ETS 173) have yet to be completed and urges the authorities to conclude these processes as soon as possible.
46. Insofar as the transparency of political funding is concerned, despite the positive steps taken to ensure that the registries of political parties are transparent and up-to-date, the overall picture is rather disappointing. GRECO regrets that the situation regarding the funding of political parties and election campaigns, to a large extent, remains the same as it was at the time the evaluation report was adopted. GRECO notes the declared commitment of the Hungarian authorities to fulfill the requirements of the outstanding recommendations such as introducing rules that will ensure the transparency, accuracy and accountability of the accounts of political parties and their entities.
47. In the light of what has been stated in paragraphs 44-46, GRECO notes that with the modifications made in relation to incriminations, Hungary has achieved an acceptable level of compliance with the recommendations in that respect. GRECO therefore concludes that, despite the low level of compliance with regard to the recommendations concerning transparency of political funding, that the overall level of compliance with the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO invites the Head of the delegation of Hungary to submit additional information regarding the implementation of recommendation iii (Theme I – Incriminations) and recommendations iii to x (Theme II – Transparency of Party Funding) by 31 December 2013 at the latest.
48. Finally, GRECO invites the authorities of Hungary to translate this report into the national language and to make the translation public.