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Second Compliance Report

Third Evaluation Round

Second Compliance Report on the Republic of Moldova

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 67th Plenary Meeting
(Strasbourg, 23-27 March 2015)

I. INTRODUCTION

1. The Second Compliance Report assesses the additional measures taken by the Moldovan authorities since the adoption of the first Compliance Report to implement the recommendations made by GRECO in its Third Round Evaluation Report on the Republic of Moldova. It should be pointed out 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](#)).
3. As required by GRECO's Rules of Procedure, the Moldovan authorities have submitted their Second Situation Report, which contains additional information on the measures taken to implement the recommendations considered to have been partly implemented in the Compliance Report. This Situation Report was received on 26 September 2014 and served as the basis for the Second Compliance Report.
4. GRECO selected Belgium and Luxembourg to appoint rapporteurs for the compliance procedure. The rapporteurs appointed are Mr Frederik DECRUYENARE, for Belgium, and Ms Doris WOLTZ, for Luxembourg. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. In its Evaluation Report GRECO addressed eight recommendations to the Republic of Moldova concerning Theme I. In its subsequent Compliance Report, it concluded that recommendations i, ii, iii, iv, v and vi had been satisfactorily implemented and recommendations vii and viii had been partly implemented.

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 points out that, in the Compliance Report, this recommendation was considered to have been partly implemented. 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. GRECO took note of the authorities' concerns with regard to any possible amendment that might grant the competent authorities discretion to determine whether a bribe-giver should be exempt from criminal liability (in particular regarding the establishment of sufficiently precise criteria for taking the decision), but pointed out that an appropriate solution had been found in other States and reiterated its doubts concerning the automatic – and mandatorily total – nature of this exemption.

8. The authorities now state that the Supreme Court of Justice has studied the judgments given in corruption and corruption-related cases in 2012 and 2013 and decided to amend and add to explanatory decision No. 5 of 30 March 2009 “on the application of the legislation on criminal liability for active and passive bribery”. In June 2014, it sent the draft explanatory decision to the courts and the Prosecutor General’s Office for public debate and opinion. On 22 December 2014, the draft was adopted. In paragraph 24 of this explanatory decision No. 11 “on the application of the legislation on criminal liability for corruption offences”, the Court analyses and accounts for the following circumstances in which the bribe-giver may be exempted from criminal liability under articles 325, paragraph 4, and 334, paragraph 4, of the CC:

1) In the event of extortion by the bribe-giver:

- it is the person who took the bribe who must have instigated it;
- coercive action must have been taken by the person who took the bribe;
- such action must have been substantial in its nature, such as to remove or restrict the freedom or ability to report the facts of the person on which the coercion was exercised, meaning that the bribe-giver was forced into the act of bribery; and
- such coercion must have taken place prior to the promise, offer or giving of the bribe.

2) In the event of effective regret on the part of the bribe-giver:

- the offence must be reported before the facts are known to the public prosecuting authorities or, failing that, the bribe-giver must not know that the prosecuting authorities are aware of the facts. In such cases, the prosecutor must also comply with the general provisions on confession contained in article 264 of the Code of Criminal Procedure (which lays down the rules on the procedure for and the form to be taken by confessions).

In cases in which the above conditions are not satisfied but the bribe-giver has actively contributed to the identification of the offence and the perpetrators of the bribery and recognised his or her guilt, he or she shall be granted the mitigation of penalty provided for in article 76, paragraph 1f), of the CC.

In view of these explanations by the Supreme Court of Justice, the authorities take the view that the legislation in force does not confer an automatic and mandatorily total status on the bribe-giver’s exemption from criminal liability.

9. GRECO takes due note of the information provided, which indicates that the Supreme Court of Justice has adopted an explanatory decision in which it analyses and accounts in particular for the circumstances in which bribe-givers may be exempted from criminal liability on grounds of extortion or effective regret. However, the explanations concerning effective regret are identical to those already contained in the Evaluation Report and do not in any respect change the fact that if the conditions for this defence are met, a bribe-giver will be systematically and fully exempted from criminal liability, regardless of the particular circumstances of the case. GRECO must conclude therefore that this exemption is indeed automatic and mandatorily total in nature – contrary to the opinion of the Moldovan authorities – and it refers to the concerns it expressed in

this respect in the Evaluation Report. In particular, GRECO is 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.

Recommendation viii.

11. *GRECO recommended to take further measures (specialised training, circulars and other awareness raising initiatives) to ensure that full use is made of the criminal law provisions on the offences of corruption and trading in influence in practice.*
12. GRECO points out that the recommendation was considered to have been partly implemented. Among other things, a seminar had been held on recent amendments to the CC, concerning corruption in particular, and attended by 26 judges and prosecutors, and other training courses and awareness-raising measures were planned.
13. The authorities report that in the meantime, several specialised training courses have been held for prosecutors, judges and investigating officers including courses on 20 to 22 May 2013, 19 to 21 June 2013 and 16 May 2014. A total of 75 prosecutors, 57 judges and 44 police officers were given instruction at seminars on the application of a standard practice to the judicial investigation and examination of corruption and corruption-related cases, organised by the National Institute of Justice with the support of the American Bar Association/Rule of Law Initiative (ABA/ROLI). A seminar on the same subject was also held on 14 November 2014 and attended by 20 judges and 15 prosecutors. Two other seminars held on 6 and 7 November 2013 and 27 and 28 March 2014 related to the investigation of corruption cases and their judicial examination and were attended by 30 prosecutors, 27 judges and ten investigating officers in total. Furthermore, on 18 June 2013, Moldovan prosecutors and judges took part in the workshop held by ABA/ROLI, the IACA and the United States and Italian Embassies on good practices in combating corruption. On 27 and 28 February 2014, the INJ, with the support of ABA/ROLI held training courses for 30 judges, 30 prosecutors and 30 investigating officers at the National Anti-Corruption Centre on special investigating methods in cases of corruption and economic crime. Two seminars on the same theme were held on 30 and 31 October 2014 and were attended by exactly the same number of people. Another seminar on the subject of the establishment of a standard legal practice with regard to corruption offences was held on 14 November 2014 and attended by 20 judges and 15 prosecutors and two training courses on the same subject are planned for 30 March and 3 April 2015 for 30 judges and 30 prosecutors.
14. The authorities also state that, with the support of experts from the MIAPAC project¹ and the EU High Level Policy Advice Mission², the National Anti-Corruption Centre and the Supreme Court of Justice have investigated and assessed all the corruption cases judged in court between January 2010 and June 2012. Their findings were published in November 2013³ and end with recommendations on how to improve investigation and trial procedures in corruption and corruption-related cases. Following this study and the experts' comments, the Supreme Court of Justice, meeting in plenary session on 14 December 2013, approved Recommendation No. 61⁴,

¹ EU-funded project: "Support to the Government of Moldova in the field of anti-corruption, reform of the Ministry of Internal Affairs, including police, and personal data protection" (October 2011 to October 2013).

² EU High Level Policy Advice Mission to the Republic of Moldova

³ See the English version on the website of the National Anti-Corruption Centre: www.cna.md/ro/date-statistic.

⁴ Published in Bulletin No. 3 of the Supreme Court of Justice, March 2014

which offers guidelines on the application of the principle of the tailoring of criminal penalties to individuals and the rules requiring this in the judgment of corruption cases. Lastly, the authorities mention explanatory decision No. 11 of 22 December 2014, which was elaborated and adopted by the Supreme Court of Justice (see recommendation vii above). This decision contains comments and explanations on the correct, standardised application of the articles criminalising corruption and trading in influence in both the public and the private sector.

15. GRECO takes due note of the information that several training courses on anti-corruption measures were held for a large number of prosecutors, judges and investigating officers and that these included courses on the application of a standard practice in the judicial investigation and examination of corruption and corruption-related cases. Other measures have also been taken to improve investigation and trial procedures in corruption and corruption-related cases and these have resulted in a recommendation and an explanatory decision of the Supreme Court of Justice on the correct, standardised application of anti-corruption legislation. GRECO welcomes these varied measures and encourages the authorities to continue their efforts with regard to the implementation of the provisions on corruption, as this is a matter of key importance.
16. GRECO concludes that recommendation viii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

17. It should be emphasised that, in its Evaluation Report, GRECO addressed nine recommendations to the Republic of Moldova concerning Theme II. In the subsequent Compliance Report, it concluded that all nine recommendations (i to ix) had been partly implemented.

Recommendations i to ix.

18. *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).*
19. 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. 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. When the Compliance Report was adopted, it was planned for the draft law to be transmitted to the Government for approval and rapidly submitted to the Parliament.
20. The authorities now report that following the public discussions on this draft law and its examination by GRECO, it was slightly amended, approved by the Government⁵ and submitted to Parliament, where it was registered on 2 July 2013 as bill No. 296. Subsequently, the relevant committees and the Parliament's Legal Directorate examined the bill, and opinions were sought from various national and international bodies. On 21 March 2014, the Prosecutor General's Office, which is the body responsible for GRECO activities, sent a letter to the Speaker of the Parliament reminding him of Moldova's obligations towards GRECO. Following this, the bill was passed by the Parliament at first reading on 17 July 2014.
21. Most of the amendments made to the draft law following the adoption of the Compliance Report are merely drafting changes. Nonetheless, the authorities state that in order to respond to the comments made by GRECO in recommendation vi, the draft law was amended in such a way as to oblige political parties to include in their financial reports full accounting information in respect of legal entities established by the party concerned or otherwise under its control (see section 29, paragraph 4d of the LPP as provided for by the draft law). Furthermore, additions were made to the draft law to the following effects: an external audit of political parties' accounts would be required every three years *at least* (in response to GRECO's encouragement in the Compliance Report, under recommendation vii, to conduct audits more regularly than this); the powers of the CEC as the party-funding supervisory body would be extended still further (it would have, in

⁵ Decision No. 456 of the Government, taken at the cabinet meeting of 1 July 2013.

particular, a right of access to all data held by the public authorities and all state registers, including personal data, and would be charged with drawing up the guidelines and the methodological standards needed for the training and assistance of political party leaders); and an even stricter system of penalties would be imposed.

22. Lastly, the authorities report that they have already held several training sessions relating to matters including the funding of political parties and election campaigns and the current reforms. In particular, on 26 March and 9 April 2013, the CEC – with the support of the IFES (International Foundation for Electoral Systems) – held a meeting of political party treasurers and investigative journalists to inform them about possible changes in the management of party finances and GRECO's requirements in this area. In addition, on 12 and 13 June 2014, the CEC and the National Anti-Corruption Centre (NAC) – with the assistance of the joint project of the Council of Europe and the European Union « Eastern Partnership – organised a training for the staff of the CEC, the CNA and the prosecution service and for representatives of civil society, during which international experts presented concrete cases of electoral fraud and illegal financing of political parties as well as practical means for their detection and investigation.
23. In addition to the information contained in the Situation Report, the authorities indicate that on 19 March 2015 – i.e. a few days before the examination by GRECO of the present report –, Parliament adopted the above-mentioned draft law at second reading, with some amendments. They explain that there will be no further reading of the law which will enter into force after its promulgation by the President of the Republic and its publication in the Official Journal (« Monitorul Oficial »). The authorities state that they will submit to GRECO the final version of the law as soon as possible, in view of its assessment in the on-going compliance procedure.
24. GRECO welcomes the fact that the draft law prepared to meet the requirements of the recommendations and examined in the Compliance Report was subsequently approved by the Government and adopted by Parliament. GRECO appreciates the fact that this draft was amended in several respects following the comments made in the Compliance Report, requiring in particular that political parties include in their annual financial reports (as in their campaign accounts) information in respect of legal entities established by the party concerned or otherwise under its control in order to meet the requirements of recommendation vi. Nonetheless, bearing in mind that GRECO has not as yet had the opportunity to assess the final version of the law, it concludes at this stage that recommendations i to ix remain partly implemented.

III. CONCLUSIONS

25. **In the light of the Third Round Compliance Report on the Republic of Moldova and the foregoing comments, GRECO concludes that the Republic of Moldova has implemented satisfactorily or dealt with in a satisfactory manner seven of the seventeen recommendations set out in the Third Round Evaluation Report.** The ten remaining recommendations have been partly implemented.
26. 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 respect to Theme II -Transparency of Party Funding - the nine recommendations (i to ix) have all been partly implemented.
27. With regard to incriminations, practically all the recommendations have now been implemented satisfactorily. Following the legislative reform, which was already presented in the Compliance

Report, the Moldovan authorities organised additional training and awareness-raising aimed at the authorities who are responsible for supervising the application of the law, and the Supreme Court of Justice drew up a recommendation and a draft explanatory decision on the correct, standardised application of the anti-corruption legislation. This draft also contains explanations and clarifications concerning the exemption from punishment granted to perpetrators of active bribery offences who bring these offences to the law enforcement authorities' attention before the latter learn of their existence. Nonetheless, on the latter issue, GRECO is not convinced that sufficient safeguards are in place to prevent the misuse of this defence and it invites the authorities again to step up their efforts in this respect.

28. With regard to the transparency of party funding, GRECO welcomes the fact that the draft "Law amending and supplementing legislative instruments" presented by the Central Electoral Commission, which was already positively received in the Compliance Report, was amended to take account of GRECO's comments and that it has been approved by the Government and by the Parliament. Nonetheless, bearing in mind that GRECO has not as yet had the opportunity to assess the final version of the law, it concludes at this stage that the recommendations concerned remain partly implemented. It was agreed that the Moldovan 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. Lastly, GRECO reiterates the appeal it made to the authorities in the Evaluation Report, calling on them to seek to ensure that the existing rules, and those to come, are applied in practice, particularly by ensuring that the supervisory mechanism has the necessary resources to implement substantive, proactive oversight of political funding.
29. In accordance with Rule 31, paragraph 9, of its Rules of Procedure, GRECO asks the Head of the Moldovan delegation to submit additional information on the implementation of recommendation vii (Theme I – Incriminations) and recommendations i to ix (Theme II – Transparency of Party Funding) by 31 December 2015 at the latest.
30. Lastly, GRECO invites the Moldovan authorities to translate the present report into the national language and to make the translation public.