

2 December 2016

**Public**  
**GrecoRC3(2016)13**

## **Third Evaluation Round**

### **Second Compliance Report on Italy**

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

\*\*\*

#### **"Transparency of Party Funding"**

Adopted by GRECO  
at its 74<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 November - 2 December 2016)

## **I. INTRODUCTION**

1. The Second Compliance Report assesses the measures taken by the authorities of Italy to implement the twelve pending recommendations issued in the Third Round Evaluation Report on Italy (see paragraph 2), covering 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 54<sup>th</sup> Plenary Meeting (20-23 March 2012) and made public on 11 April 2012, following authorisation by Italy (Greco Eval III Rep (2011) 7E, [Theme I](#) and [Theme II](#)). The Third Round Compliance Report was adopted by GRECO at its 64<sup>th</sup> Plenary Meeting (16-20 June 2014) and made public on 20 June 2014, following authorisation by Italy ([Greco RC-III \(2014\) 9E](#)).
3. As required by GRECO's Rules of Procedure, the authorities of Italy submitted a Situation Report on measures taken to implement the recommendations. This report was received on 20 September and amended on 28 October and 10 November 2016, and served as a basis for this Second Compliance Report.
4. GRECO selected Austria and Montenegro to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Christian MANQUET, Head of Department, Directorate for Penal Legislation, Ministry of Justice (Austria) and Mr Dušan DRAKIC, Head of Section, Agency for Prevention of Corruption (Montenegro). They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

5. It is recalled that GRECO in its Evaluation Report addressed 9 recommendations to Italy in respect of Theme I. In the subsequent Compliance Report, GRECO concluded that recommendation viii had been dealt with in a satisfactory manner. Recommendations i, ii and iv to vii had been partly implemented and recommendations iii and ix had not been implemented. Compliance with these recommendations is dealt with below.

#### **Recommendation i.**

6. *GRECO recommended to proceed swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).*
7. GRECO recalls that the Criminal Law Convention on Corruption (ETS 173) was officially ratified by Italy on 13 June 2013 and entered into force on 1 October 2013, making Italy the 45<sup>th</sup> Member to ratify it. At the time of the adoption of the Compliance Report, preparations for the ratification of

the Additional Protocol to the Criminal Law Convention on Corruption were reportedly underway, and GRECO therefore considered that this recommendation had been partly implemented.

8. The authorities of Italy now report that in view of the ratification of the Additional Protocol to the Criminal Law Convention on Corruption, the Ministry of Foreign Affairs and the Ministry of Justice have sent a draft proposal to criminalise active and passive bribery of foreign arbitrators to the Government.
9. GRECO takes note of the positive information provided, but regrets that the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) still has not been ratified.
10. GRECO concludes that recommendation i remains partly implemented.

#### **Recommendation ii.**

11. *GRECO recommended to enlarge the scope of application of the legislation concerning active and passive bribery to all foreign public officials, members of foreign public assemblies, officials of international organisations, members of international parliamentary assemblies as well as judges and officials of international courts, in order to fully comply with the requirements of Articles 5, 6, 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173).*
12. GRECO recalls that the recommendation had been considered partly implemented in the Compliance Report. The legislation on active and passive bribery of foreign/international officials had been modified to cover officials and judges of the International Criminal Court (ICC), in addition to officials of EU institutions or EU member states, and other foreign officials when the offense occurred in the framework of an international business transaction, who were already covered by the original law. GRECO had noted that officials of other international courts, foreign public officials, members of foreign public assemblies, and officials of any other international organisations or international parliamentary assemblies were still not encompassed in the legislation, as required by the Criminal Law Convention and requested in the current recommendation.
13. The authorities refer to the information provided under recommendation i, i.e. that the Government has received draft legislation for consideration in order to meet the requirements of this recommendation.
14. GRECO takes note of the information and concludes that recommendation ii remains partly implemented.
15. GRECO notes that Italy, when ratifying the Criminal Law Convention on 13 June 2013, also deposited with the instrument of ratification a declaration that it reserves the right not to establish as a criminal offence under its domestic law the conduct of passive bribery of foreign public officials (Articles 5 and 6 of the Convention) except for individuals of member states of the European Union. The declaration has an impact on Italy's conventional obligations as far as Articles 5 and 6 of the Criminal Law Convention on Corruption are concerned, see Conclusions, below.
16. Furthermore, GRECO notes that Article 37 of the Criminal Law Convention does not allow reservations in respect of Article 9 (bribery of officials of international organisations) and it observes that Italy has not made reservations concerning Articles 10 and 11 of the Convention,

despite the fact that its domestic legislation still limits the coverage of these offences to the EU/OECD context (as was the case at the time of adoption of the Evaluation Report) and now also to the ICC (as referred to above). Therefore, Italy is conventionally bound to adjust its legislation to comply with Articles 9-11 of the Convention.

### **Recommendation iii.**

17. *GRECO recommended to (i) enlarge the scope of application of the legislation concerning active and passive bribery of foreign jurors in order to fully comply with the requirements of Article 6 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191); and (ii) criminalise active and passive bribery of domestic and foreign arbitrators.*
18. GRECO recalls that no progress had been reported by the Italian authorities in respect of this recommendation in the Compliance Report, and therefore that it had been considered not implemented.
19. The authorities again refer to the information provided under recommendation i, i.e. that the Government has received draft legislation for consideration in order to meet the requirements of this recommendation.
20. GRECO takes note of the information that new legislation may be underway; however, this process is at an early stage.
21. GRECO concludes that recommendation iii remains not implemented.

### **Recommendation iv.**

22. *GRECO recommended to criminalise bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption.*
23. GRECO recalls that according to the Compliance Report, the range of perpetrators committing offences constituting active and passive bribery in the private sector had been broadened, and sanctions had been strengthened in respect of some of them. Although it welcomed those amendments, GRECO reminded the authorities of Italy that they remained far from being in line with the requirements of Articles 7 and 8 of the Criminal Law Convention. Shortcomings included the absence of explicit reference to the “offering” and “request” of a bribe in the text and the lack of a mention of indirect commission of the offence. GRECO had also noted that damage to the legal person needed to occur, which according to the authorities implied that the act or omission must violate office or loyalty duties, which GRECO had reminded them is not in line with the Convention. Finally, GRECO expressed doubts as to the appropriateness of maintaining such an offence under the Civil Code. In conclusion, GRECO stated that although improvements had been made in this regard, the Italian authorities had to take further measures in order to fully comply with Articles 7 and 8 of the Criminal Law Convention. The recommendation was considered partly implemented.
24. The authorities now report that the Italian Parliament approved on 12 August 2016 Law 170/2016 (“Legge di delegazione europea per il 2015”), which gives the Government power to adopt, within three months of the date of entry into force of the law, a legislative decree containing the provisions needed to implement the Council of the European Union Framework Decision

2003/568/JHA of 22 July 2003 on combating corruption in the private sector. Article 19 of Law 170/2016 provides that the decree should:

- a) Establish as a criminal offence, taking into account the criminal provisions already in force, the conduct of whoever promises, offers or gives, for himself or for others, even though an intermediate person, money or other undue advantages to any person who has managerial, control or executive functions in a company or private entity, for him/her to perform or omit acts in breach of the obligations inherent in their office;
- b) Establish as a criminal offence the conduct of whoever – while performing his/her executive functions for companies or private entities – solicits or receives, for him/herself or for others, even though an intermediate person, money or other undue advantages, or accepts the promise of them, in order to perform or omit acts in violation of the obligations inherent in his/her office;
- c) Establish as a criminal offence the instigation to commit any of the criminal offences provided under a) and b);
- d) Provide - for corruption in the private sector – the sanction of imprisonment from at least 6 months in the minimum and up to 3 years in the maximum, as well as the accessory sanction of disqualification from exercise of the activity for the person who performs executive or control functions in companies or private entities, when he or she has been already sentenced in the past for the criminal offences provided under a) and b);
- e) Establish that legal persons can be held liable for the criminal offences of corruption in the private sector, and punishable with a pecuniary sanction from 200 up to 600 company shares, as well as the interdictory sanctions provided for in art. 9 of Legislative decree 231/2001.

25. GRECO takes note of the information provided by the Italian authorities and welcomes the adoption of the Law 170/2016 giving the Italian Government power to adopt a decree criminalising bribery in the private sector. Although it originally aims at implementing the Council of the European Union Framework Decision 2003/568/JHA, it appears that according to Article 19, said Decree would include provisions that would establish as a criminal offence the offering, request and promise of a bribe, criminalise the indirect commission of the offence, and no longer mention the need for the legal person to have suffered damage, the need for a complaint from the victim, nor the requirement of distortion in competition. GRECO commends the Italian authorities for these developments, which go towards the criminalisation of bribery in the private sector. It acknowledges that the Italian Parliament has taken steps to modify the current legislation in order to comply with the requirements of the Convention, but will not assess it fully before the Decree is adopted by the Government and has entered into force. GRECO has understood that Law 170/2016 entered into force on 16 September 2016, and the deadline for the adoption of the Decree by the Government is 16 December 2016. GRECO is very hopeful that the Italian authorities will criminalise bribery in the private sector in the near future.
26. GRECO concludes that recommendation iv remains partly implemented.
27. In this connection, GRECO notes that Italy, when ratifying the Criminal Law Convention, also deposited with the instrument of ratification a declaration reserving the right not to establish as a criminal offence under its domestic law the conduct referred to in Articles 7 and 8 of the Convention, except when committed in the course of activity of a company with a view to acting, or refraining from acting, in breach of their duties and causing harm to society. The declaration has an impact on Italy's conventional obligation to comply with the aforementioned Articles of the Criminal Law Convention on Corruption, see Conclusions, below.

## **Recommendation v.**

28. *GRECO recommended to criminalise active and passive trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
29. GRECO recalls that at the time of the adoption of the Evaluation Report, only passive trading in influence was criminalised; there were certain shortcomings in this respect such as the fact that only the deception by the influence peddler on his/her ability to exert influence was criminalised under Article 346 CC; and that the actual receipt of an advantage by an influence peddler who is actually in a position to exert influence on public authorities and who actually exerts this influence was not criminalised under Article 346 CC. With the adoption of the Compliance Report, GRECO welcomed that new legislation, i.e. Article 346bis CC for the first time, criminalised active trading in influence in Italy. It did however note that the newly introduced Article 346bis CC only encompassed “gives and promises” when the Criminal Law Convention requires “promising, giving and offering”. In the Italian law, active trading in influence also requires that there is an existing relationship of influence between the peddler and the official, while the mere assertion to this end is sufficient under the Convention. Finally, GRECO noted that the sanctions set forth in the new legislation (imprisonment 1-3 years) appeared to be rather weak, as compared to e.g. the sanctions for bribery in the public sector.
30. The Italian authorities now submit that according to Italian jurisprudence<sup>1</sup> there is no substantial difference between the terms “offering” (“offerta”) and “promising” (“proposta”) in the linguistic and legal notion, and that “promising” clearly includes all aspects of promising and offering. The authorities are therefore of the view that Article 346bis CC does encompass “promising, giving and offering” as required by the Criminal Law Convention. Moreover, the authorities submit that the sanctions foreseen for this offence (imprisonment 1-3 years) are carefully decided in comparison with other forms of corruption offences and that crimes punishable up to three years can give rise to extradition, in accordance with Article 19.1 of the Criminal Law Convention on Corruption.
31. GRECO takes note of the information provided. Having studied the jurisprudence invoked by the Italian authorities, it accepts that the notion of “gives and promises” in the new Article 346 bis CC and which is reflected in Article 346 CC appears to cover the three elements “gives, promises and offers”, as required by the Criminal Law Convention. GRECO also notes that the sanctions foreseen in respect of this offence (imprisonment 1-3 years), although rather weak in comparison with some other corruption offences, may give rise to extradition, as foreseen in Article 19.1 of the Criminal Law Convention. GRECO therefore concludes that also this element is in line with the Convention. GRECO notes again, however, that Article 346bis CC requires that there is an existing relationship of influence between the peddler and the official, while the mere assertion to this end is sufficient under the Convention (“...taking advantage of the existing relationship s/he has with a public official...”). Article 346 CC which covers cases in which the influence peddler only pretends to have an influence, however, has not been changed and still does not cover the active side (i.e. the one who gives the advantage to the influence peddler). It follows that, the Italian law is still not in full conformity with the requirements of Article 12 of the Criminal Law Convention.
32. GRECO concludes that recommendation v remains partly implemented.

---

<sup>1</sup> Supreme Court of Cassation’s jurisprudence consistently states that the term “promise” encompasses both the proposal (“proposta”) and the offer (“offerta”). Judgments n.34827 of 1.7.2009 and n. 8989 of 29.01.2015 of the Supreme Court of Cassation.

33. GRECO reiterates the observation it made in the Compliance Report that Italy, when ratifying the Criminal Law Convention, also deposited with the instrument of ratification two declarations concerning Article 12 of the Convention: firstly *“that it reserves the right not to establish as a criminal offence under its domestic law the conduct referred to in Article 12 of the Convention, except when committed in the context of an existing relationship between the influence peddler and the persons referred to in Articles 2 and 4 of the Convention and to remunerate the performance of a conduct contrary to the duties, service or the failure or delay of an act of service.”* Secondly, Italy has declared *“that it reserves the right not to establish as a criminal offence the conduct of trading in influence defined in Article 12 of the Convention, in view to exert an improper influence, as defined in the foresaid article, over the decision making of any person referred to in Articles 5, 6 and 9 to 11 of the Convention”*.
34. To sum up, GRECO reiterates that Italy has widened its possibilities of prosecuting situations of trading in influence and that it complies with several elements of Article 12 of the Criminal Law Convention on Corruption, but not with all. Some of the shortcomings referred to above are concealed by reservations made when the Convention was ratified. The reservations reduce Italy's conventional obligations to implement all requirements of this recommendation. See also Conclusions, below.

#### **Recommendation vi.**

35. *GRECO recommended to take appropriate steps, in close consultation with the institutions concerned, to ensure that the applicable provisions for bribery and trading in influence offences are actively enforced in practice and facilitate an effective, proportionate and dissuasive sanctioning regime for corruption offenders, as required by Article 19 of the Criminal Law Convention on Corruption (ETS 173).*
36. GRECO recalls that the recommendation was considered partly implemented in the Compliance Report. The Italian authorities had indeed provided statistics rectifying the number of convictions for corruption in 2009/2010 and the ratio of suspended sentences that had been presented in the Evaluation Report, numbers that had originally worried GRECO and triggered the element of the recommendation pertaining to the enforcement of corruption convictions. GRECO welcomed the measures taken for the application of an effective, proportionate and dissuasive sanctioning regime for corruption offences in the public sector, but asked the Italian authorities to fix the issue at the core of the recommendation, namely the fact that the judicial bodies often resort to the lowest level of statutory sanctions.
37. The Italian authorities now report that on 27 May 2015, the Parliament adopted new Anti-Corruption Legislation, Law 69/2015, which raises both the minimum and maximum prison sentences for almost all corruption offences. More particularly, sanctions have been substantially increased in cases of active and passive corruption of domestic officials and of the foreign officials. The maximum sanction is provided for corruption in justice matters, with Article 319ter establishing a sanction imprisonment 6-12 years, which may be up to 20 years for aggravated offences. For active and passive corruption of public officials in general, the maximum sanction has been increased to 10 years of imprisonment. For the offence of “undue inducement”, the maximum sanction is now imprisonment 10 years and 6 months. The table below summarises the changes resulting from the adoption of Law 69/2015:

Offence (criminal code provision)	Before L. 69/2015		After L. 69/2015	
	Min (years)	Max (years)	Min (years)	Max (years)
314, par. I	4	10	4	10,5
318	1	5	1	6
319	4	8	6	10
319-ter par. I	4	10	6	12
319-ter, par. II – first part	5	12	6	14
319-ter, par. II – second part	6	20	8	20
319-quarter, par. I	3	8	6	10,5

38. The authorities also submit that the increased level of maximum sanctions also produces an impact on the minimum limitation period, which will generally become longer, including when the perpetrator is a recidivist. They also state that suspension of a sentence is always conditioned on the payment of a sum equivalent to the profit or to the amount of the bribe paid. The conviction for corruption offences always imposes on natural persons the payment of a sum equivalent to the amount of the bribe received. The possibility to conclude a plea bargain (*patteggiamento*) is conditioned on the restitution of the entire amount of the bribe or the profit of the crime. The Italian authorities also state that the National Anticorruption Authority (ANAC) has been given additional competences, and will be informed on a systematic basis by the prosecutors of all new cases of corruption, including those of an international dimension.
39. Finally, the authorities do not agree with the finding in the Evaluation Report that judges usually resort to the lowest level of statutory sanctions. They also state that by raising the minimum prison sanctions for corruption offences, judges will *de facto* have to impose stronger sentences. The authorities therefore consider that the legislative measures taken are as far as they can go to comply with the recommendation without impairing the independence of the judiciary.
40. GRECO takes note of the new information provided, which clearly shows that the sanctions for corruption in the public sector have been generally increased. GRECO accepts that Italy, by strengthening the sanctions (minimum and maximum) in respect of a number of corruption related offences, have made the sanctions more proportionate and dissuasive, which conveys a strong signal to potential perpetrators that corruption is not tolerated and that it will be punished accordingly, as requested in the Evaluation Report (paragraph 114). GRECO furthermore notes with interest the intention to make the investigation of these offences part of the work of the ANAC. To sum up, the measures taken – in particular to strengthen sanction in respect of corruption offences – respond adequately to the objectives of this recommendation.
41. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

#### **Recommendation vii.**

42. *GRECO recommended, in order to ensure that cases are decided before the expiry of the statute of limitations, to (i) undertake a study of the rate of limitation period-related attrition in corruption cases to determine the scale and reasons for any problem which may be identified as a result; (ii) adopt a specific plan to address and solve, within a specified timescale, any such problem or problems identified by the study; (iii) make the results of this exercise publicly available.*



43. GRECO recalls that the Italian authorities had not taken any action in respect to this recommendation, arguing that was already dealt with in the Joint First and Second Round Evaluation Report on Italy.
44. The authorities now refer once again to the increased levels of maximum sanctions introduced by the aforementioned Law 69/2015, which have an impact on statute of limitations. They also submit that the Italian Government has submitted draft legislation on limitation periods which has been approved by the Chamber on 24 March 2015 and is currently being discussed in the Senate. The authorities state that the Bill calls for a radical reform of the statute of limitation, notably by increasing the limitation periods for corruption offences up to the level of the maximum sanction and a half (instead of the maximum and a quarter currently) and the introduction of new additional grounds for suspension of the limitation period. The authorities also submit that the work on a study called for by GRECO in this recommendation has been started and that it is ongoing. The results of the assessment of the impact of statutes of limitations in the years 2004-2014 have been published on the website of the Ministry of Justice on 7 May 2016, and the Minister of Justice has presented them during a press conference on the same day. . The purpose of the study is to calibrate regulations and appropriate organisational responses and assessing the impact of the performances of the operators involved. An update including the data for 2015 will be published shortly. Furthermore, the Cabinet of the Minister of Justice has established a permanent working group which has a plan for its work and which has already launched a public competition aimed at recruiting new judicial assistants.
45. GRECO takes note of the information provided by the authorities of Italy regarding i) the new legislation comprising more severe sanctions in respect of corruption offences (see Recommendation v) which may have an impact on limitation periods; ii) a draft Bill on statutes of limitation; and iii) a study on the application of statute of limitation, aimed at providing more in-depth information of the problem and to suggest new regulations etc. GRECO notes that this ongoing study is continuously updated and that its results are made public. A working group at the Ministry of Justice has also been set up and is in charge of taking the appropriate measures, and has already launched a public process to recruit additional staff. These measures, which are ongoing, meet the objectives of this recommendation.
46. GRECO concludes that recommendation vii has been dealt with in a satisfactory manner.

#### **Recommendation ix.**

47. *GRECO recommended (i) to abolish the condition, where applicable, that the prosecution of acts of corruption committed abroad must be preceded by a request from the Minister of Justice or a victim's complaint; (ii) to extend jurisdiction over acts of corruption committed abroad by foreigners, but involving officials of international organisations, members of international parliamentary assemblies and officials of international courts who are, at the same time, nationals of Italy.*
48. GRECO recalls that no action had been taken at the time of the Compliance Report, the Italian authorities stating that there were no known cases where a Minister of Justice had rejected such a request and that such decisions were purely formal and carried no risk of political interference. GRECO noted with concern that the need for such a ministerial decision actually did pose a risk of political interference, and that this obstacle was not foreseen in the Criminal Law Convention. It also regretted that no measures had been taken to comply with the second part of the recommendation. The recommendation was considered not implemented.

49. The authorities now report that according to Article 6 CC, an offence is considered to have been committed in Italy when the conduct occurred "totally or partially" on the Italian territory. They also submit that, in cases where the conduct or its consequence totally or partially took place on the national territory, neither the request from the Ministry nor the victim's complaint is needed to start the prosecution. The authorities refer to recent cases and the jurisprudence indicates a broad interpretation, showing that very few instances do require the Minister's request in practise. Finally, they state that where Article 6 CC is not applicable, Article 9 CC requires the Minister's request only to proceed for crimes punishable by a minimum of less than three years imprisonment. Following the adoption of Laws 190/2012 and 69/2015 which raised the minimum sanctions, the authorities state that there are therefore very few cases in which the Minister's request is still needed, and that in the few which did arise, never has a Minister refused to make this request.
50. GRECO takes note of the information provided by the Italian authorities. It appears that following the adoption of Laws 190/2012 and 69/2015 and given the broad interpretation of the term "abroad", the Minister of Justice's request to prosecute acts of corruption committed abroad is in practice very rarely needed. There are, however, still cases when the request or the victim's complaint is needed, which poses a risk of political interference. This is not in line with the Criminal Law Convention. This first element of the recommendation can therefore only be considered partly implemented. As regards the second part of the recommendation, the authorities have not submitted any information, and it therefore remains not implemented.
51. GRECO concludes that recommendation ix has been partly implemented.
52. In connection with this recommendation, GRECO notes that Italy, when ratifying the Criminal Law Convention on 13 June 2013, also deposited with the instrument of ratification a declaration *that it will apply without restriction the rules of jurisdiction defined in Article 17, paragraphs 1b and c of the Convention, under the conditions currently provided for in articles 9 and 10 of the Italian Penal Code*. The declaration has an impact on Italy's conventional obligations to implement the second part of the recommendation, see Conclusions, below.

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

53. It is recalled that GRECO, in its Evaluation Report issued 7 recommendations in respect of Theme II. The Compliance Report concluded that recommendations i, iii and v had been implemented satisfactorily and recommendations ii, iv, vi and vii had been partly implemented. Compliance with the latter recommendations is thus dealt with below.

### **Recommendation ii.**

54. *GRECO recommended to (i) introduce a general ban on donations from donors whose identity is not known to the political party/candidate; (ii) lower the current threshold of donations above which the identity of the donor is to be disclosed, namely, 20,000 EUR for donations made to individual candidates, and 50,000 EUR for donations made to political parties, to an appropriate level.*
55. GRECO recalls that in the Compliance Report, the thresholds for the disclosure of the identity of donors had been considerably lowered, fulfilling the requirements set forth in the second part of the recommendation. The recommendation had therefore been considered partly implemented

56. The authorities now report that Article 9, Paragraph 23 c) of Law 96/2012, which introduced Paragraph 10bis in Article 8 of Law 2/1997 provides that “*in the case of donations of any amount, the identity of the donor shall be recorded*” in the accounts of political parties. With respect to election candidates, the authorities state that Law 515/1993 provides that all candidates, whether they are elected or not, through their electoral agent, are required to compile all transactions relating to their campaign, i.e. contributions and services received from all sources, as well as expenses. They then have to submit this declaration to the Regional Electoral Guarantee Board, which is in charge of disclosing it to the public. The authorities therefore state that anonymous donations to both parties and election candidates, whether elected or not, are illegal in Italy.
57. GRECO takes note of the information provided by the authorities of Italy. It appears that Law 96/2012, together with Law 515/1993, has filled the legislative gap at the origin of the first part of this recommendation, and that a general ban on anonymous donations has now been introduced. GRECO very much welcomes this development which is undoubtedly an achievement towards more transparency. The second part of the recommendation was already complied with in the Compliance Report.
58. GRECO concludes that recommendation ii has been implemented satisfactorily.

#### **Recommendation iv.**

59. *GRECO recommended to (i) elaborate a coordinated approach for the publication of information on party and campaign finance; (ii) ensure that such information is made available in a coherent, comprehensible and timely manner and thereby provides for easier and meaningful access by the public, including by making best use of internet publishing.*
60. GRECO recalls that according to the Compliance Report, major achievements had been made to comply with this recommendation, notably since the amended legislation now provides for an independent mechanism to control the implementation of parties' legal requirements in relation to their financial statements and their publication, explicitly referring to the use of online instruments. GRECO also welcomed the new law requiring elected officials and executives to make their campaign funding not only public but also easily available online, but regretted that no further efforts had been made in respect of election candidates who had not been elected, and therefore concluded that the recommendation had only been partly implemented.
61. The authorities now report that the Chamber of Deputies approved Bill A.S. 2439, which aims at reforming the rules on political parties in order to make their funding more transparent, in June 2016. Article 6 of this Bill, in particular, entails a series of transparency obligations relating to funding, contributions, goods and services in respect of political parties, groups and movements. Article 6 Paragraph 3 provides that for donations with a value of 5,000 EUR or more in a year, in whatever form they are granted (including services), to the persons listed in Paragraph 5 (see below), the donor and the beneficiary are required to sign a joint declaration. Paragraph 5 of the Article identifies the beneficiaries as: political parties, movements and organised groups, as well as their political and organisational branches; parliamentary groups; members of the domestic Parliament; members of the European Parliament representing Italy; counsellors of Regions, Provinces and Municipalities; candidates for seats in the domestic Parliament, members of the European Parliament representing Italy, counsellors of Regions, Provinces and Municipalities; and Presidents, secretaries, political and administrative executives of political parties, movements and organised groups at the national, regional, provincial or municipal level. Furthermore, Article 6 Paragraph 10 of the Bill modifies Annex B to Law n. 2/1997 by providing that the financial

statements of political parties and movements should disclose any financing, contribution or service, received in the year to which the budget relates, of a value lower than 5,000 EUR, by giving account of their origin. The Italian authorities report that the aforementioned Bill is currently pending before the Senate. The authorities also inform that in accordance to Article 4 of Law 659/1981, all information related to contributions made to all candidates and parties, whether elected or not, and exceeding 5,000 EUR shall be disclosed. Finally, the authorities repeat their comment made in the first Compliance Report that according to Law 515/1993, all campaign funding received by election candidates, whether they are elected or not, must be recorded by "electoral agents", submitted to the regional electoral boards and made available to the public within 120 days.

62. GRECO takes note of the information provided. It appears that Bill A.S 2439, if adopted, would oblige election candidates, whether they are elected or not, to make a joint declaration with donors who contribute to their campaign for a sum equal or superior to 5,000 EUR. GRECO notes that Article 4 of Law 659/1981, which is mentioned by the authorities in the context of the present recommendation, already provides such an obligation to make a joint declaration which is to be sent to the Office of the President of the Chamber of Deputies. The latter has no obligation to make this declaration public. However, political parties' secretaries are required to make such information public by 31 January each year. It appears that through the adoption of Law 96/2012, which had already been mentioned in the Compliance Report, the identity of donors who contribute more than 5,000 EUR to the campaign of a candidate must already be disclosed in the declaration of campaign transactions, and are therefore made public by the Regional Electoral Guarantee Board. GRECO observes that there seems to be a multiplication of legislation on this topic which, instead of making information available in a coherent and comprehensible way as the recommendation intends, appears to make it difficult for the public to access it. GRECO recalls that the recommendation had been considered partly implemented in the Compliance report because although election candidates who have not been elected are required to make their campaign funding public, no efforts had been made at the time of the adoption of the Compliance Report to facilitate public access to this information. GRECO is of the view that this observation is unfortunately still true, and that the status of the implementation of this recommendation therefore remains the same.
63. GRECO concludes that recommendation iv remains partly implemented.

**Recommendation vi.**

64. *GRECO recommended (i) to provide a leading independent body assisted, if appropriate, by other authorities, with a mandate, tenure stability, adequate powers and resources to carry out a pro-active and efficient supervision, investigation and enforcement of political finance regulations; (ii) until that occurs, to ensure that the existing institutions with current responsibilities develop a practical working arrangement for the effective implementation of party and campaign funding rules; and (iii) to strengthen the cooperation and coordination of efforts on an operational and executive level between the authorities entrusted with the supervision of political finances and the tax and law enforcement authorities.*
65. GRECO recalls that this recommendation was considered partly implemented in the Compliance Report. *The Committee for the Transparency and Control of Financial Statements of Parties and Political Movements* (the "Committee") had been set up to monitor the implementation of political parties' annual financial statements and replaced the Court of Auditors. GRECO welcomed this and noted that it was premature at the time of the adoption of the report to assess its efficiency. It

stated that the new Committee also could not be seen as a leading body for political financing, as the other monitoring mechanisms relating to election campaigns of parties and individual candidates remained the same as described in the Evaluation Report. Finally, no coordination and cooperation had been established between the Committee and the other monitoring bodies, as requested in the third part of the recommendation. Because of these shortcomings, the recommendation was considered partly implemented.

66. The authorities of Italy do not refer to any new development that addresses this recommendation.

67. GRECO concludes that recommendation vi remains partly implemented.

#### **Recommendation vii.**

68. *GRECO recommended to review the existing administrative and criminal sanctions relating to infringements of political financing rules in order to ensure that they are effective, proportionate and dissuasive.*

69. GRECO recalls that in the Evaluation Report a number of shortcomings were listed, which taken together triggered the current recommendation to review the existing system of sanctions in a rather general manner. At the time of the adoption of the Compliance Report, Italy had entered into a major reform process to gradually abandon direct public funding and replace it with voluntary contributions by citizens. As a result of this shift, it was acknowledged that sanctions would also be modified to fit the new funding system and that sanctions of the old system would gradually be abandoned and replaced by a new system adapted to the new regime of funding, which is to take place in 2017. GRECO noted that the Italian authorities had reviewed the sanctioning regime to some extent and that further adjustments were underway and concluded that the recommendation was partly implemented.

70. The authorities now informs GRECO that the new system of political financing is to be implemented as of 2017, but that the old regime, which is still in force to some extent, was not fully explained at the time of the adoption of the Evaluation Report and not in the Compliance Report either, as a result of incomplete information provided. In essence, the authorities now refer to the following:

- Parliamentary groups are subject to sanctions in case of failure to deposit a final statement of accounts or irregularities with the loss of their contributions (article 15-ter of the Rules of Procedure of the Chamber of Deputies and 16-bis of the Rules of Procedure of the Senate);
- Sanctions provided for by Article 15 of Law no. 515 of 1993 concerning candidates and parties taking part in national elections was extended to cover European elections (Article 14 of Law no. 96 of 2012);
- Article 15 of Law no. 515 of 1993 provides for sanctions in respect of election candidates (elected or not) in the form of fines between EUR 26,000 and EUR 101,000 for not submitting final account statements of electoral expenditure (paragraph 11); political parties between EUR 51,000 and EUR 500,000 and with other sanctions for less serious violations in respect of election expenditure;
- In case of failure by parties to submit or to submit incorrect annual statements, the sanctions which in the old system amounted to reduction of funding, have now been modified in the new system (where there is no public funding) to monetary sanctions up

to EUR 200,000 in combination with reduction system ((Article 8 of Decree-Law no.149 of 2013);

- Electoral reimbursements have been gradually reduced and will cease to exist in 2017 (Article 14 of Decree-Law no. 149 of 2014);

71. GRECO welcomes the thorough information provided by the Italian authorities, which provides a combination of different measures taken as a result of the on-going major reform process to gradually abandon a system based on direct public funding and move into a new system where voluntary contributions by citizens will provide the bulk of political financing. GRECO notes that in this reform process, the sanctions foreseen for different forms of violations of the rules have been thoroughly reviewed, in part concerning the old regime (which existed at the time of the adoption of the Evaluation Report) and the gradual shift into the new system, which will only become fully operational as of 2017. GRECO acknowledges that the sanctioning regime summarised above, represent a system that has developed considerably since the adoption of the Evaluation Report and that shortcomings noted in that Report have been clarified, dealt with and modified as required by the recommendation.

72. GRECO concludes that recommendation vii has been implemented satisfactorily.

### III. CONCLUSIONS

73. **In view of the conclusions contained in the Third Round Compliance Report on Italy and in light of the above, GRECO concludes that, Italy has now implemented satisfactorily or dealt with in a satisfactory manner eight of the sixteen recommendations contained in the Third Round Evaluation Report.** Of the remaining recommendations seven remain partly implemented and one not implemented.

74. More precisely, with respect to Theme I – Incriminations – recommendations vi, vii and viii have been dealt with in a satisfactory manner, recommendations i, ii, iv, v and ix have been partly implemented and recommendation iii has not been implemented. With respect to Theme II – Transparency of Party Funding – recommendations i, ii, iii, v and vii have been implemented satisfactorily and recommendations iv and vi have been partly implemented.

75. With regard to incriminations, legislative proposals are currently under consideration by the Government; in respect of bribery of foreign officials and foreign jurors, to criminalise active and passive bribery of foreign arbitrators. Steps have also been taken to criminalise bribery in the private sector; Parliament has given power to the Government to adopt a legislative decree containing the provisions needed to fulfil the requirements of Articles 7 and 8 of the Convention. The Italian Government has also presented a proposal for new legislation on statutes of limitation. While these legislative initiatives are to be commended, GRECO notes that none of them have been adopted. The only pertinent legislation to have effectively been adopted since the Compliance Report is the new Anti-Corruption law 69/2015 increasing the prison sentences for corruption in the public sector, which is to be welcomed. The possible ratification of the Additional Protocol to the Criminal Law Convention on Corruption is currently being considered by the Government.

76. Italy's conventional obligations to deal with certain shortcomings of domestic legislation in respect of the Criminal Law Convention, are reduced by the reservations made at the time of the ratification of the Convention in accordance with its Article 37. Nevertheless, following GRECO's well-established practice in respect of member states having deposited reservations, the Italian

authorities are to re-consider Theme I-recommendations ii, iv, v and ix with a view to amending its legislation in order to fully comply with the pertinent provisions of the Convention and to thus withdraw or not renew the reservations relating to Articles 5-8, 12 and 17 of the Criminal Law Convention on Corruption (ETS 173).

77. With regard to political financing, significant progress has been noted; a general ban on anonymous donors has been put in place, the transparency of donations have been increased and sanctions in respect of infringements of political financing rules have been reviewed. However, as far as the establishment of a leading independent supervisory mechanism over the financing system is concerned, and/or the coordination in this respect, no fully satisfactory solution has been found and more efforts are required concerning the publication of information of party and campaign financing.
78. In conclusion, in view of the number of recommendations which still have to be dealt with, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Italy to submit additional information on the pending recommendations, namely regarding the implementation of recommendations i-iv, v and ix on Theme I – Incriminations, and recommendations iv and vi on Theme II – Transparency of Party Funding by 30 September 2017 at the latest.
79. Finally, GRECO invites the authorities of Italy 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.