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Third Evaluation Round

Addendum to the Second Compliance Report on Ukraine

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 75th Plenary Meeting
(Strasbourg, 20-24 March 2017)

I. INTRODUCTION

1. This Addendum assesses further measures taken by the authorities of Ukraine since the adoption of the previous Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Ukraine. 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 52nd Plenary Meeting (21 October 2011) and made public on 21 October 2011, following authorisation by Ukraine (Greco Eval III Rep (2011) 1E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Ukrainian authorities submitted situation reports with information regarding actions taken to implement the recommendations within the framework of the compliance procedure. GRECO selected Azerbaijan and Finland to appoint Rapporteurs for the compliance procedure.
4. The first [Compliance Report](#) was adopted by GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 26 February 2014, following authorisation by Ukraine ([Greco RC-III \(2013\) 14E](#)). GRECO noted that Ukraine had been able to demonstrate that reforms on both incriminations and political funding with the potential of achieving an acceptable level of compliance with the pending recommendations within the following 18 months were underway and urged the authorities to vigorously pursue their efforts to address all recommendations. GRECO invited the Ukrainian authorities to submit additional information regarding the implementation of pending recommendations.
5. The Second [Compliance Report](#) was adopted by GRECO's 70th Plenary Meeting (4 December 2015) and made public on 14 December 2015 ([Greco RC-III \(2015\) 22E](#)). GRECO welcomed the fact that Ukraine had carried out extensive reforms of its criminal legislation in respect of corruption offences (missing components of bribery offences and trading in influence had been included; sanctions had been strengthened; provisions on the special defence of effective regret had been adequately revised). As regards the transparency of funding, GRECO found that Ukraine had established a new legislative framework which, to a large extent, improved the legal system in this respect (harmonisation and improvement of the legislation on transparency of regular party funding with the rules on election campaign financing; better definition of various sources of contributions and income, including donations, in order to prevent circumvention of transparency rules on donations; and introduction of mandatory auditing of party accounts by certified auditors). However, GRECO considered that the implementation of the new laws, in particular on the establishment of the National Agency for the Prevention of Corruption (NAPC) remained to be seen.
6. In view of the fact that still five out of nine recommendations concerning Theme II had yet to be implemented GRECO, in accordance with Rule 31, paragraph 9 of its Rules of Procedure

requested the Head of the delegation of Ukraine to submit additional information regarding the implementation of recommendations i, ii, vi, viii and ix (Theme II – party funding) as well as recommendation i (Theme I – incriminations) by 30 September 2016.

7. The current Addendum, drawn up by Mr Elnur MUSAYEV (Azerbaijan) and Mr Jouko HUHTAMÄKI (Finland), assisted by the GRECO Secretariat, assesses the further implementation of the pending recommendations since the adoption of previous compliance reports.

II. ANALYSIS

Theme I: Incriminations

8. It is recalled that GRECO in its Evaluation Report addressed seven recommendations to Ukraine in respect of Theme I. In the Compliance Reports, GRECO concluded that recommendations ii-v and vii had been implemented satisfactorily and recommendation vi had been dealt with in a satisfactory manner. Recommendation i, which had only been partly implemented, is dealt with below.

Recommendation i.

9. *GRECO recommended to amend current criminal legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, any private sector entity as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
10. GRECO recalls that this recommendation was partly implemented in the 2nd Compliance Report. While GRECO found that wording of Article 354 of the Criminal Code (hereafter, CC) was not identical to Article 7 and 8 of the Criminal Law Convention on Corruption (hereafter, the Convention), it did not appear more limited as it covered "employees" as well as "other persons working for the benefit of the organisation", which appeared to include those "who direct or work for in any capacity" as provided in the Convention. This was also true of Articles 368-3 and 368-4 CC. However, according to the authorities, the wording "enterprise, institution or organisation" in these provisions only referred to legal persons, whereas, according to the Convention, business activities with or without legal personality ought to be covered.
11. The authorities now refer to a draft law on amendments to the Criminal Code of Ukraine on the establishment of responsibility for receiving illegal benefits by an entrepreneur or employee, which will amend Article 354 and Article 368-3 CC.
12. GRECO takes note of the information provided by the authorities on draft amendments to the provisions relating to private sector bribery. GRECO has also examined the draft law submitted by the Ukrainian authorities. The draft amendments cover persons who do not have the status of employee or do not work permanently for the company, but can engage the responsibility of the company, as required by the Convention. However, it follows from this information that these provisions would continue to cover only business activities with legal personality whereas they should also cover those without legal personality (e.g. sole proprietorship), as required by the Convention. Therefore, since it has not been established that the situation has changed, the recommendation cannot be considered fully implemented.
13. GRECO concludes that recommendation i remains partly implemented.

Theme II: Transparency of Party Funding

14. It is recalled that GRECO addressed nine recommendations to Ukraine in respect of Theme II. Compliance with these recommendations is dealt with below. In the Compliance Reports, GRECO concluded that recommendations iii, v and vii had been implemented satisfactorily and recommendation iv had been dealt with in a satisfactory manner. Recommendations i, ii, vi, viii and ix had been partly implemented and are dealt with below.

Recommendation i.

15. *GRECO recommended to harmonise the provisions on campaign financing contained in the Law on Parliamentary Elections, the Law on Presidential Elections and the Law on Local Elections.*
16. GRECO recalls that this recommendation was partly implemented. GRECO noted that legislative measures had been taken to harmonise provisions in respect of campaign financing. Financial reporting in respect of parliamentary, presidential and local elections had been put in place as well as obligations for the publication and the verification of such reports. However, contrary to what applied in respect of parliamentary elections, there was no specific timing requirement for presidential elections, and no regulations appeared to exist for local elections. GRECO concluded that, while measures had been taken to harmonise legislation, more detail was needed to fully assess compliance with the recommendation regarding the "discrepancies" listed in the Evaluation Report (paragraph 76).
17. The authorities now indicate that the Government has continued working on this issue. The National Agency on Prevention Corruption (NAPC), which is competent in the area, started operating on 15 August 2016. According to the Law on Prevention of Corruption, the NAPC monitors the observance of restrictions prescribed by law on party funding; the legal and proper use of state funds by parties for funding their statutory activities; the timeliness of the submission by parties of reports on property, incomes, costs and obligations of financial character, reports on receipts and use of voting resource funds at general and local elections and completeness of such reports, reports of external independent financial verification of parties' activity, and authenticity of the information included.
18. GRECO takes note of the information provided by the Ukrainian authorities. GRECO regrets that the relevant legislation has still not been fully harmonised and concludes that recommendation i remains partly implemented.

Recommendation ii.

19. *GRECO recommended to find ways to ensure that transparency regulations of the election laws are not circumvented by indirect contributions to election funds, via parties' or candidates' "own funds", or by contributions which do not pass through the election funds, including funding by third parties and donations in kind.*
20. GRECO recalls that this recommendation was considered partly implemented. GRECO took note of the adoption of legislation on parliamentary, presidential and local elections according to which election campaign financing and spending must be channelled through specific election funds consisting of the candidate's own funds, voluntary contributions and the party's own funds (for candidates nominated by a party). The legislation provides for caps on donations and some additional rules to prevent that caps are circumvented as well as rules on the management (administration) of election funds, audits and detailed rules on the financial reporting and external

monitoring. However, GRECO found that more needed to be done to effectively prevent transparency regulations on election funds from being circumvented by the possible use of indirect contributions to the funds, via parties' or candidates' "own funds", which was the central issue raised in the Evaluation Report.

21. The authorities now refer to Law No. 731-VIII (8 October 2015) concerning sources of funding for political parties in general (donations and public funding). Donations must be understood as monetary funds or other property, benefits, allowances, services, loans, intangible assets, any other intangible or non-monetary benefits, including membership fees, sponsorship by third parties of events or other activities to support the party, goods, work, services provided or received for free or at discount prices for the benefit of the party or its local branches, a person related to the party, a candidate nominated by the party or its local branches for the presidential, parliamentary or local elections (by transferring the funds to the election fund). The NAPC adopted Decision No. 11 on 11 August 2016, which defines the terms "decisive influence", "ultimate beneficial owner", "related persons", "sponsorship" and "third parties". The authorities recall that political parties and their local organisations must open a bank account and that all monetary transactions have to go through it. The authorities further list those who are not entitled to make donations to political parties and the ceiling for donations. They indicate that donations from unauthorised donors or above the legal ceiling must be refused within three days and donations will be returned or transferred to the state budget. They also refer to applicable ceilings for election funds of a candidate, which should not exceed 400 minimum wages (the minimum wage being as of 1 January 2017 UAH3 200, approximately EUR 112). Finally, they state that information on contributions received by political parties is included in the quarterly financial reports submitted to and checked by the NAPC. In this respect, the authorities indicate that there is already a practice of bringing to accountability for violations of the rules of party funding, demonstrating the role of the NAPC in monitoring the funding of parties and elections.
22. GRECO takes note of the new information submitted by the Ukrainian authorities regarding the framework in place to control the funding of parties and elections. GRECO considers that this shows that steps have been taken to enhance the transparency of election funding. However, further steps would be needed specifically to effectively prevent transparency regulations on election funds from being circumvented by the possible use of indirect contributions to the funds, via parties' or candidates' "own funds", that is from external sources, which do not pass through the election funds at all. In line with the Evaluation Report (paragraph 78), GRECO therefore expects that further steps be taken to ensure that transparency regulations capture forms of support which do not pass through the election funds but are, nevertheless, *de facto* related to election campaigns.
23. GRECO concludes that recommendation ii remains partly implemented.

Recommendation vi.

24. *GRECO recommended to (i) clearly define the content and form of annual accounts of political parties, following a uniform format and accompanied by adequate source documents; (ii) ensure that income (specifying, in particular, individual donations above a certain value together with the identity of the donor), expenditure, debts and assets are accounted for in a comprehensive manner; (iii) consolidate the accounts to include local party branches as well as other entities which are related directly or indirectly to the political party or under its control; and (iv) require that the annual accounts are subject to the scrutiny of an independent monitoring mechanism and made easily accessible to the public, within timeframes specified by law.*

25. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed the basic legal framework to ensure a full account of the financing of political parties on their property, income, including donations and other forms of income, expenses and financial obligations. This law also establishes a monitoring mechanism, the NAPC, and stipulates that party accounts and reports are to be made publicly available within 10 days from their submission to the NAPC. However, the NAPC had not been fully established and it had to develop a standard format for financial party reports, which would be crucial to have uniform and comparable reporting amongst all parties, as well as the practical aspects of the publication of party accounts.
26. The authorities reiterate that Article 17 of the Law on Political Parties as amended by Law No. 731-VIII provides for the framework for the submission of political parties' quarterly financial reports to the NAPC. They add that, in order to implement this provision, the NAPC adopted Decision No. 3 of 9 June 2016¹ which approves the standard form for political parties' financial reports. Moreover, the NAPC's Decision No. 2 of 28 June 2016 approves the regulations on the procedure of parties' financial reports.²
27. GRECO takes note of the above information and welcomes the development of standard forms for the quarterly financial reports which political parties have to submit to the NAPC and which are published on its website, as well as the rules on the procedure regarding these financial reports. This complies with the recommendation. However, given that these developments are recent, GRECO invites the authorities to keep under review their effectiveness in practice.
28. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation viii.

29. GRECO recommended to ensure that an independent mechanism is in place for well-coordinated monitoring of the funding of political parties and election campaigns which is given the mandate, the authority, as well as the financial and personnel resources to effectively and pro-actively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions.
30. GRECO recalls that this recommendation was considered partly implemented. GRECO took note of the establishment of the NAPC as monitoring mechanism for political party financing but also that the Central Election Commission (CEC) remained competent for monitoring political financing rules pertaining to elections campaigns, which required extensive co-ordination. It also noted that members of the NAPC had not been appointed yet, and it remained to be seen how independent this body would be. It was also unclear whether adequate financial and human resources would be allocated to the NAPC. GRECO noted that the NAPC had been given a broad mandate in respect of corruption prevention – monitoring political financing being only one of them – and that it could not impose sanctions for procedural violations by political parties without a court decision. GRECO considered that several measures ranging from regulations to practice were needed to fully meet the requirements of this recommendation.
31. The authorities now refer to Law No. 1700-VII on Prevention of Corruption and the main aspects of the NAPC's mandate: monitoring political party financing and assigning state funds allocated to political parties. They reiterate that Article 17 of the Law on Political Parties, as amended by Law No. 731-VIII, provides for the framework for the submission of political parties' quarterly financial reports to the NAPC. They specify that the analysis of financial reporting is to be

¹ Registered with the Ministry of Justice on 30 June 2016 under No. 904/29034

² Registered with the Ministry of Justice on 25 August 2016 under No. 1185/29/315

published within two months on the NAPC's website. The analysis covers the submission of the financial report, the comprehensiveness and authenticity of the information provided and whether or not there are violations on political funding. If the NAPC detects violations, it must inform, within five days, the authorities competent for holding accountable those responsible for the violations and provide all information establishing the offence or hold them accountable to the extent of their credentials and publish the information on this on its website. As to the independence of the NAPC, the authorities indicate that it is enshrined in the Law on Corruption Prevention. The NAPC is composed of five elected members (currently there are four) appointed by the Cabinet of Ministers after an open competition, and half of the commission responsible for selecting members is composed of specialised NGOs. The authorities report that there have been no examples of pressure exerted on NAPC members. They add that the NAPC is the only body that can suspend or withdraw the state funding of a political party (Articles 17-7 and 17-8 of the Law on Political Parties), which represents a possibility for it to impose a sanction for a procedural violation committed by a party (see also paragraphs 36 and 37). Finally, when it comes to its resources, they state that the NAPC has been able to publish all quarterly reports on its website.

32. GRECO welcomes the fact that the NAPC, as established by law, has started operating. This represents an important step forward. GRECO takes note of the information provided by the authorities regarding the independence of members appointed to the NAPC, its capacity in terms of resources to carry out its mandate and the possibility of imposing sanctions for procedural violations. However, given that this body has only recently started operating, that not all its members have been appointed, that it has been given a broad remit, and that there is no coordination framework with the CEC, which is also competent for monitoring political financing rules, GRECO considers it premature to pronounce at this stage on the extent to which the NAPC ensures a well-coordinated monitoring in practice. It urges the authorities to keep under review and assess in particular the NAPC's independence and the adequacy of its human and financial resources to fully implement its broad mandate. In addition, GRECO considers that there should be a framework formalising the co-ordination between the NAPC and the CEC.

33. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix.

34. GRECO recommended to ensure that (i) all infringements of the existing and yet to be established rules on financing of political parties and election campaigns are clearly defined and made subject to an appropriate range of effective, proportionate and dissuasive sanctions; (ii) any party representatives and election candidates themselves are liable for infringements of party and campaign funding rules; and (iii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities to effectively supervise and investigate political funding.
35. GRECO recalls that this recommendation was considered partly implemented. GRECO welcomed the establishment of specific administrative offences for violations of procedures for providing or receiving political financing and for submitting financial reports on party funding and on election campaign financing, but was concerned that sanctions could only be imposed through court decisions and not by the monitoring bodies. It also took note of the new criminal offences of deliberate submission of false information, contribution and reception of contributions from unauthorised persons or entities, and deliberate provision or receiving of contributions exceeding caps on donations. However, it asked for a complete list of available sanctions to clarify who may be subject to such sanctions as well as in respect of the relevant limitation periods as requested in the recommendation.

36. The authorities now refer to the Code of Administrative Offences (CAO) according to which findings of administrative offences defined in Articles 212-15 on procedures for receiving contributions and 212-21 on procedures for submitting financial reports should be made by entitled persons within the NAPC. Moreover, Article 221 CAO gives competence to judges to consider cases of administrative offences falling under the aforementioned provisions.³ Furthermore, the authorities refer again to Article 159-1-1 CC which sanctions the submission of false information on political financing, and Article 159-1-2 on deliberate contributions to parties or election campaigns by an unauthorised person or in excess of the established caps on donations. They also refer to the possibility for the NAPC to directly suspend or terminate state funding as a sanction for failing to submit a party's financial report or a grave violation in submitting such reports (Article 17-7 and 17-8 of the Law on Political Parties). They also make reference to Article 49 CC which provides for a statute of limitation for these offences of three years. Finally, pursuant to Article 80 CC, a person convicted in accordance with Article 159-1 CC will not have to serve his/her sentence if it has not been enforced after two years in the case of sentence without restraint of liberty and after three years for sentences of restraint or imprisonment.
37. GRECO takes notes of the information provided by the authorities which, for the most part, repeats the information previously given in respect of this recommendation. That said, GRECO takes notes of the possibility for the NAPC to suspend or terminate state funding as a sanction which is now mentioned by the authorities. Since GRECO asked for a complete list of available sanctions, it infers from this information that there are no other sanctions available; this would mean that the range and level of sanctions is rather limited. On the other hand, GRECO notes the additional information regarding statutes of limitations and considers the three-year limit for these offences as adequate. However, GRECO had previously expressed concern as to the fact that sanctions could only be imposed through court decisions and not directly by monitoring bodies, demonstrating a lack of flexibility. Notwithstanding the possibility for the NAPC of suspending or withdrawing directly state funding, GRECO notes that this is only possible for parties represented in Parliament and considers that this sanction is not in itself sufficient to provide enough flexibility and therefore to change the assessment of the situation which had led it previously to consider the recommendation partly implemented.
38. GRECO concludes that recommendation ix remains partly implemented.
- III. CONCLUSIONS
39. In view of the conclusions contained in the previous Third Round Compliance Reports on Ukraine and in light of the above, GRECO concludes that to date, Ukraine has implemented satisfactorily or dealt with in a satisfactory manner eleven of the sixteen recommendations contained in the Third Round Evaluation Report. Moreover, the five remaining recommendations have been partly implemented.
40. With respect to Theme I – Incriminations, the situation remains unchanged: recommendations ii-v and vii have been implemented satisfactorily, recommendation vi has been dealt with in a satisfactory manner and recommendation i has been partly implemented. With respect to Theme II – Transparency of Party Funding, recommendations iii, v, vi and vii have been implemented satisfactorily, recommendation iv has been dealt with in a satisfactory manner and recommendations i, ii, viii and ix have been partly implemented.

³ The authorities had previously indicated that: (i) violations of the procedures for making or receiving contributions to a political party or in an election campaign may be punished with a fine (approx. EUR 40-60 for citizens and EUR 80 for officials), and (ii) violations of procedures for submitting financial reports concerning regular party funding as well as election campaign funding were also punished with a fine (approx. EUR 190-250).

41. Concerning incriminations, Ukraine has carried out rather extensive reforms of the criminal legislation in respect of corruption offences. In particular, various components missing in bribery offences, as well as in respect of trading in influence, have now been included in the amended legislation regarding the details requested in the Evaluation Report. Moreover, the sanctions available for these offences have been strengthened to a large extent and are now in compliance with the requirements of the Criminal Law Convention on Corruption. The provisions on the special defence of effective regret have been amended in such a way that the bribe-giver is released from punishment only if s/he was subject to extortion *and* voluntarily reports to law enforcement authorities. Ukraine is to be commended for these efforts. That said, contrary to what is required by Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173), the scope of private sector bribery is limited to offences committed in relation to legal persons.
42. As to transparency of political funding, Ukraine has established a new legislative framework which, to a large extent, improves the legal system in this respect. Although not linked to the recommendations of this report, a significant achievement previously highlighted by GRECO has been the introduction of public funding for political parties. Insofar as the particular recommendations addressed by GRECO to Ukraine are concerned, a number of important steps have been taken, for example, to improve the legislation concerning transparency of regular party funding and rules on election campaign financing; to better define various sources of contributions and income, including donations, in order to prevent circumvention of the transparency rules concerning donations; and to introduce mandatory auditing of party accounts by certified auditors. However, on a more specific point, GRECO is of the view that Ukraine should take further measures to effectively prevent transparency regulations on election funds from being circumvented by the possible use of indirect contributions to the funds, via parties' or candidates' "own funds". More generally, the reforms take the form of amended legislation and much remains to be seen in respect of their implementation. This is particularly true of the new monitoring body, the National Agency for Prevention of Corruption (NAPC), which has started operating in 2016, in respect of party funding. GRECO calls on the authorities to keep under review that, in practice, the independence of the NAPC is guaranteed and that adequate financial and human resources are allocated to it. GRECO also considers it important to provide for a co-ordination framework between the NAPC and the Central Election Commission (CEC), also competent for election campaign financing, to ensure the efficiency of their monitoring. Whilst welcoming the many positive developments, GRECO considers that the authorities should take all necessary measures to ensure the efficiency of the monitoring of election campaign financing.
43. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of Ukraine.
44. Finally, GRECO invites the authorities of Ukraine 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.