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Second Compliance Report

Third Evaluation Round

Second Compliance Report on Montenegro

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken, by the authorities of Montenegro since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Montenegro. 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 49th Plenary Meeting (3 December 2010) and made public on 14 December 2010, following authorisation by Montenegro (Greco Eval III Rep (2010) 7E, [Theme I](#) and [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 58th Plenary meeting (7 December 2012) and made public on 17 December 2012, following authorisation by Montenegro ([Greco RC-III \(2012\) 17E](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Montenegro 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 was submitted on 4 July 2014 and served as a basis for the Second Compliance Report.
4. GRECO selected Bosnia and Herzegovina to appoint a rapporteur for the compliance procedure on Theme II. The Rapporteur appointed for the Second Compliance Report was Mr Vjekoslav VUKOVIC, Assistant Minister, Sector for Fight against Terrorism, Organised Crime and Drugs Abuse, Ministry of Security (Bosnia and Herzegovina). He was assisted by GRECO's Secretariat in drawing up the Second Compliance Report.
5. It is recalled that GRECO in its Evaluation Report addressed five recommendations to Montenegro in respect of Theme I and all recommendations were assessed as implemented satisfactorily in the Compliance Report. Thus, there are no further recommendations concerning Theme I to be assessed in this report and the focus is on Theme II (see below).

II. ANALYSIS

Theme II: Transparency of Party Funding

6. It is recalled that GRECO in its evaluation report addressed nine recommendations to Montenegro in respect of Theme II and that recommendations i, iii, v and ix were assessed as implemented satisfactorily; recommendation ii was deemed to be dealt with in a satisfactory manner. Recommendations iv, vi, vii and viii remained partly implemented. Compliance with these recommendations is dealt with below.

7. The authorities of Montenegro now report that, following the recommendations made by GRECO, as reiterated by other international bodies (notably, the EU, OEBS/ODIHR, OECD-SIGMA), the Ministry of Finance established working groups to draft secondary legislation which would regulate more in detail the use of public funds for activities of political parties and election campaigns, as well as to prepare a model document for accounting records of political parties which would enhance the uniformity of their financial reports. Attention was also paid, in the context of drafting legislative improvements, to better defining the competencies of the bodies in charge of implementing party funding legislation, i.e. the State Election Commission (SEC) and the State Audit Institution (SAI), to enhance internal control and external auditing mechanisms for political accounts, and to strengthen the sanctioning regime.
8. In parallel, a parliamentary Working Group for Building Trust in the Election Process was established and started its work in June 2013. It consisted of 12 members of Parliament (six from governing parties and six from opposition parties) and three NGO representatives (MANS, CEMI and CDT). Although this parliamentary Working Group started its discussions with the draft law presented by the Ministry of Finance, the final draft departed considerably from its predecessor.
9. In February 2014, amendments to the Law on Financing of Political Parties were adopted; they did not enjoy cross-party consensus. The amended rules were in force (and applied to the local elections held in 12 municipalities on 25 May 2014) until the end of May 2014, when the Constitutional Court declared 16 of the 24 articles of that set of amendments unconstitutional¹. A Working Group was established thereafter to continue working on party funding legislation; it submitted a new draft to Parliament on 19 September 2014 for its consideration, which was adopted on 9 December 2014.

Recommendation iv.

10. *GRECO recommended to introduce clear rules and guidance concerning the use of public resources for party activity and election campaigns.*
11. In its RC-III Report, GRECO assessed this recommendation as partly implemented and took the view that further guidance needed to be developed in this area, given the particular concern it represents in Montenegro, with persistent irregularities occurring in practice, especially during election periods.
12. The authorities of Montenegro indicate that additional rules to prevent the misuse of public funds and resources were introduced in the 2014 amendments to the Law on Financing of Political Parties (LFPP); some of these provisions were later on declared unconstitutional (e.g. on bans for local authorities' expenditure during election periods). At present, the provisions in force in the different applicable laws concerning this matter (i) prohibit the use by candidates of administrative resources for electoral purposes (Article 22, Law on the Election of the President; Article 50(2), Law on the Election of Councillors and Representatives of Montenegro); (ii) ban donations from public institutions and public companies, from institutions and companies with State capital share, and from companies with public contracts (Article 16, LFPP); (iii) prohibit undue pressure on legal entities, companies and natural persons in order to influence in any way the outcome of election results (Article 17 LFPP); (iv) prohibit the distribution of promotional materials of political parties in public bodies – including local self-government and local administration bodies, and State-owned

¹ Articles 3, 4, 5 and 6; Article 8, paragraph 1; Article 9, paragraph 3; Articles 10, 12, 13, 15, 16; Article 18, paragraph 1(4) and (5); Article 20, paragraph 1 (25), (26) and (27) and paragraph 3; Article 21, paragraph 1 (3), (4), (11), (12), (13), (14) and (15); Article 22, paragraphs 1 and 2; Article 23, paragraph 1 (8).

companies (Article 18 LFPP); (v) require State and local budget units to publish, on a weekly basis during the election period and three months thereafter, details on their accounts (Article 19 LFPP); (vi) require public bodies to publish, on a weekly basis during the election period, travel orders for the use of official cars (Article 20 LFPP, as amended in 2014). Moreover, the 2013 amendments to the Criminal Code introduced the offence of abuse of State resources, which is punishable with imprisonment from six months to five years (Article 193, CC). The refinement of rules regarding the misuse of public resources is under consideration by the Working Group in charge of proposing new amendments of the LFPP (e.g. donation bans/cool-off periods for donors who have concluded a public contract, prohibition to use public premises during election campaigns and to distribute promotional materials of political parties in public bodies, restrictions on the use of State funds and obligation to publish details of units' budgets, ban on debt cancellation by a public body, ban on the use of official cars for electoral purposes, restrictions on recruitment of additional personnel during election campaigns).

13. GRECO acknowledges the action taken to further regulate in this field, but can only reiterate the conclusion it reached in the RC-III Report. In this connection, GRECO notes that changes in this area have mainly consisted in the introduction of new rules restricting the use of public resources for political purposes (as detailed in paragraph 12); however, unfortunately, these rules have not been sufficiently coupled with clear mechanisms for their enforcement, both in terms of the responsible authorities and the available sanctions. In particular, GRECO notes that, following the adoption of the RC-III Report, the abuse of public resources at the time of campaign, notably, in connection with the presidential election, as well as the municipal elections, carried out in 2013 and 2014 respectively, was again identified by electoral observers as a main source of concern in Montenegro (e.g. noticeable increases in the budgetary spending of State bodies during election campaigns, including new recruitments of temporary personnel; substantial donations by contractors of large public tenders; involvement of public officials in campaign events)². In 2013, the Parliamentary Assembly of the Council of Europe (PACE) recommended in its election observation report that the authorities conduct investigations into all allegations of abuse of administrative resources by the ruling parties and that the findings of those investigations be published³. Such a request was also made by the European Union. The Parliament of Montenegro established an inquiry committee, which issued a technical report containing the opinion of each of its members, with no conclusions or recommendations. Another area of public outcry relates to the State capacity to supervise the correct implementation of the law and the follow-up given to citizens' complaints of abuse of public resources.

14. In the light of the above, GRECO can only reiterate its view that this area merits further attention and closer monitoring by the authorities in order to assess how to enforce the existing/to-be-adopted rules restricting the use of public resources for party activity and election campaigns more effectively. GRECO wishes to draw the attention of the authorities to the activities of the European Commission for Democracy through Law of the Council of Europe (Venice Commission), and in particular, its recent initiatives to combat the misuse of administrative resources during electoral processes and the foreseen adoption of guidelines in this regard⁴. The outstanding concerns of GRECO regarding this recommendation must be read in conjunction with those raised below in connection with recommendation vi.

² See, for example, European Commission Annual Progress Reports for 2013 and 2014:

http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/mn_rapport_2013.pdf.

http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf.

³ PACE Observation of the Presidential Election in Montenegro (7 April 2013).

<http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=19735&lang=en>.

⁴ Venice Commission Report on the Misuse of Administrative Resources during Electoral Processes (December 2013).

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)033-e).

15. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi.

16. *GRECO recommended that (i) an institution, whether new or existing, be given appropriate independent authority and resources to monitor the funding of political parties and electoral campaigns (both from private and public sources), and (ii) until that occurs, for the existing institutions with current responsibilities to (a) develop a practical working arrangement ensuring effective implementation of party/campaign funding rules; (b) describe that arrangement publicly on the websites of the Ministry of Finance and the State Election Commission (and the local commissions where appropriate), and (c) include clear information to the public regarding how and where to lodge complaints.*
17. GRECO, in its RC-III Report, assessed this recommendation as partly implemented since it considered that the institutions entrusted with oversight responsibilities for party funding related matters, i.e. the State Election Commission (SEC) and the State Audit Institution (SAI) needed to prove their effectiveness in practice. GRECO deemed that more needed to be done to inform the public on how and where to lodge complaints. Finally, GRECO was of the firm opinion that the implementation of this particular recommendation, and more particularly, the degree of independence and effectiveness of supervision over political finances, was crucial for the credibility of the system.
18. The authorities of Montenegro stress that the 2014 amendments to the LFPP define in a clearer manner the institutional arrangements regarding implementation of the law. In particular, supervision and control over implementation of the LFPP is to be conducted by the SEC. The SAI is to perform audits of political accounts with a total revenue exceeding 10 000€. A department was established in the SAI for the auditing of political finances and a member of the SAI Senate was appointed as head of department. Several activities for professional development, including targeted training activities, were developed for the personnel of this department. Both the SEC and the SAI publish their reports on party funding matters on their respective websites; these reports include recommendations for addressing further shortcomings, and strengthen discipline, in this area. It is envisaged that the role which is currently fulfilled by the SEC regarding political financing oversight will be transferred to a to-be-created specialised anticorruption agency by January 2016. As to the proactive monitoring role carried out at the crucial time of campaigns (not restricted to party funding rules, but more generally to election irregularities in the exercise of the right to vote), the authorities report a sizeable number of cases which have been carried through.
19. GRECO welcomes the reported reinforcement of personnel in the SAI, as well as the clarification provided by law as to the overall oversight responsibility of the SEC in this area and the audit role of the SAI regarding political accounts. Be that as it may, GRECO recalls the overall objective of this recommendation, i.e. to ensure effective implementation of party/campaign funding rules. In this connection, GRECO can only welcome the many positive developments in legislation that have occurred since the adoption of the Third Round Evaluation Report. The authorities must be commended for all the effort put into ameliorating the legislative framework for political financing with a view to better preventing corruption in this area of activity. That said, in the light of the campaign financing irregularities which have followed in recent elections and have given rise to much public outcry, GRECO considers that for the law to fulfil its purpose in practice, the institutional framework for the supervision of party finances ought to be significantly strengthened. While the public now appears to be acquainted with the available channels to complain for any irregularity they detect in this domain, this information serves little purpose if it is not followed

thereafter, particularly, when the responsible oversight bodies lack capacity or/and responsibility for dealing with such complaints. GRECO refers to the concerns already expressed before (see paragraph 13) as to the oversight/enforcement capacity for the implementation of the law and the response given to citizens' complaints regarding irregularities occurring during elections (e.g. abuse of public resources).

20. GRECO further notes the plans underway to transfer responsibilities to a to-be-created Anti-corruption Agency. Given the current state of affairs, GRECO can only continue to be cautious as to the effectiveness of the oversight mechanisms for political financing; it further wishes to stress how vital their proactive performance is in assuring credibility of the entire system. Consequently, GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

21. *GRECO recommended to considerably strengthen the auditing of political parties, in particular, by (i) assessing the need to adjust the current rules in order to establish consistent and clear auditing obligations for political parties, including a review of the current auditing threshold for campaign accounts (i.e. total amount of funds raised and spent from private sources in an election campaign exceeds 50,000 EUR); (ii) introducing provisions to ensure the independence of auditors who are to audit political finances.*
22. GRECO took the view, in its RC-III Report, that this recommendation had been partly implemented and called for additional measures to strengthen the financial discipline of political parties.
23. The authorities of Montenegro now explain that, under the LFPP, the State Audit Institution is the sole body responsible for auditing party/campaign accounts with a total revenue exceeding 10 000€. As outlined before, the personnel and expertise resources of the SAI in this area have been recently reinforced (see paragraph 18). The LFPP also provides for an obligation for political parties to develop internal control mechanisms in their statutes, including through the appointment of responsible persons for financial dealings. The SAI has now received details on the responsible bodies for each political party and the different arrangements introduced to enhance internal control; the latest report of the SAI (for the 2012 fiscal year) is positive as to the way in which political parties have responded to recommendations on financial discipline.
24. GRECO notes that the threshold for requiring auditing has now been brought down to political accounts with a total revenue exceeding 10 000€ (as compared to the prior 50 000€). GRECO also welcomes the establishment of a dedicated department in the SAI dealing with political finances. Time and experience with the law will show whether further adjustments are still necessary in this area to ensure that the capacity to oversee political finances is adequate, as already highlighted in paragraph 19. As mentioned in the RC-III Report, the move from a system, which used to rely on private auditors, to a system where the SAI is the sole body responsible for performing audits, places vital importance on the effectiveness of the SAI's control. Moreover, the latter necessitates the existence of proper internal control mechanisms within parties' structures. For this reason, GRECO attaches key importance to the obligation placed on political parties themselves to assure that their internal functioning respects the principle of transparency, financial discipline and accountability.
25. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

Recommendation viii.

26. *GRECO recommended (i) to better adjust the existing sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive, including by broadening the scale and range of penalties available; (ii) to cover all possible infringements of the law, as appropriate.*
27. In its RC-III Report, GRECO acknowledged the improvements made in the law regarding its sanctioning system, but called for a broader and more flexible range of penalties, and stressed the need to tie all possible infringements to enforcement action. It assessed this recommendation as partly implemented.
28. The authorities of Montenegro highlight that further amendments were introduced in the sanctioning regime to specifically tackle the outstanding remarks raised by GRECO in the RC-III Report. To this effect, fines have been raised and complemented with additional sanctions of both administrative and penal nature, including imprisonment, forfeiture and return of illegal gains to the State budget, suspension of payment of public funds to those parties not filing their financial reports, professional bans for responsible financial officers in political parties. Furthermore, the authorities report that all possible infringements are now coupled with sanctions, including in the two outstanding areas identified by GRECO, i.e. in relation to payments made by donors and companies with public contracts which donate to a political party in contravention of the applicable ban.
29. GRECO welcomes the steps taken by the authorities to upgrade the sanctioning system of party funding rules and to provide for a comprehensive list of infringements liable to sanctions. Enforcement of the LFPP is a critical issue which needs to be kept under scrutiny by the authorities in order to recast public trust in this domain. Sanctions do not only need to be appropriate in law but also applied in practice. GRECO can only refer back to the remarks it has made, in paragraph 20, concerning the effective implementation of party/campaign funding rules.
30. GRECO concludes that recommendation viii has been implemented satisfactorily.

III. CONCLUSIONS

31. **In view of the above, GRECO concludes that Montenegro has implemented satisfactorily or dealt with in a satisfactory manner twelve of the fourteen recommendations contained in the Third Round Evaluation Report.** The two remaining recommendations have been partly implemented.
32. More specifically, with respect to Theme I – Incriminations, all recommendations (i-v) have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendations i, iii, v, viii and ix have been implemented satisfactorily; recommendations ii and vii have been dealt with in a satisfactory manner; and recommendations iv and vi have been partly implemented.
33. GRECO congratulates Montenegro for its sustained efforts to engage in a reform process, in both topics under review in the Third Evaluation Round, in which virtually all concerns raised by GRECO have been taken on board. Regarding Theme I – Incriminations, all recommendations have been implemented. In this connection, GRECO particularly welcomes the changes introduced in criminal legislation to provide for greater clarity and consistency of bribery and

trading in influence offences, as well as to establish broader jurisdictional rules. Concerning Theme II – Transparency of Party Funding, GRECO also positively values the efforts displayed to enhance transparency of party funding, to better identify financing sources, to strengthen financial discipline of political parties through more stringent accounting and auditing obligations and to provide for a broad range of sanctions when infringements occur. GRECO, however, takes note of the turbulent times which have so far characterised the reforms undertaken in the party funding field, the misuse of public office and public funds during elections, and the recent decision of the Constitutional Court, in June 2014, to annul a significant part of the amendments of the Law on Financing of Political Parties. A new Law was adopted on 9 December 2014. It is essential to ensure implementation and enforcement of legislation on the ground. To this effect, it remains decisive to ensure that the oversight responsibilities conferred to the State Audit Institution and the State Election Commission (the latter to perform party funding supervisory tasks until the Anticorruption Agency starts to operate in January 2016) are effectively performed in practice, and that citizen' complaints receive appropriate follow-up.

34. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of Montenegro.
35. Finally, GRECO invites the authorities of Montenegro 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.