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Third Evaluation Round

Second Compliance Report on the United Kingdom

"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 Second Compliance Report assesses further measures taken by the authorities of the United Kingdom since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on the United Kingdom. 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 36th Plenary Meeting (11-15 February 2008) and was made public on 3 April 2008, following authorisation by the United Kingdom (Greco Eval III Rep (2007) 3E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 46th Plenary meeting (22–26 March 2010) and was made public on 2 July 2010, following authorisation by the United Kingdom ([Greco RC-III \(2009\) 3E](#)).
3. As required by GRECO's Rules of Procedure, the authorities of the United Kingdom submitted their Second Situation Report with additional information regarding the actions taken to implement those recommendations that were partly implemented or not implemented according to the Compliance Report. This report was received on 4 October 2011 and served as a basis for the Second Compliance Report. Additional information and explanations concerning Theme I were provided on 8 June 2012.
4. GRECO selected Bulgaria and Ireland to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Aidan MOORE, Office of the Ombudsman, on behalf of Ireland, and Mr Georgi RUPCHEV, State Expert, Directorate of International Co-operation and European Affairs, Ministry of Justice, on behalf of Bulgaria. They were assisted by GRECO's Secretariat in drawing up the second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed two recommendations to the United Kingdom in respect of Theme I and both recommendations were considered partly implemented in the Compliance Report. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to proceed with the efforts to revise existing criminal law in order to provide for comprehensive, consistent and clearer definitions of bribery offences.*
7. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report as the adoption process of the draft Bribery Bill was underway.

8. The authorities of the United Kingdom now report that the Bribery Act 2010 came into effect on 1 July 2011.
9. The authorities underline the following key provisions of the Bribery Act.¹
 - two general offences covering the offering, promising or giving of an advantage, and the requesting, agreeing to receive or accepting of an advantage;
 - a discrete offence of bribery of a foreign public official to obtain or retain business or an advantage in the conduct of business;
 - a new offence of failure by a commercial organisation to prevent a bribe being paid for itself or on its behalf. It will be a defence if the organisation has “adequate procedures” in place to prevent bribery; and
 - a maximum penalty of 10 years imprisonment for all the offences, except the offence relating to commercial organisations, which will carry an unlimited fine.
10. Regarding active bribery of a foreign public official, the authorities explain that the offence at section 6 “*bribery of foreign public officials*” of the Bribery Act is a specific offence dealing with bribery in publicly funded business opportunities overseas and was intended to reflect the terms of the OECD Convention on Bribery of Foreign Public Officials in International Business Transactions. They state that the active bribery of foreign public officials in the meaning of Article 5 of ETS 173 is more generally covered by section 1 of the Bribery Act and they refer to section 3(6) of the Bribery Act which clarifies that the offences at sections 1 (and 2) cover functions, including public functions, which have no connection with the UK and/or which are performed outside the UK. The authorities refer to section 6 of “*Joint Prosecution Guidance of The Director of the Serious Fraud Office and The Director of Public Prosecutions*”, published on 30 March 2011, which states that bribery of foreign public officials may be prosecuted under section 1 of the Act.²
11. Moreover, the authorities state that the provision requiring the “*consideration of local written law*” in the application of section 6 of the Act is a definitional provision which relates only to the specific offence established in that section, which is not the provision of the Act principally relied on for compliance with Article 5 of ETS 173. The authorities also emphasise in this connection that this definitional provision is a narrow exception allowing for circumstances in which it is lawful for an official to be influenced by the transfer of benefits (e.g. ‘community benefits’ offered in accordance with the terms of tender for a public sector procurement contract). The authorities state that this definitional provision does not allow this exception to be relied on by invoking local customs or practice.
12. Concerning the criminalisation of passive foreign bribery, the authorities state that this conduct is criminalised by the general offence at section 2 of the Act and refer again to section 3(6) of the

¹ The offences referred to in paragraphs 10-12 are reproduced in the Appendix to this report.

² Paragraph 4, section 6 of the guidance reads as follow. “Bribery of foreign public officials may also be prosecuted, in appropriate cases, under section 1, making use of the extra-territorial jurisdiction. This may be the case, for example, if it is difficult to prove that the person bribed is a foreign public official. It should be noted, however, that under section 1 it will be necessary to prove the improper performance element.”

Act which clarifies that the offences at sections 1 (and 2) cover functions, including public functions, which have no connection with the UK and/or which are performed outside the UK.

13. GRECO takes note of the information and explanations provided. In light of these explanations, it is quite obvious that the Bribery Act 2010 has established two different methods in connection with foreign bribery, namely a) a specific offence which caters for the UK's obligations under the OECD Convention (section 6), and b) two general offences established under sections 1 and 2 which would have to be read in conjunction with section 3(6) of the Act. In GRECO's view, the coexistence of these different provisions could give rise to discrepancies in the application of the law. Nevertheless, GRECO acknowledges that the new bribery legislation replaces a series of fragmented and complex bribery offences under common law and the Prevention of Corruption Acts 1889-1916 with a new comprehensive and modern legal framework, as intended by the recommendation.
14. GRECO therefore concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

15. *GRECO recommended to consider criminalising trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this Article of the Convention.*
16. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report as the consideration process concerning criminalisation of trading in influence and withdrawal of the reservation was not completed.
17. The authorities of the United Kingdom now indicate that they have considered the recommendation and intend to maintain the current UK reservation relating to Article 12 of the Criminal Law Convention on Corruption (ETS 173) because of the official view that a wider scope of criminality would lead to unnecessary complexity and insufficient legal certainty creating a risk of criminalising legitimate activities. The authorities state that Sections 1 and 2 of the Act will cover active and passive trading in influence respectively to the extent that the conduct involves an improper performance of a relevant function as defined by the Act which does not explicitly include a trading in influence offence as such,
18. GRECO regrets that the United Kingdom maintains its previous position in respect of the offence "trading in influence". It would like to recall in this connection that according to the Explanatory Report to the Criminal Law Convention on Corruption " 'improper' influence must contain a corrupt intent by the influence peddler: the acknowledged forms of lobbying do not fall under this notion." (paragraph 65). That said, GRECO notes that the position taken by the UK authorities is the result of formal consideration which was required in the current recommendation.
19. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Theme II: Transparency of Party Funding

20. It is recalled that GRECO in its Evaluation Report addressed six recommendations to the United Kingdom in respect of Theme II and that recommendation iii was considered as having been implemented satisfactorily in the Compliance Report. The remaining recommendations are dealt with below.

Recommendation i.

21. *GRECO recommended that a common format be established for parties' accounts and returns with a view to ensuring that such information to be made available to the public is coherent, meaningful and comparable to the greatest extent possible*
22. It is recalled that this recommendation was considered not implemented in the Compliance Report as the Electoral Commission, at that time, was only in the initial stages of developing new requirements for party accounts in close cooperation with the political parties.
23. The authorities of the United Kingdom now report that the Electoral Commission has published new guidance setting out accounting standards for use on a voluntary basis, particularly for those parties and party accounting units with a turnover below the £250,000 reporting threshold. The parties began to adopt the standard format in their accounts for the year 2011 and the Commission will move to full use of the new standards within the next 2-3 years. The Commission also plans to promote the use of standard formats by parties and accounting units with a turnover above £250,000, and will review the effectiveness of its current voluntary approach, and the case for mandating standards through legislation, in the light of progress.
24. GRECO is pleased that the Electoral Commission has established a common accounting format including new requirements for accounting by political parties.. GRECO notes that the format/requirements have been introduced on a voluntary basis. GRECO also welcomes the fact that the Electoral Commission will be reviewing the effectiveness of the adopted requirements and considering mandating its implementation through legislation, if necessary. As the initiative concerned has been introduced recently, GRECO is not in a position to assess its effectiveness.
25. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

26. *GRECO recommended that to the greatest extent possible, election candidates and third parties be subjected to transparency standards in respect of loans which are comparable to those applying to political parties.*
27. It is recalled that GRECO concluded in the Compliance Report that this recommendation was not implemented as the secondary regulation which would extend the application of the Electoral Administration Act 2006 provisions regarding reporting requirements for loans and other credit facilities of political parties to third parties, permitted participants at referendums, and candidates, had not been brought before parliament due to time constraints.
28. The authorities of the United Kingdom now indicate that the Government's intention is to bring before Parliament, when time allows, the secondary legislation required to extend the provisions of the Electoral Administration Act 2006 to include loans to election candidates and third parties. They also indicate that it is important to note that there is sufficient time for the new regulatory requirements to be established before upcoming polls. The authorities also submit that in legislating for a referendum on the Parliamentary voting system (subsequently held on 5 May 2011), the Coalition Government made specific provision in the *Parliamentary Voting System and Constituencies Act 2011* to ensure the regulation of loans applied to the permitted participants for that poll.

29. GRECO welcomes the fact that the regulation of loans applied to the permitted participants at the May 2011 referendum. GRECO regrets, however, that the regulations necessary to widen the transparency standards concerning loans to election candidates and third parties have not been brought into effect since the adoption of the Compliance Report.
30. GRECO concludes that recommendation ii has not been implemented.

Recommendations iv and v.

31. *GRECO recommended that the regulating function of the Electoral Commission be reinforced, and that the Electoral Commission adopt a pro-active approach to the investigation of financing irregularities. (recommendation iv)*
32. *GRECO recommended that – as a complement to the current (mainly criminal) sanctions – more flexible sanctions be introduced in respect of less serious violations of the political financing rules and that the Electoral Commission be provided with the necessary powers to investigate such cases and to apply the appropriate sanctions. (recommendation v)*
33. It is recalled that GRECO concluded in the Compliance Report that these recommendations were partly implemented because the necessary secondary legislation required to enable the use of the new sanctioning regime adopted by the Political Parties and Elections Act 2009 had not been brought into effect. Furthermore, the guidance on the usage of the new powers entrusted to the Electoral Commission, required for the Provisions of the new act to become applicable, had not been published at the time of adoption of the Compliance Report.
34. The authorities of the United Kingdom now stress that the secondary legislation required to equip the Electoral Commission with more flexible sanctions came into force on 1 December 2010, in accordance with the Political Parties and Elections Act 2009. The Electoral Commission's Enforcement Policy set out the range of sanctions now available to it, including – but not limited to – monetary penalties, stop notices and forfeiture.
35. GRECO welcomes that the United Kingdom, through the adoption of the Political Parties and Elections Act 2009 and the secondary legislation to it, has strengthened the Electoral Commission with a range of new powers and sanctions which can be expected to enable it to be more pro-active in investigating irregularities regarding political parties and elections. While the United Kingdom has complied with these recommendations; GRECO is not in a position to assess the effectiveness of the new powers of the Electoral Commission.
36. GRECO concludes that recommendations iv and v have been implemented satisfactorily.

Recommendation vi.

37. *GRECO recommended that objective research be carried out concerning future police investigation and prosecution in respect of political funding offences.*
38. This recommendation was considered as not implemented in the Compliance Report: It is recalled that this recommendation was triggered by allegations – even if not fully substantiated – of a general reluctance of the police to initiate investigations in respect of political financing (Evaluation report, paragraph 132); although a more pro-active investigative approach of the Electoral Commission in the future was thought likely to have an impact also on the work of the

police and the prosecution services, GRECO expressed its expectation that the authorities also pay some attention to future police investigations and prosecutions, which are not solely connected to the development of the Electoral Commission (Compliance report, paragraph 41).

39. The authorities of the United Kingdom now report that the position of the government as stated in the Compliance Report, to keep this issue under review in the light of legislative developments, remains unchanged as the new civil sanctioning powers have only been available to the Electoral Commission since December 2010.
40. GRECO notes that the position of the authorities of the United Kingdom remains the same as at the time of the adoption of the Compliance Report. GRECO takes note of the approach of the government to keep this recommendation under review and to consider it again in the future.
41. GRECO concludes that recommendation vi has not been implemented.

III. CONCLUSIONS

42. **In view of the conclusions contained in the Third Round Compliance Report on the United Kingdom and in view of the above, GRECO concludes that the United Kingdom has implemented satisfactorily or dealt with in a satisfactory manner in total six of the eight recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation i has been implemented satisfactorily and recommendation ii has been dealt with in a satisfactory manner. Regarding Theme II – Transparency of Party Funding, recommendations i, iii, iv and v have been implemented satisfactorily or dealt with in a satisfactory manner and recommendations ii and vi have not been implemented.
43. Concerning incriminations, the United Kingdom, with the adoption of the new Bribery Act, has managed to transform its complex and fragmented bribery legislation into a more comprehensive and clear piece of legislation. The new law does not only simplify and consolidate but also introduces a new scheme of offences. The United Kingdom is clearly to be commended for this achievement. That said, GRECO has concerns that the coexistence of different provisions covering bribery of foreign public officials could give rise to discrepancies in the application of the law. In addition, “trading in influence” has not been criminalised in line with the Criminal Law Convention on Corruption (ETS 173) despite the fact that some aspects of this offence appear to be covered by the new Bribery Act.
44. In so far as the transparency of political funding is concerned, the United Kingdom has shown good progress since the adoption of the Evaluation Report. It now has in place a new legal framework which gives the Electoral Commission more regulatory powers and flexible sanctions to impose. While these legal improvements can be expected to increase the general transparency and accountability of political funding considerably, if applied as intended, their effectiveness will need to be kept under review. Further progress in this area should occur once the secondary legislation extending the application of the provisions of the Electoral Administration Act to loans in respect of election candidates and third parties is adopted by Parliament.
45. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of the United Kingdom.
46. GRECO invites the authorities of the United Kingdom to authorise, as soon as possible, the publication of this report.

APPENDIX (English only)

Relevant Sections of the New Bribery Act 2010

“1 Offences of bribing another person.”

(1) A person (“P”) is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage—

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

2 Offences relating to being bribed.

(1) A person (“R”) is guilty of an offence if any of the following cases applies.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

(3) Case 4 is where—

(a) R requests, agrees to receive or accepts a financial or other advantage, and

(b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—

(a) by R, or

(b) by another person at R's request or with R's assent or acquiescence.

(6) In cases 3 to 6 it does not matter—

(a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,

(b) whether the advantage is (or is to be) for the benefit of R or another person.

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

3 Function or activity to which bribe relates.

(1) For the purposes of this Act a function or activity is a relevant function or activity if—

(a) it falls within subsection (2), and

(b) meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection—

(a) any function of a public nature,

(b) any activity connected with a business,

(c) any activity performed in the course of a person's employment,

(d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporated).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it—

(a) has no connection with the United Kingdom, and

(b) is performed in a country or territory outside the United Kingdom.

(7) In this section “business” includes trade or profession.

...

6 Bribery of foreign public officials.

(1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P’s intention is to influence F in F’s capacity as a foreign public official.

(2) P must also intend to obtain or retain—

(a) business, or

(b)an advantage in the conduct of business.

(3)P bribes F if, and only if—

(a)directly or through a third party, P offers, promises or gives any financial or other advantage—

(i)to F, or

(ii)to another person at F's request or with F's assent or acquiescence, and

(b)F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.

(4)References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes—

(a)any omission to exercise those functions, and

(b)any use of F's position as such an official, even if not within F's authority.

(5)"Foreign public official" means an individual who—

(a)holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside the United Kingdom (or any subdivision of such a country or territory),

(b)exercises a public function—

(i)for or on behalf of a country or territory outside the United Kingdom (or any subdivision of such a country or territory), or

(ii)for any public agency or public enterprise of that country or territory (or subdivision), or

(c)is an official or agent of a public international organisation.

(6)"Public international organisation" means an organisation whose members are any of the following—

(a)countries or territories,

(b)governments of countries or territories,

(c)other public international organisations,

(d)a mixture of any of the above.

(7)For the purposes of subsection (3)(b), the written law applicable to F is—

(a)where the performance of the functions of F which P intends to influence would be subject to the law of any part of the United Kingdom, the law of that part of the United Kingdom,

(b)where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation,

(c)where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—

(i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or

(ii) any judicial decision which is so applicable and is evidenced in published written sources.

(8) For the purposes of this section, a trade or profession is a business.”