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Third Evaluation Round

Second Compliance Report on "the former Yugoslav Republic of Macedonia"

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 63rd Plenary Meeting
(Strasbourg, 24-28 March 2014)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken by the authorities of “the former Yugoslav Republic of Macedonia” since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on “the former Yugoslav Republic of Macedonia”. 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 46th Plenary Meeting (22-26 March 2010) and made public on 30 August 2010, following authorisation by “the former Yugoslav Republic of Macedonia” (Greco Eval III Rep (2009) 6E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO’s 54th Plenary meeting (20-23 March 2012) and made public on 28 June 2012, following authorisation by “the former Yugoslav Republic of Macedonia”.
3. As required by GRECO's Rules of Procedure, the authorities of “the former Yugoslav Republic of Macedonia” submitted their Second Situation Report with additional information regarding action taken to implement the recommendations that were partly implemented or not implemented, according to the Compliance Report. This report, which was received on 17 September 2013, served as a basis for the Second Compliance Report.
4. GRECO selected Lithuania and Serbia to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Mr Paulius GRICIŪNAS, Vice Minister of Justice (Lithuania) and Mr Vladan JOKSIMOVIC, Deputy Director of the Anti-Corruption Agency (Serbia). They were assisted by GRECO’s Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its evaluation report addressed 7 recommendations to “the former Yugoslav Republic of Macedonia” in respect of Theme I. Recommendations i, ii, iv, v and vi were considered satisfactory implemented and recommendation iii was considered dealt with in a satisfactory manner. Compliance with the remaining recommendation is dealt with below.

Recommendation vii.

6. *GRECO recommended 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 mandatory restitution of the bribe to the bribe-giver in such cases.*

7. GRECO recalls that in the RC-report, it had acknowledged that the authorities of “the former Yugoslav Republic of Macedonia” had abolished in the Criminal Code the mandatory total exemption of punishment to the bribe-giver who reports to law enforcement authorities. It noted, however, that the restitution of the bribe to the bribe-giver remained possible. Recommendation vii was thus considered partly implemented.
8. The authorities of “the former Yugoslav Republic of Macedonia” explain that amendments to the Criminal Code (Law amending the Criminal Code – Official Gazette No 166/2012 of 26.12.2012), which entered into force on 3 January 2013, have abolished the possibility for the court to decide to return the bribe to the bribe-giver.
9. GRECO welcomes the amendments introduced to the Criminal Code to comply with the remaining part of the recommendation vii.
10. GRECO concludes that recommendation vii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

11. It is recalled that GRECO in its Evaluation Report addressed 6 recommendations to “the former Yugoslav Republic of Macedonia” in respect of Theme II. Recommendation ii was implemented satisfactorily, recommendations i, iii and iv were considered as partly implemented and recommendations v and vi were regarded as not implemented. Compliance with these recommendations is dealt with below.

Recommendation i.

12. *GRECO recommended (i) to introduce clear provisions determining the commencement of an election campaign in view of the obligation to keep campaign accounts and campaign financial reports; and (ii) to extend the financial reference period applicable to election campaigns so that the financial activity during this period is accurately and comprehensively recorded.*
13. GRECO welcomed in its Compliance Report the amendments introduced to the Electoral Code in order to clarify the concrete obligations of the organisers of election campaigns concerning reporting and reporting periods, as requested by the first part of the recommendation. It underlined, however, that the financial reference period applicable to election campaigns had not been extended and concluded therefore that the recommendation was partly implemented.
14. The authorities of “the former Yugoslav Republic of Macedonia” indicate that the Electoral Code (hereafter EC) was further amended in November 2012 (Official Gazette No.142/2012). In particular, Article 71 now contains an obligation for political parties, coalitions or independent candidates engaging in election campaigns to provide a unique tax number for the purpose of opening a bank account for the election campaign. This opening of such a campaign account marks the starting point of the financial reference period applicable to election campaigns. The article also specifies that all campaign finance contribution and expenditure have to go through this bank account. Moreover, Article 85 EC, as amended, foresees an obligation of the State Audit Office to conduct an audit of the financial reports within 60 days of their submission. This audit covers the period from the day of opening of the campaign account to the end of the transactions on this account. For reference, the election campaign account is to be opened at the earliest within 48 hours after calling the elections – which occurs between 90 and 70 days before

election day – and at the latest within 48 hours after confirmation of the list of candidates to the election (Article 71 EC); the election campaign period extends from 20 days to 1 day prior to the election day (Article 69-a EC).

15. As regards the 2013 municipal elections, the authorities state that the State Audit Office performed in May 2013 all audits of the financial reports submitted during and after the campaign, and that they were published on its website¹.
16. GRECO welcomes that the latest amendments to the EC create a possibility to open campaign bank accounts within 48 hours of the call for elections, which occurs between 90 and 70 days before the elections. The financial reference period would therefore be extended for political parties and candidates who choose to open a campaign account early. This is, however, a mere possibility and the latest date at which a campaign account has to be opened – about a month before the elections – remains unchanged. GRECO is not aware of any incentives that would encourage political parties and candidates to open campaign accounts earlier and has serious doubts, therefore, that this change in the law will affect practice in the sense sought by the recommendation.
17. The amendment to Article 85 EC introducing an obligation of the State Audit Office to conduct an audit of the financial reports within 60 days of their submission is also a positive step. However, this deadline only concerns the audit of the final campaign finance reports and no deadlines have been introduced for the audit of interim campaign reports. In view of the above, GRECO concludes that the reported measures are steps in the right direction, but that they are not sufficient to generate a more complete picture of the financial activity during the election campaign, as intended by the recommendation.
18. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

19. *GRECO recommended to increase the transparency of the accounts and activities of entities related, directly or indirectly, to political parties, or otherwise under their control, and to include, as appropriate, the accounts of such entities in the accounts of political parties.*
20. GRECO recalls that the authorities had addressed this recommendation by banning NGOs from campaigning for political parties. GRECO highlighted in the Compliance Report that, despite this prohibition, campaigning by entities related to political parties was still occurring in practice. It had therefore called upon the authorities to reassess the situation of these entities and had assessed this recommendation as partly implemented.
21. The authorities of “the former Yugoslav Republic of Macedonia” explain that the Law on the Financing of Political Parties (hereafter LFPP) was amended, together with the Electoral Code, in November 2012 (Official Gazette No.142/2012). New paragraphs were included in Article 17 LFPP and Article 83-b EC, according to which registries of donations received by political parties and election candidates have to include data regarding donations of subjects with are related, directly or indirectly, to political parties, or otherwise under their control. Political parties have to publish every six months the registry of donations on their website or to make it available to the public in any other way. As regards election campaigns, complete information on donations

¹ <http://www.dzr.gov.mk/DesktopDefault.aspx?tabindex=0&tabid=1090>

received is included in the financial reports, which are published by the State Election Commission, the State Audit Office and the State Commission for the Prevention of Corruption on their websites.

22. GRECO welcomes the amendments to the LFPP and the EC, which improve the transparency of donations by entities related, directly or indirectly, to political parties, or otherwise under their control. It recalls, however, that the Evaluation Report (paragraph 92) had noted that the entities concerned – think-tanks and research institutes – did not generate any income and that it was mostly concerned by a risk of them serving to shoulder expenditure by political parties or organising campaign events on their behalf. The measures reported by the authorities do not seem to address these activities, the transparency of which also needs to be improved. Precisions on what constitutes a direct or indirect link with a political party would also improve the clarity and applicability of the amendments.

23. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

24. *GRECO recommended to ensure that all political parties are adequately informed and advised (e.g. through the provision of training/guidelines) on the applicable political funding regulations, particularly as regards their accounting aspects.*

25. GRECO recalls that this recommendation had been assessed as partly implemented, on account of the fact that some measures had been taken to inform political parties about their reporting obligations. These measures were not considered sufficient, taking into account the fact that political parties, especially smaller ones, still largely failed to comply with their reporting obligations.

26. The authorities of “the former Yugoslav Republic of Macedonia” indicate that the above-mentioned amendments to the LFPP (Article 27) and the EC (Article 84-b) have added an obligation for the Ministry of Finance to issue, together with the template for financial reports, an instruction manual on how to complete the reports. An obligation for the Ministry of Finance to conduct trainings at least once a year for political parties on financial aspects of their functioning and on how to complete financial reports was also added to Article 27 LFPP.

27. Pursuant to these new obligations, the Ministry of Finance issued two manuals on how to complete annual and campaign financial reports, which were appended to the respective reports’ Rulebooks and were published in the Official Gazette No. 21/2013. The Ministry also organised on 1 March 2013 a training session for political parties on how to fill in election campaign financial reports. In the same period, the Ministry of Finance informed the public on national radio and television about the fact that annual and campaign reports would be submitted by political parties, including the deadlines and institutions to which the reports were to be submitted. That information is also published on the Ministry of Finance’s website, where the rulebooks and forms are available in electronic format.

28. GRECO takes note of the measures taken by the Ministry of Finance to inform political parties and the public about the political financing regulations. It welcomes in particular the inclusion in law of an obligation for the Ministry of Finance to provide guidelines and annual training for political parties on applicable financing regulations. GRECO considers that this legal obligation and the measures taken for its implementation respond to the requirements of the

recommendation; GRECO very much hopes that the new arrangements will result in improved compliance by political parties of their reporting obligations.

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

Recommendation v.

30. *GRECO recommended to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate and adequate powers and resources to carry out a proactive and effective supervision, investigation and enforcement of political financing regulations.*
31. GRECO had considered in its Compliance Report that, in spite of amendments to the LFPP giving a more prominent role to the State Audit Office, this body was still not adequately equipped to assume a leading role in the effective supervision, investigation and enforcement of political financing regulations. In particular, human and financial resources at its disposal still appeared insufficient and procedures were missing to ensure efficient co-operation between the State Audit Office and State Commission for the Prevention of Corruption in uncovering irregularities. Moreover, provision had not been made for a mandatory audit of political parties' annual financial reports. GRECO had therefore assessed this recommendation as not implemented.
32. The authorities of "the former Yugoslav Republic of Macedonia" recall that the 2011 amendments to the LFPP and the EC have foreseen a leading role for the State Audit Office in the supervision of political financing. The 2012 amendments to the EC complemented these arrangements by adding an obligation for the State Audit Office to conduct an audit of election campaign final accounts, within 60 days of their submission (Article 85 paragraph 6 EC). Article 85 paragraph 8 EC also foresees the conclusion of memoranda of understanding between the State Audit Office, the State Electoral Commission and the State Commission for the Prevention of Corruption on the exchange of information on irregularities in financial reports and subsequent measures to be undertaken. The memorandum subsequently concluded foresees the obligation for each of these three bodies to send to the others a summary of the reports on the use of advertising space by election campaign organisers, as well as a summary of the financial reports for the 2013 municipal elections.
33. Regarding the strengthening of the human capacities of the State Audit Office, a procedure for the recruitment of five senior auditors was conducted, but none of the applicants satisfied the criteria for the opened positions. The recruitment procedure was repeated in the autumn 2013 and as a result, three junior auditors were recruited. Recruitment procedures are being completed for a further two junior auditors, who are expected to start their functions in March 2014. These five new auditors will be employed according to the State Audit Office's work programme, which includes the audit of political parties' financial reports.
34. The State Audit Office has reinforced in recent years its monitoring activity of the financing of political parties. In 2011, it audited 17 political parties, both as regards their annual and electoral reports. Over the course of 2013, the State Audit Office carried out audits of the annual and campaign financial reports of all 51 political parties receiving public funding and provided advice to those parties on bookkeeping and presentation of accounts. 43 of these reports were published on the State Audit Office's website². Suggestions were also made about necessary amendments to the legislative and sub-legislative framework governing the activity of political parties. Audit reports of five parties were submitted to the Public Prosecutor's Office for suspected violation of

² The remaining eight parties were deleted from the register of political parties as they were no longer active.

the political financing regulations. As stated under recommendation i, the audit of all campaign reports pertaining to the municipal elections was also performed. The State Audit Office's programme of activities for 2014 foresees the audit of all campaign organisers for the upcoming presidential elections.

35. Over the course of its audit work, the State Audit Office collaborated with the Central Registry in order to consolidate records regarding active political parties and obtain data on the total annual income of entities involved in the financing of political parties.
36. Co-operation between the State Audit Office, the State Electoral Commission and the State Commission for the Prevention of Corruption on the basis of the new memoranda of understanding was tested for the first time during the 2013 municipal elections campaign. Numerous exchanges of information took place among the three bodies from May 2013 to January 2014. Information concerned financial reports submitted or not by campaign organisers, as well as the price and use of advertising space in the media. As a result of these exchanges, the State Electoral Commission decided, upon the proposal of the State Audit Office in July 2013, to suspend payment of the reimbursement of campaign expenses for 93 lists of candidates which had failed to submit at least one report to the relevant institutions. This sanction was later lifted for seven lists which had meanwhile complied with their reporting obligations.
37. As regards enforcement of the political financing regulations, the State Audit Office submitted to the Ministry of Justice, in February 2014, a proposal to suspend annual public funding in respect of seven parties for infringement of the applicable provisions. It is expected that the Ministry of Justice will take a decision in this matter very soon. The State Commission for the Prevention of Corruption exercised similar prerogatives by initiating in December 2013 proceedings against 43 election campaign organisers who had failed to submit financial reports. The procedure foresees a settlement, followed if necessary by misdemeanour procedures before the competent court. Proceedings were later stopped in 13 cases, after submission of the missing reports. The misdemeanour court in Skopje decided on sanctions in eight cases: two campaign organisers received a 2 670 € fine, one a 2 000 € fine and two a 1 000 € fine; three organisers received only a court reprimand, because they had complied with their reporting obligations during the course of the proceedings. The authorities indicate that the procedures that are still pending before the court are scheduled for April 2014.
38. GRECO takes note of the information reported and of a number of positive changes. The fact that the State Audit Office now has an obligation – and the sole competence – to audit election campaign accounts, including as regards campaign expenditure, represents an improvement as compared to the situation described in the Evaluation Report, when it shared this competence with other bodies. The fact that the State Audit Office has been able to increase its audit activity of political parties is also positive. It is to be hoped that this activity will be pursued in coming years, in the framework of the Office's annual programme of activities. The recruitment of five new auditors is welcome, as are the measures taken by the State Audit Office and the State Commission for the Prevention of Corruption for the enforcement of political financing regulations.
39. That said, it is necessary to further streamline the current arrangements for investigation and enforcement, in order to increase efficiency. The information submitted to GRECO shows that current arrangements are still cumbersome, requiring several different steps and the intervention of various bodies to finally decide on sanctions for infringements of the political financing regulations. Such a fragmentation of powers was already described in the Evaluation Report (see paragraphs 94-96). The situation has been improved somewhat, but it cannot yet be said that the

State Audit Office, which is now clearly the leading body in charge of the supervision of political financing, has adequate investigation and enforcement powers. Moreover, information provided under recommendation vi below shows that few sanctions have been decided by the misdemeanour court in Skopje compared to the number of misdemeanour procedures started.

40. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

41. *GRECO recommended (i) to ensure that the mechanism by which sanctions are imposed for violations of the rules on political funding works effectively in practice, and (ii) to ensure, in particular, that the sanction of loss of public funding by political parties and election campaign organisers can be applied in practice.*
42. GRECO recalls that this recommendation had been assessed as not implemented in the Compliance Report, in the absence of reported changes in the procedures and practical arrangements for implementing sanctions.
43. The authorities of “the former Yugoslav Republic of Macedonia” report, as regards the second part of the recommendation, that Articles 27-b and 27-c of the LFPP were amended to introduce a sanction of suspension of public funding for political parties that do not submit an annual report to the State Audit Office within the legal deadline or that do not publish information about the donations they received. This sanction, which is independent from a possible misdemeanour responsibility of the party for the same facts, is decided by the Ministry of Justice on the proposal of the State Audit Office and it may be applied until the political party complies with its obligations regarding the annual report and/or the publication of donations. The same sanction may apply for a period of three months, under the same conditions, in case a political party fails to publish its annual report within the legal deadline. Both sanctions are subject to appeal before the Administrative Court. Further to the audits of political parties’ annual reports performed in 2013, the State Audit Office proposed suspension of public funding for seven political parties (see paragraph 37). The decision of the Ministry of Justice is currently pending.
44. Similarly, Article 177-a of the EC was amended to allow for the suspension, partial or total loss of public funding for election campaigns organisers who fail to comply with their legal obligations. Suspension of public funding may be applied when organisers do not submit financial reports within the legal deadlines, until they comply with their obligations. Partial loss of public funding may be applied in case a party or candidate exceeded the allowed limit on campaign expenditure. In such a case, public funding is reduced by the same value by which campaign expenditure was exceeded. If expenditure was exceeded by a value greater than the public funding to which the party or candidate was entitled, the loss of public funding is total. These sanctions are imposed by the State Electoral Commission on proposal of the State Audit Office. They are subject to appeal before the Administrative Court. Suspension of public funding was applied to 93 lists of candidates in the 2013 municipal elections (see paragraph 36).
45. As regards the first part of the recommendation, the authorities refer back to the information submitted in paragraph 37 above, according to which the misdemeanour court in Skopje imposed fines on three election campaign organisers and reprimanded three others. Pending misdemeanour procedures further to violation by election campaign organisers of article 189 EC are due to be decided upon by the court in April 2014.

46. GRECO recalls, as regards the second part of the recommendation, that the sanction of loss of public funding already existed in the versions of the LFPP and the EC which were examined in the Evaluation Report (see paragraph 100). The Constitutional Court had then repealed Article 32 LFPP, on the grounds that no procedure was foreseen in the law for processing a motion for loss of public funding, although it did not object to the substance of that sanction. It would seem that the sanctions of suspension and partial or total loss of public funding for political parties and election campaign organisers, as foreseen in the amendments to the LFPP and the EC, represent an improvement over the previous repealed article, as they contain clearer and more precise provisions on the procedures for implementing these sanctions. The fact that the State Audit Office may propose the application of these sanctions is also a positive development, as it may enable it to take a more proactive role in the system. The sanction foreseen under the EC has actually been applied by the State Electoral Commission, which shows that it is now effective in practice, as required by the second part of the recommendation.
47. As regards the first part of the recommendation, GRECO takes note of the sanctions applied by the misdemeanour court in Skopje, which seems to demonstrate certain progress in the effectiveness of the sanctioning system. It encourages the authorities of “the former Yugoslav Republic of Macedonia” to pursue their efforts to develop a track record of investigation, prosecution and sanction by the law enforcement authorities.
48. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

49. **In view of the conclusions contained in the Third Round Compliance Report on “the former Yugoslav Republic of Macedonia” and in light of the above, GRECO concludes that “the former Yugoslav Republic of Macedonia” has implemented satisfactorily ten of the thirteen recommendations contained in the Third Round Evaluation Report.** The three remaining recommendations have been partly implemented.
50. More specifically, with respect to Theme I – Incriminations, recommendations i, ii and iv-vii have been implemented satisfactorily and recommendation iii has been dealt with in a satisfactory manner. With respect to Theme II – Transparency of Party Funding, recommendations ii, iv and vi have been implemented satisfactorily and recommendations i, iii and v have been partly implemented.
51. As regards the criminalisation of corruption offences, the latest amendments to the Criminal Code in 2012 have enabled “the former Yugoslav Republic of Macedonia” to complete a reform process undertaken in 2011, which appears to largely meet the requirements of the Criminal Law Convention on Corruption (ETS 173) and to adequately address all GRECO recommendations in this area, including with respect to bribery of foreign officials and of domestic/foreign arbitrators, active trading in influence, bribery in the private sector, the defence of effective regret and jurisdiction issues.
52. In so far as transparency of party funding is concerned, progress has occurred regarding the information of political parties about their financial obligations and the transparency of the involvement of third parties in election campaigns. Steps have also been taken to increase the role of the State Audit Office in the supervision and sanctioning system and the resources it has to carry out its missions. Co-operation between the State Audit Office and the other entities involved in the supervision of political financing has improved and a track record of sanctions has

begun to develop. This track record will need to be maintained and reinforced, particularly by ensuring that sanctions are imposed for violations other than the non-submission of required financial reports. Moreover, the arrangements for investigation and enforcement of the rules on political financing are still cumbersome and need to be further streamlined to improve efficiency.

53. The adoption of this Second Compliance Report terminates the Third Round compliance procedure in respect of “the former Yugoslav Republic of Macedonia”.
54. GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.