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Third Evaluation Round

Compliance Report on Andorra

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of political party funding”

Adopted by GRECO
at its 61st Plenary Meeting
(Strasbourg, 14-18 October 2013)

I. INTRODUCTION

1. This Compliance Report assesses the measures taken by the Andorran authorities to implement the 20 recommendations issued in the Third Round Evaluation Report on Andorra (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17 and 19.1 of the Criminal Law Convention on Corruption (ETS 173); Articles 1-6 of the Additional Protocol thereto (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of political 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 51st Plenary Meeting (27 May 2011) and made public on 27 May 2011, following authorisation by Andorra (Greco Eval III Rep (2010) 11E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Andorran authorities submitted a Situation Report on measures taken to implement the recommendations. This report, which was received on 30 November 2012 and supplemented by additional information received on 9 August 2013 (including the draft of a new law on political parties), served as a basis for the Compliance Report.
4. GRECO selected Austria and Switzerland to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Mr Christian MANQUET (head of unit in the Directorate of Criminal Legislation, Federal Ministry of Justice), on behalf of Austria, and Mr Jean-Christophe GEISER (*collaborateur scientifique* at the Federal Justice Department), on behalf of Switzerland. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendations (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

Theme I: Incriminations

6. In its evaluation report, GRECO addressed 10 recommendations to Andorra in respect of Theme I. Compliance with these recommendations is dealt with below.
7. Generally, the Andorran authorities report that, after GRECO's 54th plenary meeting in December 2011, the Government asked the Joint Committee (consisting of specialists from the Financial Intelligence Unit, the Andorran National Institute of Finance, the Ministry of the Economy, the Ministry of Finance, the Ministry of External Affairs, the Ministry of Justice and the Interior, and the prosecution service, as well as outside advisers) to consider possible changes to criminal

legislation on Theme I (incriminations) of the report. Following meetings held during the first half of 2012, amendments were proposed on the basis of the recommendations in the Third Round Evaluation Report. The proposals were approved after discussion among the members, then at Government level. Draft legislation was subsequently tabled in July 2012 and approved by Parliament (*Consell General*) on 11 October 2012: a) Act 18/2012 amending various provisions of the Criminal Code relating to corruption, notably in Articles 15 to 23; b) Act 19/2012 amending various provisions of the Code of Criminal Procedure, particularly in response to GRECO's recommendations. Both laws came into force on 15 November 2012 (the day after their publication in the official gazette). In the case of some recommendations, however, the Principality of Andorra preferred to maintain the existing situation.

Recommendation i.

8. GRECO recommended that the notion of advantage in the offences of bribery and trading in influence be extended to take clear account of all forms of benefit, material and non-material and whether or not they have a calculable financial value, in accordance with the notion of "any undue advantage", as it appears in the Criminal Law Convention on Corruption (ETS 173).
9. The Andorran authorities report that Act 18/2012 made changes to the wording of the various offences concerned in order to take account of this recommendation; hence, in the text of Articles 380, 381, 383 and 384 of the Criminal Code (on active and passive bribery) and in the text of Article 386 (on active and passive trading in influence), the concept of "undue advantages" was introduced in place of the expression "advantages with a potential financial value" (see below).
10. The wording of the offences as revised is now as follows (for practical reasons, all the planned amendments are set out below):

Article 380. Bribery

1. Authorities or public officials who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, **undue advantages**~~with a potential financial value~~ or accept an offer or a promise in order to act or take a decision relating to their official position, **or refrain from doing so**, shall be punished by **up to two years' imprisonment**~~a fine of up to three times the value of the advantage~~ and suspension from a public post of up to three years.

2. Individuals who offer, deliver or promise **undue advantages**~~with a potential financial value~~ to an authority or official, **for their personal gain or that of a third party**, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by **detention ("arrêt")**~~fine of up to three times the value of the advantage~~.

3. An absolute excuse is the fact that individuals report the act of bribery to the authorities before being aware that an inquiry has started.

Article 381. Aggravated bribery

1. Authorities or public officials who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, **undue advantages**~~with a financial value~~ or accept an offer or a promise in exchange for an unjust action or omission, delaying an act or decision, or an act or decision of a political nature, shall be punished by up to four years' imprisonment, a fine of up to three times the value of the advantage and disqualification from occupying a public post of up to six years.

2. Individuals who offer, deliver or promise **undue advantages**~~with a potential financial value~~ to an authority or official, **for their personal gain or that of a third party**, with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by up to two years' imprisonment, a fine of up to three times the value of the advantage and disqualification from dealings with the public authorities of up to four years.

Article 382. Other subjects of bribery

The offence in the two preceding articles concerning authorities or public officials also applies to situations in which the actions or decisions described are taken against or by a foreign or international public official, or a member of an international or supranational parliamentary assembly, **or a member of a public assembly exercising legislative or administrative powers in any other state.**

This applies also to jurors, arbitrators, experts, interpreters or any other persons exercising public authority, **whether nationals or foreigners,** with the penalty of disqualification from occupying a public post replaced by disqualification from exercising the profession or post concerned.

Article 383. Judicial bribery

1. Judges who, for their personal gain or that of a third party, request or receive, personally or via an intermediary, ~~undue advantages with a potential financial value~~ or accept an offer or a promise in order to take or refrain from taking an action or decision relating to their official position shall be punishable by three months' to three years' imprisonment, ~~a fine of up to three times the value of the advantage~~ and disqualification from occupying a public post for of up to six years.

2. Individuals who offer, deliver or promise **undue advantages** with a potential financial value to a judge, **for his or her personal gain or that of a third party,** with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by ~~detention,~~ **up to two years' imprisonment,** ~~a fine of up to three times the value of the advantage~~ and disqualification from dealings with the public authorities of up to four years.

Article 384. Aggravated judicial bribery

1. In the circumstances described in Article 383.1, if the action or decision in exchange for the advantage consists in handing down an unjust decision, or unjustly delaying a decision, the penalty shall be two to five years' imprisonment, ~~a fine of up to three times the value of the advantage~~ and disqualification from occupying a public post of up to six years.

2. Individuals who offer, deliver or promise ~~undue advantages with a potential financial value~~ to a judge, **for his or her personal gain or that of a third party,** with a view to securing one of the acts or decisions described in the previous paragraph shall be punished by three months' to three years' imprisonment ~~and a fine of up to three times the value of the advantage.~~

Article 385. Mitigated judicial bribery

When the attempted bribery on behalf of the accused in criminal proceedings is carried out by the latter's spouse or de facto equivalent, or by a natural or adoptive parent, child, brother or sister, the penalty shall be a ~~fine of up to twice the value of the advantage~~ detention ("arrêt") in the circumstances described in Article 383 and a prison sentence of up to two years in the circumstances described in Article 384.

Article 386. Trading in influence

1. Persons who exercise influence on an authority or official in connection with any situation on the basis of their personal relationship with that or another official or authority to obtain a decision that could entail, directly or indirectly, ~~a financial~~ **an undue advantage** for them or for third parties shall be liable to ~~detention~~ **a prison sentence of up to two years** ~~and a fine of up to twice the advantage sought or obtained.~~ The court may also order disqualification from dealings with the public authorities of up to three years.

2. The authority or official concerned shall be liable to the same penalties and suspension from a public post of up to three years.

3. When the perpetrator is an authority or official and the influence and the influence derives from the powers inherent in the post or any personal or hierarchical relationship, he or she shall be liable to three months' to three years' imprisonment, ~~a fine of up to twice the advantage sought or obtained~~ and suspension from a public post of up to five years.

Article 386 bis. Other subjects of trading in influence

For the purposes of the preceding article, an official or authority shall mean:

1. A foreign or international public official, or a member of an international or supranational parliamentary assembly, or a member of a public assembly exercising legislative or administrative powers in any other state.

2. Jurors, arbitrators, experts, interpreters or any other persons exercising public authority, whether nationals or foreigners.

3. Officials or staff of international courts.

Article 386 *ter* [former Article 386 bis]. Secondary consequences

With regard to the offences referred to in this chapter, the court **must** ~~may~~ impose the following measures:

a) Seizure of the proceeds, within the meaning of Article 70.

b) The other measures, relating to natural or legal persons, referred to in Article 71.

11. GRECO takes note of the improvements made through the reference to advantages which no longer necessarily have a potential financial value but are simply “undue”, as in the Criminal Law Convention on Corruption. The explanatory memorandum to Act 18/2012, in which the equivalent of only one page of comments is devoted to corruption offences, offers no details regarding the implications of the change, for example the fact that it is intended to cover all forms of non-material advantage (such as a favourable decision in another case, a job, a promotion or a distinction). That would have warranted an explanation, not only in absolute terms, but also in the light of the characteristics of corruption in Andorra, since the evaluation report found that exchanges of favours are particularly widespread in practice. However, practitioners will always be able to refer to the meaning which the Convention – via its explanatory report¹—gives to this expression.
12. Nevertheless, GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended as regards active bribery offences, (i) to criminalise the granting of advantages to third party beneficiaries and (ii) to ensure that the use of intermediaries is unambiguously covered.*
14. The Andorran authorities report that Act 18/2012 amended the second paragraph of Articles 380, 381, 383 and 384 of the Criminal Code through the addition of a reference to any third party beneficiaries. This is done by repeating the expression used in the first paragraph of these articles, for example “for their personal gain or that of a third party” in the case of Article 380 (see the revised wording of the offences in paragraph 10). With regard to the second part of the recommendation, the authorities reiterate the argument already put forward when the Evaluation Report was adopted, namely that recourse to an intermediary is normally covered by Article 21 of the general part of the Criminal Code and that the introduction of an explicit reference to the use of an intermediary in the wording of the second paragraph of the above articles (even if there is already such a reference in the case of passive bribery) would affect the overall logic of the offences. It was therefore deemed preferable a) to ask the prosecuting authorities, if they see fit, to specify in a circular that offences of active bribery are committed even where recourse is had to an intermediary – the Principal State Prosecutor thought it unnecessary to adopt a written text of this kind, given the numbers involved (four deputy prosecutors in addition to himself) and the instruction was given verbally at weekly meetings; b) to include in the explanatory memorandum to Act 18/2012 a clarification to the effect that bribery is always criminalised where an intermediary is involved, under whatever article, through the application of Article 21 in cases where the provision in question makes no reference to indirect bribery.

¹ Council of Europe conventions and the related explanatory reports can be accessed on the website of the organisation's Treaty Office. For the Criminal Law Convention in particular:

<http://www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=06/06/2013&CL=FRE>

15. GRECO takes note of the measures taken in respect of the first part of the recommendation. It notes in this connection that the explanatory memorandum to Act 18/2012 specifies that the third party can be “a family member, friend etc”. The legislature could have taken the opportunity to add to the list some examples of legal persons (eg a company or political party), but, on the whole, expectations have been met. Regarding the second part of the recommendation, GRECO has certain misgivings about the fact that the instruction was only given verbally, because this is not a permanent solution (how will new deputy state prosecutors or principal state prosecutors be advised of this in future if there is no written record and they have only the good will and memory of their colleagues to rely on?), and the fact that investigating judges, who have a central role in bribery cases, have received no information. Overall, given that the explanatory memorandum seems to provide the necessary clarifications, GRECO concludes that the recommendation’s expectations are met in this case too.
16. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

17. *GRECO recommended (i) to criminalise omissions, whether they are “unjust” or not; and (ii) to clarify the notions of “unjust” actions or omissions and actions or decisions “of a political nature” in Articles 381 and 384 of the Criminal Code.*
18. The Andorran authorities give it to be understood, where the first part of the recommendation is concerned, that it was decided, following consultations and certain clarifications as to the scope of the recommendation, to amend Article 380, paragraph 1 of the Criminal Code by adding the words “or refrain from doing so”. As regards the second part of the recommendation, the same approach was adopted as in the case of recommendation ii: a) the explanatory memorandum to Amending Act 18/2012 says that “*an action or omission must clearly be deemed unjust when it is contrary to legal principles and their underlying principles, including unlawful administrative and civil [decisions/actions] in the broadest sense*”. The term “action of a political nature” refers essentially to the vote of a member of an elected assembly and, more broadly, to any decision on his or her part which is not of an administrative nature (ie in the context of committee work, a chamber or group); b) the state prosecutor gave verbal instructions regarding the meaning given above to the terms in question at his weekly meetings with his four deputies.
19. GRECO takes note of the amendment made to Article 380, paragraph 1 of the Criminal Code, as far as the first part of the recommendation is concerned. GRECO cannot be content with this measure alone because, as emphasised in the Evaluation Report, in principle the same amendment needed to be made to Article 383, paragraph 1, and this has not been done (see paragraph 10). During the finalisation of this report, the Andorran authorities stress that this omission will need to be remedied in another future amendment to the Code. As regards the second part of the recommendation, GRECO appreciates the measures taken at the level of the Andorran prosecuting authorities, but for the same reasons as given in the case of the previous recommendation, a satisfactory clarification would also need to be included in the explanatory memorandum (in order to benefit as many practitioners as possible, including investigating judges, who play a central role in bribery cases). In GRECO’s opinion, however, the further details given are insufficiently clear as to the concept of “unjust omission”. As regards “actions of a political nature”, the further details given in the explanatory memorandum ultimately provoke more questions and consequences: for example, if an action of a political nature refers to any decision by a member of an elected assembly, this would mean that, in principle, it would come systematically under Article 381 (aggravated bribery), and not Article 380 (basic offence of

bribery).The Principality should therefore take further measures to implement this recommendation in its entirety

20. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

21. *GRECO recommended that consideration be given to (i) establishing an offence of bribing members of foreign public assemblies, in accordance with article 6 of the Criminal Law Convention on Corruption (ETS 173) and, thus, (ii) withdrawing or not renewing the reservations to this article, as well as to article 10 of the Convention concerning members of international parliamentary assemblies.*

22. According to the information provided by the Andorran authorities, the reservation to Article 6 of Convention ETS 173 was not renewed when other reservations were renewed by the Andorran Minister for Foreign Affairs in a letter dated 7 October 2011. It was therefore agreed to criminalise the conduct referred to in that article by introducing an amendment into the text of Article 382, paragraph 1 of the Criminal Code ("Other subjects of bribery" - see paragraph 10 above) by means of Act 18/2012. This involved adding the words "or a member of a public assembly exercising legislative or administrative powers in any other state". At the same time, the reservation to Article 10 of the Convention has not been maintained (the declaration of 7 October 2011 states this intention in explicit terms: GRECO reiterates that this reservation was superfluous given that, at the time of the evaluation, bribery of a member of an international parliamentary assembly was already covered by Article 382, paragraph 1).

23. GRECO notes the action taken on both parts of the recommendation and welcomes the introduction of the offence of bribery of members of foreign public assemblies. Since the wording adopted by Andorra for this purpose and the existing wording concerning members of international parliamentary assemblies were taken word for word from the Convention, they do not call for any particular comments.

24. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

25. *GRECO recommended that an offence be established of the bribery of foreign arbitrators and jurors and Andorra ratifies the additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible.*

26. The Andorran authorities report that the words "whether nationals or foreigners" have been introduced into Article 382, paragraph 2 of the Criminal Code by means of Act 18/2012 (see paragraph 10 above for the new wording of this article). Protocol ETS 191 has not yet been ratified, but the Minister for Foreign Affairs signed it on 20 November 2012 during Andorra's Chairmanship of the Council of Europe. Ratification is likely to occur by the end of 2013.

27. GRECO notes with satisfaction the amendment adopted in accordance with the first part of the recommendation and the first steps taken towards ratification of the Protocol. It encourages the Principality to complete the ratification process in line with the recommendation.

28. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

29. GRECO recommended that consideration be given to (i) making bribery in the private sector an offence, in accordance with articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) and, thus, (ii) withdrawing or not renewing the reservation to these articles of the Convention.
30. The Andorran authorities put forward detailed arguments, stating in substance that it is not considered desirable to change the present system based on criminalisation of dishonest management of an undertaking under Article 240 of the Criminal Code². In the view of the Andorran authorities, Articles 7 and 8 of the Criminal Law Convention on Corruption provide for an offence which is framed in a particularly broad and open, and also excessively ambiguous, way. In particular, they consider that it is primarily an “offence of risk” which applies even if no economic loss is suffered or there is no harm to the competitiveness of the undertaking. They argue further that, although the offence is committed by managers or employees (imprecise concept) acting in breach of their duties or obligations, the Convention does not stipulate that the result must be contrary to the interests of, or harm, the legal entity to which the bribed person belongs. The conduct described in Articles 7 and 8 of the Convention is also open to interpretation or even the drawing of analogies, which is inconsistent with the principle of strict interpretation of the law (*lex certa*) by which the creation of criminal-law provisions is governed in the Principality. It was therefore decided not to introduce an offence of private-sector bribery in accordance with Articles 7 and 8 of the Convention and the reservation to these articles was renewed by letter of 7 October 2011 for a further three years.
31. GRECO takes note of the above position of the Andorran authorities. GRECO notes that Article 240 of the Criminal Code on dishonest management of undertakings criminalises passive bribery to a certain extent by making it an aggravating circumstance in cases where the directors of a company act to the detriment of their own company and jeopardise its competitiveness. However, Article 240 of the Criminal Code does not pursue the same aim as Articles 7 and 8 of the Convention and, in GRECO’s view, should not be regarded as an alternative to real criminalisation of active and passive bribery in the private sector: Whereas Article 240 is designed solely to protect private interests, Articles 7 and 8 of the Convention go much further by also protecting general interests which might be harmed as a result of bribery within an undertaking, such as fair competition in business and public procurement, quality of the environment, food safety, infrastructure safety, consumer interests, the smooth running of financial and business establishments, etc. This dimension of private-sector bribery has clearly not been taken into consideration.
32. From this point of view, GRECO does not consider that the offence of private-sector bribery in the Convention is excessively broader, more ambiguous or vaguer than the various offences of active and passive bribery in the public sector – which the Principality already criminalises without additionally requiring some form of prejudice (such as harm to the interests of the state or

²Article 240 – Dishonest management of an undertaking

The de facto or de jure directors and managers of a company or undertaking who, for their own benefit or that of a third party and taking advantage of their position and responsibilities, undertake improper operations that compromise the competitiveness of that company or undertaking shall be liable to three months' to three years' imprisonment.

When the aforementioned actions have been taken by the de facto or de jure director or manager, as part of the ordinary activities of the company or undertaking, as a result of having requested or received, personally or via an intermediary, advantages with a potential financial value for his or her own benefit or that of a third party, or having accepted such an offer or promise, the penalty shall be in the upper half of that prescribed in the first paragraph.

taxpayers, or to the proper functioning of institutions) – if one were to follow the logic of Article 240 of the Criminal Code and the reasoning of the Andorran authorities. Lastly, if passive bribery is regarded as a sufficiently serious unlawful act to constitute an aggravating circumstance under Article 240, that should logically lead to the same approach being adopted with regard to active bribery. Yet this need for parallelism is clearly one aspect that has not been considered. GRECO therefore calls on the Principality to continue reviewing the matter so as to take into account all the benefits related to the criminalisation of active and passive bribery in the private sector.

33. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

34. *GRECO recommended that consideration be given to (i) bringing the offence of trading in influence into line with the various elements of Article 12 of the Criminal Law Convention on Corruption (ETS 173), by including, in particular, the notions of remuneration and intermediaries and by extending the offence to cases in which influence has not been clearly demonstrated and/or exercised and ones involving foreign public officials, members of foreign public assemblies, international public officials, members of international parliamentary assemblies and judges and officials of international courts; and, thus, (ii) withdrawing or not renewing the reservation to this article of the Convention.*
35. The Andorran authorities report that Act 18/2012 introduced into the Criminal Code a new Article 386bis – see text in paragraph 10 – which defines the concept of “official or authority” as used in Article 386 in such a way as to include a) foreign or international officials and members of an international or supranational parliamentary assembly or of a parliamentary assembly in any other state ; b) jurors, arbitrators, experts, interpreters or any other persons exercising public authority, whether nationals or foreigners; c) officials or staff of international courts. The Principality confirmed that judges (*battle*) and prosecutors – who are not dealt with specifically as it is the case for the incrimination of bribery – are considered as “officials” for the purposes of these two articles, which thus cover trading in influence in relation with judges and other members of domestic, foreign and international courts.
36. Regarding the other recommended changes, the Andorran authorities state in substance that extending the offence – so as to cover the action of the person who wishes to exert influence by buying influence and the person who claims to be able to influence a decision, or the agreement between those persons – would be contrary to the general rules and principles of Andorran law which preclude criminalisation of the phase prior to the attempt, ie the conspiracy. Provision for this is made only in the case of terrorist funding and money laundering. Furthermore, establishing an offence of trading in influence including – in addition to the attempt, which is already covered by Andorran law – cases in which it proves impossible in practice to exert any influence would be contrary to the principle of proportionality. For these reasons, and given that another nine states have also maintained a reservation to Article 12 of the Criminal Law Convention, it was decided not to make any further changes to the offence of trading in influence and, hence, to maintain the reservation (renewed for another three years by letter of 7 October 2011).
37. GRECO notes with interest the inclusion of a new provision in the Criminal Code which extends the offence of trading in influence under Andorran law to the different categories of persons forming the target of the influence, in accordance with Article 12 of the Criminal Law Convention. This being said, all relevant aspects were not discussed/examined when considering the possibility of making the improvements suggested, in particular the idea of remuneration by the

person buying/selling influence (which might have enabled the country to reconcile the offence with the spirit of Andorran law) and the reference to direct trading in influence or trading in influence via intermediaries.

38. Overall, GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

39. *GRECO recommended that the penalties provided for in articles 380, 385 and 386.1 of the Criminal Code be increased.*
40. The Andorran authorities report that Act 18/2012 referred to in paragraph 7, which came into force on 15 November 2012, increased the quantum of the penalties for offences of a) “simple” bribery of an authority or public official under Article 380 of the Criminal Code: the fine was replaced by a prison sentence of up to 2 years for passive corruption; b) judicial bribery under Article 383: the sentence of *arrêt*³ and the fine were replaced by a prison sentence of up to 2 years for active bribery – and at the same time the fine for passive bribery was abolished; c) “mitigated” active judicial bribery under Article 385: the fine was replaced by a sentence of *arrêt* in the case of simple judicial bribery under Article 383, and the sentence of *arrêt* was replaced by a prison sentence of up to 2 years for the aggravated judicial bribery of Article 384; d) trading in influence under Article 386: the sentence of *arrêt* and the fine were replaced by a prison sentence of up to 2 years for the person exerting influence – and at the same time the fine was abolished for acts committed by an official who yields to influence in the case of paragraph 3.
41. In the light of the texts provided by the Principality, it would also seem that confiscation (“seizure”) of the undue advantage was made mandatory (and no longer optional) under Article 386ter.
42. GRECO notes with satisfaction the amendments described above. However, the increase in penalties is only modest: they have merely gone up a notch, with *arrêt* replacing fines and prison sentences replacing *arrêt*. Ultimately, Andorra is undoubtedly the only GRECO country at present where, overall, the penalties for bribery and trading in influence are so low. In particular, GRECO cannot be satisfied with the fact that active bribery of authorities or officials (Article 380, paragraph 2) is still not punishable by imprisonment, as already stressed in the Evaluation Report. The same applies to the “mitigated” active judicial bribery of Article 385 in the circumstances described in Article 383, where a person bribes a judge or prosecutor for the benefit of a spouse or relative in criminal proceedings – which constitutes a kind of mitigating circumstance in relation to the general regime of judicial bribery. GRECO therefore calls for a review of the situation where these two provisions are concerned.
43. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

44. *GRECO recommended that steps be taken to (i) ensure that Andorra has jurisdiction to deal with cases of bribery or trading in influence committed abroad by one of its public officials or involving one of its public officials or any other persons referred to in Article 17.1.c of the Criminal Law Convention on Corruption and (ii) repeal the dual criminality requirement concerning bribery and trading in influence offences committed abroad.*

³Restriction of liberty for a maximum period of 6 months, as an alternative to imprisonment.

45. The Andorran authorities report, in connection with the first part of the recommendation, that Act 18/2012 amended the two paragraphs of Article 32 of the Criminal Code defining the concept of “authorities and public officials” by specifying that the definition applies for criminal-law purposes independently of the nationality of the person concerned. With regard to the second part of the recommendation, they say that *“the elimination of the dual criminality requirement affects Andorran legal rules in a general, structural way. This requirement is a fundamental principle shared by most of the Principality’s neighbouring states. The upholding of the dual criminality principle should under no circumstances have an adverse effect on the Principality’s international co-operation undertakings, in the same way that it does not affect all the European Union states which retain it as an underlying principal of their legal rules. With this in mind, the express inclusion in the Principality’s Criminal Code of the forms of corruption provided for in the Criminal Law Convention on Corruption, including corruption in the private sector and trading in influence (adapted to bring them into line with the fundamental principles of Andorran legislation), helps to ensure the effectiveness of international co-operation mechanisms in this field, because the dual criminality principle operates in a positive way.”*
46. GRECO takes note of the information provided and measures taken to date. Where the first part of the recommendation is concerned, only some of the recommended improvements have been taken on board and, in the absence of additional information, questions remain as to the Principality’s ability to prosecute acts of bribery and trading in influence committed abroad by a foreign national, targeting or involving one of its public officials or assembly members, or any other person referred to in Articles 9 to 11 of the Convention (officials, members of an international assembly, judges or officials of an international court, provided they are Andorran nationals). Additional measures are therefore expected in this connection. As regards the second part of the recommendation, GRECO points out that the Principality has – in principle – accepted the extended jurisdiction of its courts without making use of the possibility to reserve application subject to the dual criminality requirement being met. From this point of view alone, this recommendation therefore calls for amendments in domestic law. As a subsidiary consideration, the validity of the objections put forward by Andorra appears questionable: while Andorra (which has criminal-law provisions covering each category of offence) is indeed in a position to offer assistance to a requesting country, it deprives itself, in principle, of the possibility of acting on offences committed abroad by a bribed Andorran public official or foreign bribers (at least there is a risk that any assistance provided by another country would be annulled by domestic legal actions). Ultimately, although GRECO notes some progress, the advances made in relation to this recommendation remain modest on the whole and the Principality is urged to display a more proactive approach.
47. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

48. *GRECO recommended (i) to clarify the conditions for invoking the special defence of effective regret and accordingly revise the mandatory exemption from liability or punishment and (ii) in the event of the application of this special defence, that the conditions for its applicability be studied as regards its possible uses and the risks of abuse.*
49. The Andorran authorities acknowledge that, in principle, the investigating judge – who has the power to terminate a case – leaves it to the court to assess the grounds for extinguishing or imputing criminal liability, such as self-defence, necessity, performance of duty, mental disorder, insurmountable fear, etc. However, in the case of criminal conduct (such as active bribery under

Article 280 of the Criminal Code), it should be possible for the investigating judge to assess the grounds for exemption from liability in order to avoid situations in which a person goes to court as a defendant knowing the pointlessness of the situation because an exemption is certain to be granted (although this does not affect any civil proceedings). It was therefore considered conceivable that the investigating judge should be able to decide the matter in cases of this kind (subject to a challenge by one of the parties to the proceedings, which would leave the matter in the hands of the court) and that he should be able to assess, at the stage of the preliminary procedural steps, the existence of any grounds for exemption from liability in the case of Article 280 of the Criminal Code and the other cases provided for in the Criminal Code. Act 19/2012 referred to in paragraph 7, which came into force on 15 November 2012, therefore amended the Code of Criminal Procedure by adding a second paragraph to Article 42 in order to incorporate the above considerations⁴.

50. GRECO notes that the substance of this recommendation was that a study should be made of the risks of abuse related to exemption from liability in cases of active bribery under Article 380, paragraph 3, in order to limit those risks by allowing the judge to consider the circumstances of the particular case (and to determine, for example, whether the bribe was extorted under the threat of a refusal by the bribed public official or other adverse consequences for the briber). GRECO takes note of the amendments made to the Code of Criminal Procedure at the end of 2012 and the explanations provided. In GRECO's opinion, the Principality has not addressed the problem underlying this recommendation, but has merely remedied what it perceived as a procedural problem, ie saving the briber from having to go to court when he or she has reported the facts (because – as GRECO understands it, and this confirms the relevance of the recommendation – the court would in any case hand down an acquittal). Ultimately, the amendments tend to go in the opposite direction to that intended in this recommendation.
51. GRECO concludes that recommendation x has not been implemented.

Theme II: Transparency of political party funding

52. In its Evaluation Report, GRECO addressed 10 recommendations to Andorra in respect of Theme II. Compliance with these recommendations is dealt with below.
53. The Andorran authorities state generally that a bill was drafted by the “democratic parliamentary group” in response to these recommendations. Work began in early 2012, with the group's declared aim being to regulate party funding. By the end of the year, an initial working outline (including an analysis of the existing legislative framework) was available, as was the first draft of a more general law on political parties including a section on their funding. The new text, in conjunction with the law governing the organisation of elections and referendums and the election

⁴ Article 42

“1. Upon completion of the preliminary procedural steps, the judge shall take one of the following decisions:

a) Drop the charge, dismiss the complaint or order the proceedings to be discontinued.

b) Order a stay of proceedings in accordance with the provisions of Articles 126 et seq. of this Code.

c) Initiate trial proceedings if the facts disclose an offence, or refer the case to a single-judge court if the offence is considered minor.

2. If the investigating judge considers that a ground for exemption from liability is applicable to the accused, he may, after hearing submissions from the prosecution, deliver a reasoned decision or judgment finding a lack of criminal liability and ordering the proceedings to be discontinued, without prejudice to any civil liability arising from the facts, which shall be decided by civil courts. An appeal may be lodged against this decision in accordance with the provisions of Article 194.”

financing law (as amended in 2005)⁵, should offer the necessary transparency in response to GRECO's recommendations.

54. This initial outline served as the basis for discussions with the opposition and for an assessment by the Government, in consultation with its advisers, in March 2013. The text was approved by the parliamentary group, but some fine-tuning and amendment may be required before it is laid before Parliament in September this year. The aim is to secure unanimous approval for this text. A copy of this preliminary draft "Political Parties Bill", as yet unpublished, was made available to the GRECO rapporteurs and Secretariat in August.

Recommendation i.

55. *GRECO recommended (i) regulations be introduced to ensure transparency in the financing of political parties, on an equal basis, consistent with the regulations on campaign financing and in accordance with Recommendation (2003) 4 on common rules against corruption in the funding of political parties and electoral campaigns; (ii) the relations between, on the one hand, the financing of parliamentary groups and, on the other, that of political parties and election campaigns be regulated.*
56. The Andorran authorities say that there is a strong resolve to regulate the transparency of party funding. This is one of the aims of the Political Parties Bill, whose primary purpose is to regulate the existence of political parties, which are traditionally governed by the Associations Act. The bill will need to lead to harmonisation with the legislation which currently regulates political party funding in election periods, namely the above-mentioned Election Financing Act, in order to add to and update it.
57. GRECO notes with satisfaction the on-going legislative work. With regard to the first part of the recommendation, GRECO notes that, as the Political Parties Bill currently stands, it contains a Chapter IV on political party funding which seeks to comply extensively with the rules set out in *Recommendation Rec(2003)4*. It deals with the following aspects: a) general principles and methods of funding (Articles 22 and 23); b) rules on private funding and own resources – subscriptions, donations by natural and legal persons and prohibited sources of funding, loans from credit institutions, resources derived from own activities, proceeds from assets, bequests and inheritances, ban on anonymous donations and other restrictions on support (Articles 24 to 28); c) rules on public funding of parties represented in parliament and municipal councils (Articles 29 and 30); accounting rules and obligation to appoint an accountant (Articles 31 and 32); internal and external auditing of accounts (Article 34), disciplinary offences, penalties and procedures (Articles 35 to 37). The bill includes a series of additional provisions introducing amendments to a) the Election Financing Act, b) the Criminal Code (Article 387 criminalising illegal financing of political parties); and c) the legislation relating to the Court of Auditors, which is to be the body responsible for monitoring compliance with the rules on political funding (parties and election campaigns). Provision is also made for the creation of a register of political parties.
58. GRECO has taken due note of the fact that this is a text presented as being in its early stages (the Andorran authorities call it an "outline") and the fact is that the wording leaves various points in abeyance. While GRECO appreciates the fact that the document is based extensively on *Recommendation Rec(2003)4*, it feels that it would be useful to stress at this stage that, despite Andorra's specific features and the small number of political formations that can be regarded as

⁵ The texts can be accessed at the web address www.eleccions.ad by going to the bottom of the page and clicking on "normativa".

political parties, some significant improvements appear desirable in various respects. For example, the proposed amendments to the Election Financing Act are likely to be insufficient to ensure the consistency of rules required by the interconnection between the (continuous) funding of political parties and the (more occasional) funding of election campaigns (for example, as regards forms of private support – donations and sources of funding generally). Another example of a question warranting further consideration: although political parties currently registered as associations will need, in principle, to register as parties with the new registry provided for under article 7, and to comply with the new legislation (according to the draft's first transitory provision), they still could be subjected to no rules at all if they don't even register as associations, which was the case – at the time of the visit – with the country's main two traditional parties. GRECO is concerned that if the legislation were adopted as it stands, it would keep two different regimes of which only one would reflect GRECO's expectations. This is not acceptable and it would clearly be preferable that the applicability of political financing legislation is not left to the sole decision of individual political formations (but be applicable automatically on the basis of objective criteria such as, for instance, participation in an election). During the adoption of the present report, the Andorran authorities – aware of this issue – indicated their intention to amend the first transitory provision and to ensure consistency with article 7 of the draft by requiring all political formations to register as political parties if they want to retain their ability to, i.a., participate in elections.

59. With regard to the second part of the recommendation, it is not possible to tell from Andorra's comments to what extent it has been, or will be, taken into account and the bill does not seem to address this issue, which in principle falls under the rules on use of the resources allocated to the National Council.
60. In conclusion, GRECO encourages the Principality to continue and complete its work by enacting the Political Parties Bill, while taking care to ensure consistency of rules and to address the various points in this recommendation. The question of making all political parties subject to the new rules on an equal footing will require particular attention. It concludes, therefore, that recommendation i has been partly implemented.

Recommendation ii.

61. *GRECO recommended that machinery be established to evaluate the overall system of political financing, with a view, over time, to determining with political parties the extent and nature of their obligations and what changes and clarifications are required to the relevant legislation and regulations.*
62. The Andorran authorities submit a series of comments of no real relevance to this recommendation (intention of introducing checks on political party funding and entrusting this task to an existing body, namely the Court of Auditors – see recommendation ix. and paragraphs 89 et seq. on this subject; small size of Andorran political parties; need to regulate party funding).
63. GRECO notes, for its part, that, as it stands, the draft Political Parties Bill includes an Article 34, paragraph 11 under which the Court of Auditors, acting on its own initiative or at Parliament's request, would be able to produce "reports, memoranda and studies on political party funding". GRECO considers that this proposal is consistent with the recommendation and that such documents could be the opportunity or basis for dialogue aimed at fine-tuning the rules in future. In any event, the proposal would warrant support and should be extended to political funding as a whole since, under the Election Financing Act, the Court of Auditors is not formally vested with an

advisory function or a power of proposal. The Andorran authorities indicate that in the most recent version of the draft, provision has been made to fill these gaps.

64. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

65. *GRECO recommended (i) the necessary steps be taken to ensure that appropriate accounting rules and forms clearly apply, outside of election periods, to the financing of all political formations and (ii) rules be established on the retention of accounting documents and supporting material by these formations and election candidates.*

66. The Andorran authorities report that, at this stage in the work, the draft Political Parties Bill, and more specifically the chapter on funding referred to in paragraph 57, provides for accounting obligations adapted to the legal status of political parties. They add that, in any case, the existing Company Accounts Act applies to all “employing entities” engaged in commercial or professional activities, but also more generally to “companies and other legal persons” (Article 1). The authorities believe that parties currently fulfil their accounting obligations under this article.

67. GRECO takes note of the information supplied and appreciates – where the first part of the recommendation is concerned – the inclusion of accounting obligations at this stage in the drafting of the future Political Parties Act. Article 32 as it is currently worded refers to appropriate accounting and lists a series of items which should be included (record of income and expenditure, including those relating to any elections, inventory of assets, revenue derived from the various sources of funding – public, private, own resources etc.), and provides for annual approval by each party of its accounts, including the balance sheet, profit and loss account, inventory of assets and appendices. As regards the details, the Court of Auditors will determine the applicable models and criteria at the appropriate time. GRECO encourages Andorra to carry through these plans in order to ensure full implementation of this part of the recommendation. At present, in the light of the situation described in paragraph 82 of the Evaluation Report (numerous uncertainties as to the applicable accounting rules and their effectiveness in practice), GRECO cannot be content with the presumption of application of the Company Accounts Act. With regard to the second part of the recommendation, the situation report says nothing about the measures taken or planned. GRECO notes, however, that, at this stage in the drafting, the Political Parties Bill includes an Article 32, paragraph 6 which requires political parties to keep accounting and supporting documents for a period of 5 years. That is consistent with the recommendation. However, a similar obligation would need to be placed on all formations and lists contesting elections on an “ad hoc” basis. Here too, GRECO encourages the Principality to give further – and more active – consideration to this part of the recommendation.

68. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

69. *GRECO recommended the regulations be amended to include in campaign and (in the future) political party accounts (i) contributions in kind, other than voluntary work by non-professionals – whether these be donations or services provided free of charge or at preferential rates - with a uniform system for estimating and recording their commercial value; (ii) candidates' personal contributions and (iii) the loans and similar financial services available in practice in Andorra,*

including when they are granted under advantageous conditions or free of charge and can thus be considered as a form of donation.

70. The Andorran authorities report in connection with part (i) of the recommendation that the Political Parties Bill will in principle ensure that the question of contributions in kind is dealt with. Regarding parts (ii) and (iii), “candidates’ personal contributions” and “loans and similar financial services available in practice in Andorra” may be aspects on which agreement will have to be reached between the two main political parties because they would be a novelty in the country’s legislation. The future rules will provide a classification of resources received by political parties (members’ contributions, donations etc. – see paragraph 57).
71. GRECO takes note of the above information and observes that, in the preliminary draft Political Parties Bill, Article 25, paragraph 7 provides as follows: “For the purposes of this Act, [a donation] shall be any contribution of goods or services with economic value made without any consideration in return. This does not include any voluntary work which party members and sympathisers do for the party”. This is fully consistent with part (i) of the recommendation. However, it would seem that no provision is made in the additional provisions of the draft text to ensure that the Election Financing Act, which regulates election campaign funding and is confined to financial contributions, is brought into line with the new approach. Furthermore, it still needs to be determined how the commercial value of contributions in kind will be evaluated. With regard to parts (ii) and (iii) of the recommendation, the information supplied shows that these desirable improvements have not yet been addressed/discussed in the course of the work. The preliminary draft Political Parties Bill made available to GRECO, which includes amendments to the Election Financing Act in its additional provisions, does not address these questions at this stage and, in conclusion, GRECO can only encourage the Principality to step up its work to ensure that the various points of the recommendation are addressed in their entirety. Overall, and considering the very limited progress, GRECO cannot consider that this recommendation was taken into account, even partly.
72. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

73. *GRECO recommended that current and future regulations on the financing of election campaigns and on political parties take appropriate account of the various forms of support from members and sympathisers.*
74. The Andorran authorities report that, as mentioned under the previous recommendation (paragraph 70), the future rules will provide a classification of resources received by political parties, and in particular: contributions in the form of subscriptions by members and sympathisers, including any special contributions from paid office-holders, donations (from natural or legal persons), contributions in kind, inheritances and bequests, income from party assets etc.
75. GRECO appreciates the planned improvements which could be introduced through the future Political Parties Act. While this answers some of the concerns expressed in paragraph 84 of the report, the fact remains that no similar clarifications and improvements are envisaged in connection with election campaign funding: the Election Financing Act addresses the issue of campaign funding only by setting a limit of 6000 euros on contributions by natural or legal persons and the preliminary draft Political Parties Bill includes no amendments in this respect. The question of how the future Political Parties Act and the Election Financing Act will link in with

each other also calls for further clarification (for example, will members and sympathisers be able to make contributions both to lists of candidates and to the party(ies) fielding them?) Once again, GRECO can only encourage Andorra to step up its work in order to address the different points in this recommendation.

76. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

77. *GRECO recommended that the regulations specify (i) the arrangements for taking account of the various forms of financial support and support in kind from parties to their candidates and, where relevant, the need to include corresponding amounts in candidates' accounts and (ii) the requirement that as far as possible all support and expenditure must pass through election agents and thus the relevant campaign accounts.*
78. The Andorran authorities state that the obligation already placed by the law [the Election Financing Act] on each candidate/list of candidates to open a campaign account and appoint a campaign manager to manage it is intended to ensure that the source of contributions can be verified. This obligation will be easy to verify since the future Political Parties Act, which will regulate party funding, will include an obligation to submit accounts.
79. GRECO notes, with regard to the first part of the recommendation, that the preliminary draft Political Parties Bill requires political parties to keep accounts covering revenue and expenditure, but the text would gain by providing a general list of expenses and clearly specifying election expenses. GRECO further notes that the Election Financing Act says nothing about direct or indirect contributions and support by political parties to their candidates as one of their sources of funding (or even as election expenses borne by the party) and, at this stage, the preliminary draft Political Parties Bill makes no provision for amending the Election Financing Act in this respect. Regarding the second part of the recommendation, GRECO notes that it was stressed in the Evaluation Report that, in practice, political parties are directly involved in funding their candidates' campaigns, inter alia by covering the related expenses, and that, at the same time, the question arose as to whether parties' contributions should be taken into account in candidates' campaign accounts and be subject to the limit of 6000 euros applicable to donations from legal persons (or natural persons – Article 9 of the Election Financing Act). Paragraph 85 of the report also stressed that: *“the way in which the financing and monitoring arrangements are designed and the fact that it is easy to determine the level of public funding well before the closure of the election accounts may be an incentive to particular parties not to declare all their expenditure (and thus perhaps their income) since this would in any case exceed the reimbursable amount⁶. Several of those to whom the GET spoke confirmed the relevance of its concerns.”* GRECO considers, on the whole, that in the absence of more detailed explanations from the Andorran authorities, the preliminary draft Political Parties Bill does not take sufficient account of this recommendation and, therefore, that it is not even possible to talk about partial progress.
80. GRECO concludes that recommendation vi has not been implemented.

⁶ “It is easy to calculate the level of subsidies when the results are announced and the accounts only have to be submitted to the court of auditors 60 to 80 days after the elections. A candidate list may therefore confine itself to including in its campaign accounts expenditure equivalent to the reimbursement level. The GET notes that this is not necessarily hypothetical. Thus, rather strangely the total expenses recorded in all eight (!) campaign accounts presented by the various national and local party lists standing in the April 2009 elections were almost exactly equal – with less than 1% variation – to the public reimbursements for which these lists were eligible.”

Recommendation vii.

81. GRECO recommended that adequate measures be taken to ensure that the campaign accounts of lists presented by coalitions clearly reflect the financial situation of each candidate, or group of candidates, on these lists.
82. The Andorran authorities believe that the future Political Parties Act will enhance the transparency of political funding as a whole and therefore bring improvements in this respect too.
83. GRECO notes that, as stressed in the Evaluation Report (paragraph 86): “Campaign accounts are officially maintained and presented by candidate lists, through the intermediary of their election agents. Although the appointment of joint agents for several lists would appear to be a secondary problem (see paragraph 36), real problems of transparency arise from the fact that a significant proportion of candidate lists stand under labels that in fact represent coalitions or alliances of several formations or parties, sometimes in association with independent candidates⁷: a) it becomes difficult to attribute the origin of funding, including personal contributions, the borrowers and so on, to any particular candidate or party member of such a list; b) the beneficiaries of any private contributions are no longer identifiable and it is no longer possible to determine who is supporting whom; c) one or more generous contributors with no real political ambitions could be registered as candidates on the list of a political party or alliance or an existing coalition, to give their support and possibly circumvent the ceiling on donations, and then withdraw their candidatures. The GET believes that transparency calls for a clearer picture of the individual accounts of members of coalition lists⁸.” GRECO observes that, in the absence of any (proposed) amendments to the Election Financing Act in the preliminary draft Political Parties Bill, and also in the absence of any further explanations from the Principality, it cannot consider that any action has been taken to address the concerns underlying this recommendation.
84. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

85. GRECO recommended (i) parties and/or candidates be required to publish individual donations above a certain minimum level, together with the identity of donors; (ii) the future regulations on the financing of political parties provide for the regular and timely publication of political party accounts, accompanied by the identity of major donors.
86. The Andorran authorities state that the Political Parties Act will in principle include an obligation to file accounts, but in view of the country’s small size, publication of the identity of donors (major or minor) is difficult to put in place. Nevertheless, under the preliminary draft bill as it currently stands, donations will be identified and verified by the Court of Auditors and the identity of donors will be published only in the event of judicial proceedings or an application to the courts.

⁷The system for reimbursing campaign expenses offers no indication of how the respective expenditures and receipts within coalition lists are broken down because public aid is allocated to the whole of any particular list. Its components then apportion that sum in accordance with their own internal arrangements.

⁸ Possibilities might be to include in the accounts form sub-headings for each component of or candidate on the list, to abolish the very principle of consolidated accounts and require accounts to be presented for each candidate on the list, and so on.

87. GRECO takes note of the information supplied and observes that no action has been taken (or is planned) on the first part of the recommendation, as is confirmed by a reading of the preliminary draft Political Parties Bill, which, for example, makes no provision for an amendment to the Election Financing Act to introduce arrangements for publishing the identity of “major donors” involved in financing election campaigns. The same applies to the second part of the recommendation and the identification of major donors to political parties. That leaves the question of the future publication of political parties’ accounts: the preliminary draft Political Parties Bill makes no formal provision for this either. It seems reasonable to assume that this will be an automatic consequence of the future publication of audit reports by the Court of Auditors on political parties’ annual accounts (see below the comments on recommendation ix), as is the case at present with campaign accounts. But this is a mere assumption on which – in the absence of relevant information from Andorra – GRECO cannot base its assessment of the implementation of this recommendation. For the time being, therefore, GRECO can only conclude as to the lack of any tangible developments in this area.

88. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

89. *GRECO recommended that a mechanism be established to supervise the financing of election campaigns, and – following future amendments – political parties, and that this machinery be as independent as possible of the political parties and have the necessary authority and resources to ensure proper substantial supervision.*

90. The Andorran authorities state that, in its current wording, the preliminary draft Political Parties Bill makes it a duty for parties to submit their accounts every year to the Court of Auditors, which is already the body responsible for auditing the campaign accounts submitted by (lists of) candidates. The authorities consider that this will be an effective way of ensuring transparency in political funding. They also stress that the Court of Auditors is totally independent of political parties in its capacity as the body responsible for auditing the funding of political parties and election campaigns. This institution has its own budget approved by the State Budget Act. It also possesses staff appointed in accordance with the statutory conditions (Court of Auditors Act).

91. GRECO takes note of the information submitted and stresses the particular importance of this recommendation. It reiterates the findings and analysis made in the Evaluation Report (paragraph 90), which found, inter alia, a problem of overlapping between the Election Commission’s supervision and that of the Court of Auditors, with both exercising essentially formal, fairly restricted and ineffective supervision, as well as noting the dependence of the Court of Auditors on Parliament (which formally approves its supervisory work).

92. GRECO notes that the preliminary draft Political Parties Bill apparently seeks to ensure a certain degree of effectiveness in verification of the accounts which political parties will be required to submit to the Court of Auditors by 1 April each year. Indeed, Article 33 as it is currently worded provides for verification of all accounts (including revenue from private sources) to detect any formal financial or accounting irregularities. The Court of Auditors will be able to request all relevant explanations from the party concerned and recommend measures that it should take, and initiate disciplinary proceedings leading possibly to sanctions (see recommendation x below), including where a party obstructs its work or refuses to co-operate with it. GRECO also notes that the additional provisions include proposed amendments to step up supervision of candidates’ and parties’ campaign accounts, and to amend Article 12 of the Election Financing Act in such a way

that Parliament is no longer required in future to approve the draft report by the Court of Auditors on its audit of campaign accounts. As regards the reports on parties' annual accounts, draft Article 33 of the Political Parties Bill is worded in such a way that, in this case too, the Court of Auditors performs its audit without its findings having to be approved by Parliament (and hence by the political parties themselves). This also covers the exercise of disciplinary authority, which would therefore rest solely with the Court of Auditors. All this is undoubtedly in line with the recommendation, but, once again, these are preliminary draft provisions which still have to be fine-tuned and finalised. GRECO takes this opportunity to reiterate that the link between the Electoral Commission's supervision (limited and ineffective in practice) and that of the Court of Auditors under the Election Financing Act needs to be re-examined.

93. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

94. *GRECO recommended that the legislation be supplemented by effective, proportionate and dissuasive sanctions for various breaches, including ones committed by donors, of the regulations on campaign financing and those to come on political party financing.*

95. The Andorran authorities say that the preliminary draft Political Parties Act includes a chapter on offences and fines, with a system of sanctions combining administrative and criminal-law measures.

96. GRECO takes note of the provisions in question, contained in Articles 33 to 37 of the preliminary draft text submitted by the Andorran authorities. These provisions punish breaches of the rules relating to private donations and the keeping and submission of accounts, and any other breach of the rules on political funding. To this end, the proposed article 35 paragraph 1e makes a cross reference to the whole chapter dealing with financing obligations and modalities⁹. Penalties range from a fine of twice to three times the amount of the donation to fines of between 1000 and 100,000 euros. They are applicable to any natural or legal person concerned: depending on the circumstances of the case, liability may be established in respect of the party or one or more of its members. The penalty is decided following disciplinary proceedings conducted by the Court of Auditors, with the possibility of an appeal to the High Court of Andorra. Action by the Court of Auditors is subject to a limitation period of two years. It may also refer to the prosecution service any matter where there is evidence of criminal behaviour. These various proposals, which have yet to be finalised and adopted, are clearly in line with the recommendation, especially as the final provisions, as already mentioned in paragraph 92, provide for the monitoring arrangements to be extended to compliance with the rules on funding contained in the Election Financing Act (the link between these two mechanisms will need to be examined in greater detail by GRECO once explanations have been provided).

97. GRECO concludes for the time being that recommendation x has been partly implemented.

⁹Chapter IV, in fact (the draft examined by the rapporteurs refers mistakenly to chapter III)

III. CONCLUSIONS

98. **In the light of the foregoing, GRECO concludes that Andorra has satisfactorily implemented only three of the twenty recommendations contained in the Third Round Evaluation Report.** Twelve other recommendations have been partially implemented and five have not been implemented to date. With regard to Theme I – Incriminations, recommendations i, ii and iv have been implemented satisfactorily, recommendations iii, v, vi, vii, viii and ix have been partly implemented and recommendation x has not been implemented. With regard to Theme II – Transparency of political party funding, recommendations i, ii, iii, v, ix and x have been partly implemented and recommendations iv, vi, vii and viii have not been implemented.
99. With regard to incriminations, Andorra introduced a number of improvements recommended in the May 2011 Evaluation Report by means of legislative amendments which came into force in November 2012. As a result, undue advantage is no longer necessarily financial and may now take any form, the concepts of third party beneficiary and indirect bribery have been introduced, and bribery of members of foreign assemblies is now established as an offence. Partial improvements are also noted with regard to bribery of jurors and arbitrators – it remains for Andorra to ratify the Protocol to the Criminal Law Convention, which should be a formality. Andorra continues, however, to avail itself of its right of reserve regarding bribery offences in the private sector and trading in influence. The country will also need to review a number of questions, such as those relating to extra-territorial jurisdiction of its judicial authorities or the conditions under which liability may be extinguished based on the “effective regret” provision.
100. With regard to transparency of political party funding, GRECO notes that there is a will for reform in line with the expectations of the Evaluation Report and that work is in progress on a preliminary draft “Political Parties Bill” designed to regulate, for the first time, the existence and activities of political parties, including their funding, and therefore to supplement the embryonic provisions contained in the Election Financing Act (which applies only to this very specific field). Despite being at a very early stage in its drafting, the initial text submitted by Andorra hints at a series of improvements which clearly warrant support: these include rules on the various sources of funding used by parties and monitoring of their annual accounts, with an increased role for the Court of Auditors in this regard. Clearly, however, a good many questions have not yet been sufficiently discussed: these include the question of whether political parties would actually be governed by the future rules, and the harmonisation and interlinking of the above-mentioned two texts. Other aspects require further clarification, for example as regards the annual publication of parties’ accounts. GRECO strongly encourages Andorra to carry through the planned reforms, but also to give further thought to the points in abeyance and those which seem to pose problems, such as future publication of the names of major donors, which is an important aspect in terms of the general transparency of political funding.
101. In the light of the details given in the preceding paragraphs, GRECO notes that, despite a poor result on the whole, Andorra has been able to show that substantial reforms are in progress, offering the potential to achieve an adequate level of compliance with the outstanding recommendations in the next 18 months. GRECO therefore concludes that the current low level of compliance with the recommendations is not “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It encourages the Principality of Andorra to step up its efforts to implement the outstanding recommendations. It asks the Head of the Andorran delegation to provide it with a progress report on implementation of the outstanding

recommendations (ie recommendations iii, v, vi, vii, viii, ix and x on Theme I, and recommendations itox on Theme II)by30April 2015 at the latest.

102. Lastly, GRECO asks the Andorran authorities to authorise publication of this report as soon as possible, to translate it into the national language and to make this translation publicly available.