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Third Evaluation Round

Addendum to the Second Compliance Report on Iceland

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 61st Plenary Meeting
(Strasbourg, 14-18 October 2013)

I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of Iceland, since the adoption of the First and Second Compliance Reports, in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Iceland. 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 37th Plenary Meeting (4 April 2008) and made public on 16 April 2008, following authorisation by Iceland (Greco Eval III Rep (2007) 7E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 46th Plenary meeting (26 March 2010) and made public on 4 May 2010, following authorisation by Iceland ([Greco RC-III \(2010\) 2E](#)). In view of the low level of compliance with the recommendations issued in the Third Evaluation Report, GRECO decided to apply Rule 32 of its Rules of Procedure, regarding action in respect of non-complying members, and invited the Icelandic delegation to provide a report on the progress made in implementing the pending recommendations. The Interim Compliance Report was adopted at GRECO's 49th Plenary meeting (3 December 2010) and made public on 7 December 2010, following authorisation by Iceland ([Greco RC-III \(2010\) 2E Interim Report](#)). On the basis of the progress substantiated by Iceland in the Interim Compliance Report, GRECO decided not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the evaluation report. The Second Compliance Report ([Greco RC-III \(2012\) 2E](#)) was adopted at GRECO's 55th Plenary Meeting (14-16 May 2012) and made public on 25 April 2013, following authorisation by the Icelandic authorities.
3. In accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, GRECO's Second Compliance Report invited the Head of the Icelandic delegation to submit additional information regarding the implementation of the 4 recommendations that had been partly or not implemented. The information was provided on 5 March 2013 and served as a basis for the Addendum to the Second Compliance Report.
4. GRECO selected Croatia to appoint a rapporteur for the compliance procedure on Theme I. The Rapporteur appointed for the Addendum to the Second Compliance Report was Mr Dražen JELENIĆ, Deputy State Attorney General, State Attorney's Office (Croatia). He was assisted by GRECO's Secretariat in drawing up the Addendum.
5. It is recalled that GRECO in its Evaluation Report addressed nine recommendations to Iceland in respect of Theme II and all recommendations were assessed as implemented satisfactorily or dealt with in a satisfactory manner in the Compliance Report. Thus, there are no further recommendations concerning Theme II to be assessed in this report and the focus is on Theme I (see below).

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its Evaluation Report addressed 6 recommendations to Iceland in respect of Theme I and that recommendations iv and vi were considered dealt with in a satisfactory manner. Recommendations i, ii, iii and v were considered partly implemented.

Recommendations i-iii.

7. *GRECO recommended:*

- to ensure that Members of Parliament are covered by the provisions on bribery and trading in influence of the Penal Code (recommendation i);

- to ensure that members of a foreign public assembly exercising administrative powers are covered by the provisions on bribery and trading in influence of the Penal Code (recommendation ii);

- to ensure that foreign arbitrators and jurors are covered by the provisions on bribery of the Penal Code and to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible (recommendation iii).

8. GRECO recalls that in the Second Compliance Report, it welcomed the fact that the authorities had prepared draft legislation with the potential to meet the requirements of the recommendations. Pending adoption of the draft amendments, GRECO assessed recommendations i, ii and iii as partly implemented.
9. The authorities of Iceland report that, on 24 January 2013, Act No. 5/2013 on Bribery was enacted; it introduces a number of amendments to the Penal Code (PC) as per the recommendations made by GRECO and the OECD Working Group on Bribery in International Business Transactions. The aforementioned amendments (and more particularly, the amendments introduced to Articles 109 and 128 PC) make it clear that Members of Parliament (recommendation i), members of a foreign public assembly exercising administrative powers (recommendation ii), as well as foreign arbitrators and jurors (recommendation iii) are covered by the provisions on bribery and trading in influence. The *personae* scope of the offence of bribery in the private sector has also been expanded to cover managers and employees of State-owned enterprises (amendment to Article 264a PC).
10. Iceland ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) on 6 March 2013; it entered into force with respect to Iceland on 1 July 2013.
11. GRECO welcomes the positive developments reported and the explicit criminalisation of bribery and trading in influence of Members of Parliament, members of a foreign public assembly exercising administrative powers, foreign arbitrators and jurors, in line with recommendations i, ii and iii.
12. GRECO concludes that recommendations i, ii and iii have been implemented satisfactorily.

Recommendation v.

13. *GRECO recommended (i) to increase the penalties for bribery offences in the private sector and (ii) to consider increasing the penalties for active bribery in the public sector.*
14. The authorities of Iceland indicate that pursuant to Act No. 5/2013, penalties for active bribery in the public sector have been raised from three to four years' imprisonment and those available for bribery in the private sector from two to three years' imprisonment (amendments to Articles 109 and 264a PC, respectively). This increase is said to be in line with the overall level of sanctions in Icelandic criminal law, thus mainstreaming internal legal consistency. Moreover, administrative sanctions are now available against both natural and legal persons (amendments to Articles 19d and 68 PC).
15. GRECO notes that the penalties for bribery in both the public and the private sector have been increased. More particularly, GRECO welcomes the fact that the authorities have not only considered increasing the level of sanction for active bribery in the public sector (as recommended), but have actually done so. GRECO notes that the maximum sanction for active bribery in the public sector (four years) remains lower than that available for passive bribery (six years). Likewise, although the maximum sanction for bribery in the private sector has been increased (from two to three years), the Penal Code continues to maintain a distinction in terms of sanctions for private sector bribery on the one hand and bribery in the public sector on the other hand. GRECO underscored in the Third Evaluation Round Report (paragraph 69) that such a distinction could lead to the presumption that private sector corruption is considered a less serious offence than corruption in the public sector, contrary to the intention pursued by the drafters of the Convention. GRECO understands the explanations of the authorities that the aforementioned level of sanctions must be assessed in the light of the general level of penal sanctions in Iceland. In such a context, GRECO considers that the increase introduced by the latest amendments is already a step in the right direction. That said, the authorities are encouraged to keep this area under review to ensure that the available penalties are proportionate and dissuasive enough to effectively discourage corrupt practices in both the public and private sector.
16. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

III. CONCLUSIONS

17. **With the adoption of this Addendum to the Second Compliance Report on Iceland, GRECO concludes that Iceland has implemented satisfactorily or dealt with in a satisfactory manner all the recommendations contained in the Third Round Evaluation Report.**
18. GRECO congratulates the Icelandic authorities on the manifold reforms made, which suitably address all of GRECO's recommendations. More particularly, GRECO welcomes the recent amendments introduced to the Penal Code to better approximate to the Criminal Law Convention on Corruption (ETS 173), including as regards the application of bribery offences with respect to members of Parliament and the review of the available sanctions for corruption offences. GRECO further welcomes the fact that Iceland has now ratified the Additional Protocol to the Criminal Law Convention on Corruption concerning bribery of domestic and foreign jurors and arbitrators. GRECO also acknowledges the steps taken by the Icelandic authorities over recent years to increase the transparency of private donations, to reinforce the control role of the National Audit Office as well as that of external private auditors, and to strengthen the sanctioning system for

infringements of party funding rules. Likewise, Iceland has now regulations in place requiring transparency in the financing of presidential campaigns.

19. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Iceland.
20. GRECO invites the authorities of Iceland to translate the Addendum into the national language and to make the translation public.