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**Greco RC-III (2015) 8E**

## **Third Evaluation Round**

### **Addendum to the Second Compliance Report on the Republic of Moldova**

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

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**"Transparency of Party Funding"**

Adopted by GRECO  
at its 70<sup>th</sup> Plenary Meeting  
(Strasbourg, 30 November - 4 December 2015)

## **I. INTRODUCTION**

1. The Addendum to the Second Compliance Report assesses further measures taken by the authorities of the Republic of Moldova since the adoption of the First and Second Compliance Reports in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on the Republic of Moldova. It is recalled that the Third Evaluation Round covers two distinct themes, namely:
  - **Theme I – Incriminations:** Articles 1a and 1b, 2 to 12, 15 to 17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1 to 6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (incrimination 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 the 50th Plenary Meeting of GRECO (1 April 2011) and made public on 6 April 2011, following the authorisation of the Republic of Moldova (Greco Eval III Rep (2010) 8E, Theme I and Theme II). The subsequent Compliance Report was adopted by GRECO at its 59th plenary meeting (22 March 2013) and made public on 3 April 2013, with the authorisation of the Republic of Moldova (Greco RC-III (2013) 2E). The Second Compliance Report (Greco RC-III (2015) 3E) was adopted by GRECO at its 67th plenary meeting (27 March 2015) and made public on 1 April 2015, with the authorisation of the Republic of Moldova.
3. In accordance with Rule 31 para. 9 revised of its Rules of Procedure, GRECO, in its Second Compliance Report, asked the head of the Moldovan delegation to submit additional information on the implementation of seventeen recommendations which had been partly implemented. The information was submitted on 8 June 2015 and served as a basis for this Addendum to the Second Compliance Report.
4. GRECO selected Belgium and Luxembourg to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Addendum to the Second Compliance Report are Mr Carl PIRON for Belgium and Ms Doris WOLTZ for Luxembourg. The Rapporteurs were assisted by GRECO's Secretariat in drawing up the Addendum.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that, in its Evaluation Report, GRECO addressed eight recommendations to the Republic of Moldova concerning Theme I. In its Second Compliance Report, it concluded that recommendations i, ii, iii, iv, v, vi and viii had been satisfactorily implemented and recommendation vii had been partly implemented; compliance with this outstanding 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 sector and private sector in cases of “effective regret”.*
7. GRECO recalls that the recommendation was considered to have been partly implemented. According to the Compliance Report, the legislation on the special defence available under articles 325, paragraph 4, and 334, paragraph 4, of the Criminal Code (CC) had been examined by the working group responsible for drawing up the draft law amending the CC, as recommended by GRECO, but this working group's proposals to repeal or amend the above-mentioned provisions had been rejected during the public debate on the draft law. According to the Second Compliance Report, on 22 December 2014 the Supreme Court of Justice adopted explanatory decision No. 11 “on the application of the legislation on criminal liability for corruption offences”, in which the Court analyses and accounts for the circumstances in which the bribe-giver may be exempted from criminal liability under articles 325, paragraph 4, and 334, paragraph 4, of the CC. That said, GRECO noted that the explanations concerning “effective regret” were identical to those already contained in the Evaluation Report and did not in any respect change the fact that the exemption from criminal liability in cases of “effective regret” was indeed automatic and mandatorily total in nature – contrary to the opinion of the Moldovan authorities
8. The authorities now state that they are maintaining their position as expressed in the First and Second Compliance Reports and that there are no plans, for the moment, to revise the special defence provisions contained in the CC. That said, on 29 June 2015, the Prosecutor General issued an ordinance to set up a group of prosecutors tasked to develop guidelines on the application of articles 325, paragraph 4, and 334, paragraph 4 CC. Those written instructions are to cover the pertinent provisions of the Code of Criminal Procedure, the clarifications provided by the above-mentioned explanatory decision No. 11 of the Supreme Court of Justice as well as the investigatory practice in cases of corruption.
9. GRECO takes note of the information provided. While it acknowledges the recent initiative by the Prosecutor General aimed at developing guidelines on the application of the provisions on “effective regret”, it refers, once again, to the concerns expressed in the Evaluation Report regarding the automatic and mandatorily total nature of the exemption from criminal liability in cases of “effective regret”. In particular, GRECO is still not convinced that sufficient safeguards have been established to prevent the misuse of this defence, and once again it invites the authorities to step up their efforts in this field.
10. GRECO concludes that recommendation vii remains partly implemented.

### **Theme II: Transparency of Party Funding**

11. It is recalled that, in its Evaluation Report, GRECO addressed nine recommendations to the Republic of Moldova concerning Theme II. The Second Compliance Report concluded that all the recommendations remained partly implemented.

## Recommendations i to ix.

### 12. GRECO recommended:

- *to make it obligatory for political parties' annual financial reports destined for publication and submission to the supervisory authorities to include more precise information, guaranteeing a full overview of the party's assets and its income and expenditure (recommendation i);*
- *to require that all donations received by political parties outside election campaigns that exceed a given amount, as well as the identity of the donors, are disclosed to the supervisory authorities and are made public (recommendation ii);*
- *to take appropriate measures to limit the risk that members' subscriptions received by parties may be used to circumvent the transparency rules applicable to donations (recommendation iii);*
- *to take appropriate measures (i) to ensure that all donations and services provided to parties or candidates in kind or on advantageous terms are properly identified and recorded in full, at their market value, in both parties' annual reports and campaign funding reports; and (ii) to clarify the legal situation regarding loans (recommendation iv);*
- *to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable (recommendation v);*
- *to explore the possibilities of consolidating political parties' annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control (recommendation vi);*
- *to introduce independent auditing of party accounts by certified experts (recommendation vii);*
- *to mandate an independent central body, endowed with sufficient powers and resources and assisted by other authorities where necessary, so as to allow the exercise of effective supervision, the conduct of investigations and the implementation of the regulations on political funding (recommendation viii);*

*to ensure that (i) all infringements of the rules on party funding in general and financing of election campaigns are clearly defined and made subject to effective, proportionate and dissuasive sanctions, which can, if necessary, be imposed after the Constitutional Court has validated the elections; and (ii) the limitation periods applicable to these offences are sufficiently long to allow the competent authorities effectively to supervise political funding (recommendation ix).*

- ### 13. GRECO recalls that a working group responsible for drawing up amendments to the legislation on funding of political parties and election campaigns had been set up by the Central Electoral Commission (CEC), with a view, *inter alia*, to implementing GRECO's recommendations and that it had prepared a draft "Law amending and supplementing legislative instruments", which contained amendments to eight pieces of legislation including the Electoral Code (EC), the Law on Political Parties (LPP), the Criminal Code (CC), the Code of Criminal Procedure, the Code on Minor Offences, the Broadcasting Code, the Tax Code and the Law on the Court of Auditors. In the Compliance Report, GRECO assessed this draft law and concluded that it provided a

response to most of the concerns expressed in the Evaluation Report. According to the Second Compliance Report, following the public discussions on this draft law and its examination by GRECO, it was slightly amended, approved by the Government and submitted to Parliament, which passed it at first reading. Most of the amendments made to the draft law following the adoption of the Compliance Report were merely drafting changes. In addition to the information contained in the Situation Report, the authorities indicated that on 19 March 2015, Parliament adopted the draft law at second reading, with some amendments. It was agreed that the authorities would submit to GRECO the final version of the law as soon as possible, in view of its assessment in the on-going compliance procedure.

14. The authorities now report that Parliament discussed the above-mentioned draft law at the session on 19 March 2015 and adopted the final version on 9 April 2015. The law was published in the Official Journal ("Monitorul Oficial") on 14 April 2015, and entered into force on publication, with the exception of the amendments to articles 27 to 29, 31 and 31<sup>1</sup>, paragraph 4, of the LPP which will enter into force on 1 January 2016. The authorities stress that the final version is to a large extent identical to the draft law as already evaluated by GRECO in the First and Second Compliance Reports, with respect to the provisions relevant for the implementation of GRECO's recommendations. Most of the amendments made to the draft law following the adoption of the Second Compliance Report are merely drafting changes.<sup>1</sup> Certain details of the draft law which are of only marginal relevance to GRECO's recommendations have been amended and clarified, moreover. For example, it has been made clear that the CEC must publish information on parties' income and expenditure within 48 hours of accepting the annual financial reports (and not within two weeks, as was indicated in the First Compliance Report, under recommendation i); furthermore, if the party has a web page, it is also required to publish this information on its site. Another example is the maximum amount that can be contributed by an individual to one or more political parties during a given year, which has been set at 200 times the average monthly wage (instead of 20 times the average monthly wage, as indicated in the First Compliance Report, under recommendation iii). The new legislation has been submitted to GRECO.
15. As regards the second part of recommendation ix, the authorities report that the specific draft law – drawn up by the Ministry of Justice and mentioned in the First Compliance Report – amending the Code on Minor Offences, which includes provisions to extend the limitation period applicable to minor offences from three to six months, was examined by the Government following public discussions, in June 2015. However, the Government resigned before the draft law could be submitted to Parliament, and the Minister of Justice thus withdrew the draft in order to initiate new coordination with the interested parties. Within a short time period after the designation of the members of the new Government, the ministry obtained opinions from all the public entities concerned, but the new Government was dismissed by Parliament on 31 October 2015. For these reasons, the draft law has not been submitted to Parliament for adoption.
16. GRECO welcomes the fact that the draft "Law amending and supplementing legislative instruments" prepared to meet the requirements of the recommendations and examined in the Compliance Report – and in the Second Compliance Report, as regards a few amendments concerning the implementation of recommendations vi and vii - was adopted by Parliament and is, for the most part, already in force. The Republic of Moldova has thus completed a significant, wide-ranging reform, in the course of which all the concerns raised by GRECO in the Evaluation Report have been closely examined. The adoption of the above-mentioned draft law addresses almost all these concerns. Among other things, measures have been taken to expressly

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<sup>1</sup> It should be noted therefore that in the final version of the law, the numbers of the amended or newly introduced articles sometimes differ from those indicated in the First and Second Compliance Reports.

determine the minimum content of political parties' annual financial reports to be submitted to the supervisory authorities and published (in particular, all of a party's assets, income, financial obligations and expenditure must be listed individually); to consolidate political parties' annual reports and campaign funding reports so as to include entities which are directly or indirectly related to them or otherwise under their control; to require the disclosure of detailed information on all donations received by a party, and the recording of in-kind donations and services provided on advantageous terms or of financial obligations - including loans - in the financial reports of political parties and electoral contestants; to limit the risk that members' subscriptions received by parties may be used to circumvent the transparency rules applicable to donations; to promote the use of means of payment for donations to political parties and for political party spending involving, notably, recourse to the banking system in order to make them traceable; to require that an external audit be performed on parties' financial reports (except for parties whose transactions volume remains under a certain level); to mandate the CEC to act as an independent body responsible for supervising and monitoring the funding of political parties and election campaigns and to assign it new powers to fulfil this role, including the right to apply certain sanctions to political parties and electoral contestants if they have violated the relevant rules; and to include a series of new provisions on the penalties for minor and criminal offences which may be imposed on political parties and election candidates for breaching various political financing rules. The only recommendation which still remains to be implemented is the recommendation to extend the limitation period for minor offences in cases of infringements of the rules on party funding in general and financing of election campaigns (second part of recommendation ix). GRECO invites the authorities to step up their efforts in order to complete this legislative process. Lastly, GRECO reiterates the appeal it made to the authorities in the Evaluation Report, calling on them to seek to ensure that the rules are applied in practice, particularly by ensuring that the CEC has the necessary resources to implement substantive, proactive oversight of the funding of election campaigns and political parties in general.

17. GRECO concludes that recommendations i to viii have been implemented satisfactorily and that recommendation ix remains partly implemented.

### III. CONCLUSIONS

18. **With the adoption of this Addendum to the Second Compliance Report on the Republic of Moldova, GRECO concludes that the Republic of Moldova has now implemented satisfactorily or dealt with in a satisfactory manner in total fifteen of the seventeen recommendations set out in the Third Round Evaluation Report.** The two remaining recommendations have been partly implemented.
19. More particularly, with respect to Theme I – Incriminations, recommendations i, ii, iii, iv, v, vi and viii have been implemented satisfactorily and recommendation vii has been partly implemented. With regard to Theme II – Transparency of political party funding, recommendations i, ii, iii, iv, v, vi, vii and viii have been satisfactorily implemented and recommendation ix has been partly implemented.
20. With regard to incriminations, the Second Compliance Report had already concluded that practically all the recommendations had been implemented satisfactorily. Legislative reform had been introduced to extend the scope of the provisions on corruption to national public officials, foreign officials and officials of international organisations, foreign arbitrators and jurors and persons carrying out an activity in the private sector. The provisions on bribery in the public and private sectors and on trading in influence had been brought into line with the standards of the

Criminal Law Convention on Corruption (ETS 173). Lastly, training and awareness-raising measures targeting the authorities responsible for enforcing the legislation had been undertaken. The only recommendation which remained and still remains to be implemented concerns the automatic and mandatorily total nature of the exemption from criminal liability in cases of “effective regret” which is granted to perpetrators of active bribery offences who bring these offences to the law enforcement authorities' attention before the latter learn of their existence. On this point, GRECO is still not convinced that sufficient safeguards are in place to prevent the misuse of this defence and it once again invites the authorities to step up their efforts in this respect. Likewise, in view of the specific context in Moldova where corruption is perceived as a worrying phenomenon and in the light of the recent changes in the law, GRECO invites the authorities to continue their efforts to ensure that full use is made in practice of the criminal law provisions relating to bribery and trading in influence offences.

21. With regard to the transparency of political funding, GRECO welcomes the fact that the “Law amending and supplementing legislative instruments” has now been approved by Parliament in its final version and entered into force on 14 April 2015, except for a number of provisions which will enter into force on 1 January 2016. The Republic of Moldova now has a legal framework which aims to ensure transparency in the funding of political parties, electoral contestants and entities related to political parties, in accordance with the relevant provisions of Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns. All the shortcomings identified in GRECO’s Evaluation Report have been thoroughly addressed; only a specific draft law extending the limitation period for minor offences in such matters remains to be adopted. The legal improvements made will increase the general transparency of political funding considerably, if applied as intended. In this regard, GRECO reiterates the observation it made in the Evaluation Report calling on the authorities of the Republic of Moldova to seek to ensure that the rules are applied in practice, notably by ensuring that the supervisory mechanism - which is now concentrated in the hands of the Central Electoral Commission - has the necessary resources to implement substantive, proactive oversight of the financing of election campaigns and of political parties in general.
22. The adoption of this Addendum to the Second Compliance Report terminates the Third Round compliance procedure in respect of the Republic of Moldova.
23. GRECO invites the authorities of the Republic of Moldova to authorise, at its earliest convenience, the publication of this Addendum, to translate it into its national language and to make the translation publicly available.