



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Third Evaluation Round

Compliance Report on Estonia

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

"Transparency of Party Funding"

Adopted by GRECO
at its 46th Plenary Meeting
(Strasbourg, 22-26 March 2010)

I. INTRODUCTION

1. The present Compliance Report assesses the measures taken by the Estonian authorities to implement the 17 recommendations issued in the Third Round Evaluation Report on Estonia (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 37th Plenary Meeting (4 April 2008) and made public on 15 April 2008, following authorisation by Estonia (Greco Eval III Rep (2007) 5E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Estonian authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 30 October 2009, it was updated on 24 January 2010 and served as a basis for the Compliance Report.
4. GRECO selected Hungary and the United States of America to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were M Akos KARA, Deputy Head of Department, Hungary, and Ms Jane LEY, Deputy Director, US Office of Governmental Ethics, USA. 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 recommendation (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. It was recalled that GRECO in its evaluation report addressed 8 recommendations to Estonia in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended to ensure that active and passive bribery of members of domestic public assemblies, members of foreign public assemblies and members of international parliamentary assemblies are criminalised in accordance with Articles 4, 6 and 10 of the Criminal Law Convention on Corruption (ETS 173).*

8. The authorities of Estonia report that Section 288 (3) of the Penal Code has been amended in order to provide for a broader coverage in respect of foreign and international officials. The new legislation, which entered into force on 28 July 2008, reads: *“An official in the crimes specified in § 293–298¹ of this Code is also a foreign official. A foreign official is an appointed or elected person who performs legislative, executive or judicial functions in any foreign country or in its administrative unit of any level, or who performs a public function on behalf of a foreign state, its administrative unit, public authority or public undertaking, as well as an official or representative of an international organisation in public law, including a member of an international representative body or court”* (Unofficial translation).
9. The authorities add that a draft Anti-Corruption Act, currently pending before Parliament, extends the definition of an official to persons who, *inter alia*, perform “legislative tasks”. Furthermore, draft amendments concerning the Penal Code, also pending in Parliament, contain a reference to that definition in order to criminalise active and passive bribery of members of domestic public assemblies in Estonia. The draft laws are expected to be adopted in 2011.
10. GRECO takes note of the progress reported and is pleased that the new legislation adopted criminalises bribery of foreign and international members of public assemblies. Moreover, draft legal amendments concerning the definition of a public official aiming at criminalising active and passive bribery of members of domestic assemblies, are pending before Parliament. For that reason the compliance with this recommendation is not yet complete.
11. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

12. *GRECO recommended to amend current legislation in respect of bribery in the private sector in order to clearly cover the full range of persons who direct or work for, in any capacity, private sector entities as provided for in Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173).*
13. The authorities of Estonia indicate that draft amendments in respect of Section 288 (2) of the Penal Code have been submitted to Parliament in order to provide a wider definition of an “official” which would extend to the categories of persons who are to be covered by private sector bribery. The draft Section reads as follows: *“An official in crimes specified in § 293–298 of this Code is also an arbitrator, a natural person who has competence in acting in the name of another natural or legal person to defend the person’s economic or other interests by making a decision, performing an act or transaction, or by participating in the substantial preparation thereof”*. The authorities have added that the draft section would cover every person with the competence to act on behalf of another person under private law. The current text would exclude that just any person in an agency would be covered, for example, a person who cannot influence the interest of an entity he or she is working for would fall outside the definition.
14. GRECO appreciates that the draft amended text in Section 288 (2) of the Penal Code provides for a much wider definition of the circle of persons covered by private sector bribery than the current legislation does. The draft section does not correspond literally to the requirements of articles 7 and 8 of the Criminal Law Convention which *inter alia* refer to “any person who direct or work for, in any capacity, private sector entities”, covering employment as well as other types of work relations involving agents, consultants and the like. GRECO takes the view that the proposed amendments could well have been drafted in a language that would better correspond

to the wording of the Criminal Law Convention; however, it appears that the amended text is aimed at providing a sufficiently broad definition of the persons covered by private sector bribery. Further clarifications in the Parliamentary process would nevertheless be beneficial for the sake of clarity. Despite this, GRECO cannot point at a particular private sector representative that clearly would fall outside the draft definition and would therefore conclude that the current provision recommendation appears to be in compliance with the requirements of the pertinent articles of the Criminal Law Convention, but the draft amendments to section 288(2) of the Penal Code are not yet adopted by Parliament.

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

Recommendation iii.

16. *GRECO recommended to criminalise active and passive bribery of domestic and foreign arbitrators in accordance with articles 2, 3 and 4 of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) and to sign and ratify this instrument as soon as possible.*
17. The authorities of Estonia report that in order to criminalise active and passive bribery of domestic and foreign arbitrators, draft amendments to Section 288 (2) of the Penal Code are currently pending before Parliament. In the draft legislation the definition of an official has been explicitly extended also to cover arbitrators, both domestic and foreign arbitrators, according to the authorities (see draft text above; recommendation ii). The authorities add that the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) is to be signed and ratified following the adoption of the draft amendments.
18. GRECO takes note of the information provided and is of the opinion that the recommendation will be properly implemented once the above draft amendments to Section 288(2) of the Penal Code have been adopted and subject to and the subsequent ratification of the Additional Protocol to the Criminal Law Convention.
19. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

20. *GRECO recommended to ensure that a gratuity-based offence following an earlier bribe-based offence (and vice versa) can give rise to an aggravated sentence.*
21. The authorities of Estonia report that draft amendments to Sections 293 (accepting of gratuities) and Section 294 (accepting of bribes) of the Penal Code are currently pending before Parliament, according to which an earlier acceptance of either a bribe or a gratuity in respect of any of these offences may lead to a five year prison sentence instead of up to 3 years' imprisonment. The authorities add that the same draft law contains amendments in respect of all active and passive bribery/gratuity offences, i.e. sections 297 and 298 of the Penal Code.
22. GRECO notes that the amendments referred to by the Estonian authorities would, if adopted, resolve the problem of inconsistency as highlighted by GRECO in the Evaluation report. The authorities have stated that other provisions will be amended following the same logic, however, nothing concrete has been reported about similar drafting measures in respect of the active forms of the same offences (sections 297 and 298). Further efforts are accordingly required in this respect

23. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

24. *GRECO recommended to ensure that the active and passive bribery offences are construed in such a way as to cover instances where the advantage is not intended for the official him/herself but for a third party.*

25. The authorities of Estonia report that Sections 293 (1) (accepting gratuities) and 294 (1) (accepting bribes) of the Penal Code have been amended to explicitly provide that these offences would also cover situations where the advantage is intended for a third party. The relevant parts of these amended sections now read : *“An official who consents to a promise of property or other benefits or who accepts property or other benefits for himself or herself or for a third party in return for...”*. The amendments entered into force on 28 July 2008.

26. GRECO welcomes that the legislation in respect of passive bribery/acceptance of a gratuity has been amended in accordance with the recommendation. GRECO notes that these amendments also apply to active bribery as the elements of the passive offences are mirrored in the active offences.

27. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

28. *GRECO recommended (i) to criminalise active trading in influence as a principal offence; (ii) to include the request of an advantage in the offence of passive trading in influence; and (iii) to clarify what should be considered “illegal use of influence” in order to ensure that all instances of an asserted or confirmed improper influence are covered.*

29. The authorities of Estonia report that the implementation of this recommendation has been made part of a working plan of the Ministry of Justice which aims at drafting necessary legal amendments in order to comply with the recommendation. A draft law is planned to be submitted to Parliament in September 2010.

30. GRECO concludes that recommendation vi has not been implemented.

Recommendations vii and viii.

31. *GRECO recommended to abolish the requirement of dual criminality with respect to the offences of bribery and trading in influence committed abroad. (recommendation vii)*

32. *GRECO recommended to establish jurisdiction over offences of bribery and trading in influence committed abroad by/or involving Estonian public officials and members of domestic public assemblies who are not Estonian citizens. (recommendation viii)*

33. The authorities of Estonia report that Chapter 1, section 7 of the Penal Code, which deals with the rules on criminal jurisdiction, has been amended in order to enlarge the scope of Estonian jurisdiction in respect of bribery offences (including gratuities) and trading in influence. The new paragraph (2) to section 7, which entered into force on 28 July 2008 reads: *“The penal law of Estonia applies to...granting of gratuity or giving a bribe to a foreign official, peddling of influence*

by a foreign official, and to other crimes that are related to these crimes, which are committed by an Estonian citizen or an alien who has been detained in Estonia and who is not extradited, or a legal person registered in Estonia". The authorities submit that this amendment concerns bribery of foreign officials and provides that even if bribery is not punishable where the offence is committed, Estonians are to be held liable under Estonian law. The authorities also submit that in other situations covered by these recommendations, Article 8 of the Penal Code would be applicable as the Criminal Law Convention of Corruption is binding upon Estonia. Article 8 of the Penal Code reads: "*Regardless of the law of the place of commission of an act, the penal law of Estonia shall apply to an act committed outside the territory of Estonia if the punishability of the act arises from an international agreement binding on Estonia*".

34. GRECO notes that the wording of section 7 (2) of the Penal Code, applies to bribery and trading in influence of foreign public officials and other crimes that are related to these crimes. GRECO accepts that this new legislation provides for a wider jurisdiction than was the case in the past. However it does not cover all possible situations included in recommendation vii. It appears, for example that private sector bribery abroad would not be included in the definition. It follows that section 7 (2) of the Penal Code only partially abolishes the dual criminality requirement concerning corruption offences. The reference to section 8 of the Penal Code as a general principle that would cover all other situations, was already dealt with in the Evaluation report (paragraph 74). GRECO recalls that officials met at the time were quite uncertain about this argument as there was no case law to support it and that this position would raise further questions, for example, as to the applicability of universal jurisdiction to citizens of states which have not acceded to the international treaty in question. GRECO maintains its previous position that it has not been substantiated that section 8 of the Penal Code would overrule the dual criminality requirement in all other situations, covered by recommendation vii.
35. Moving to recommendation viii, GRECO recalls that Article 17 1.b of the Criminal Law Convention extends the nationality jurisdiction to public officials and members of domestic public assemblies even if they are not citizens of the state where they have their public position. Such a situation is, for example, possible within a municipality in a member state of the European Union. GRECO cannot see that the wording of section 7 (2) of the Penal Code addresses these kinds of situation. GRECO furthermore maintains its position in respect of the applicability of section 8 of the Penal Code also in respect of recommendation viii.
36. GRECO concludes that recommendation vii has been partly implemented and that recommendation viii has not been implemented.

Theme II: Transparency of Party Funding

37. It was recalled that GRECO in its evaluation report addressed 9 recommendations to Estonia in respect of Theme II. Compliance with these recommendations is dealt with below.
38. The Estonian authorities report in respect of all 9 recommendations that draft legislation has been prepared in order to meet the requirements. The draft legislation, which is named "*Political Parties and Persons Running as a Candidate for Elections financing Act*" (hereinafter "the draft PPA") has been prepared by the Ministry of Justice and is foreseen to replace the existing Political Parties Act (PPA). The draft PPA Act has been approved by the Government and it is expected to be dealt with by Parliament during the first half of 2010.

Recommendation i.

39. *GRECO recommended to broaden the definition of entities related, directly or indirectly, to political parties or otherwise under their control, and to oblige political parties to include such entities both in their annual reports and in their reports on election campaign financing.*
40. The authorities of Estonia report in relation to the first part of the recommendation, i.e. to broaden the definition of entities, that the draft PPA, § 12⁶ (1) provides a definition of an entity related to a political party which is broader than the definition in the current law as the definition includes foundations and not only non-profit organisations. According to the draft, there does not have to be a legal connection between a political party and the entity related; however, two conditions must be met: firstly, the entity's activities have to be targeted at achieving the aims of a political party and secondly, the political party must exercise control over the entity. Furthermore, in order to avoid party activities being carried out through other legal persons, the draft PPA prohibits parties from establishing any other legal persons or being members of, or a shareholder in, other legal persons.
41. The authorities report, in respect of the second part of the recommendation, that in accordance with subsection 4 of § 12⁶ of the draft PPA, political parties are obliged to inform the National Electoral Committee of the entities related to them. According to § 12⁹ of the same draft, political parties are also obliged to include the accounts of connected entities in their annual reports as well as to include the costs of the entity in their electoral campaign reports (§ 12⁸ (1)).
42. GRECO has seen the draft legal amendments and welcomes the information concerning the possible changes in current legislation which, if adopted by Parliament, appear to meet the concerns raised by GRECO in relation to the recommendation.
43. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

44. *GRECO recommended to ensure that membership fees are not used to circumvent the transparency rules concerning donations.*
45. The authorities of Estonia report that the requirements of this recommendation have been addressed in the draft PPA, § 12³ which makes an explicit distinction between membership fees and donations. Donations and membership fees will have to be registered separately and disclosed on the tenth day of the first month of the calendar quarter in a public register kept by the party. Data disclosed would include the name of the donor/membership fee payer; ID code; amount of donation/membership fee and the date of payment.
46. GRECO takes note of the information provided. The information submitted suggest that the proposed legislation has the potential of enhancing transparency considerably and thus remedying the shortcoming that triggered the current recommendation.
47. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

48. *GRECO recommended to require political parties, independent candidates and election coalitions to provide more detailed and complete reports on election campaign financing, in respect of the required level of itemisation of income and expenditure.*
49. The authorities of Estonia submit that the draft PPA, § 12⁸, provides for more detailed regulation concerning the itemisation of election campaign funds and expenditures than is the case with the current law. Moreover, the draft PPA aims at making no distinction between political parties, independent candidates and election coalitions in terms of their reporting obligations (§5¹ (3) and § 5² (5)). Section 12¹ (2) defines the parties' sources of funds as membership fees, state budget allocations, donations and other transactions. Draft section 12⁸ (4) contains requirements for the reporting of expenditures that are to be included, such as costs relating to communication, labour, advertising, publication etc. Government contributions and income from other transactions are to be included in the report of an election campaign. Furthermore, political parties are to disclose donations and membership fees quarterly on their respective websites.
50. The authorities also refer to new instructions prepared by the Estonian Anti-Corruption Select Committee for the purpose of assisting political parties with their reporting of campaign expenditure. The instructions are available on the webpage of the Select Committee and include forms for declaring expenditures. (The draft PPA foresees the transfer of the Committee's competences to the responsibility of the National Electoral Committee, see recommendations vi and vii, below.)
51. GRECO takes note of the information provided, including the draft legislation. What has been reported would, if the draft legislation is adopted, certainly lead to more detailed and complete reporting with regard to income and expenditures in relation to election campaigns. GRECO welcomes the "instructions" issued by the Select Committee, which can be useful in providing more comparable reports in the future; these instructions obviously need to be updated in the light of new legislation coming into being.
52. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

53. *GRECO recommended that political parties, independent candidates and election coalitions be required to publish at regular intervals, defined by law, the donations (cash and non-cash) received, including, if appropriate, during the electoral campaign period.*
54. The authorities of Estonia refer to the draft PPA, § 12³, according to which *political parties* are to be obliged to disclose donations and membership fees on the tenth day of the first month of the calendar quarter. This rule also includes donations in kind, the value of which has to be calculated. The authorities stress that it was not deemed necessary to establish additional reporting during election campaigns in addition to the above quarterly reporting.
55. As far as *independent candidates* are concerned, the authorities submit that income declarations would be controlled by the National Electoral Committee, which – as a possible future monitoring body – would have such a mandate, according to the draft PPA, §§ 12¹⁰ and 12¹¹. Furthermore, independent candidates would be obliged to inform the Committee of their bank accounts used for elections.

56. The authorities stress that *election coalitions* are non-profit associations according to the draft PPA and that they are obliged to declare donations on election campaign financing in their annual reports (§ 5¹ (3) and 12⁸). The obligation to submit annual reports follows from § 36 of the Non-profit Associations Act; such reports are to be filed within 6 months from the end of the financial year. Moreover, election coalitions would only be allowed to use bank accounts that are reported to the National Electoral Committee.
57. GRECO takes note of the information provided. The draft PPA provides for clear rules on the reporting of donations to political parties; this has to be done within a certain period of time of receipt of the donation. GRECO acknowledges that political parties are by far the most important actors in Estonian elections, however, it cannot disregard that no specific regular reporting obligation on the part of independent candidates appears to be foreseen in the draft legislation, other than the possibility of the National Electoral Committee requesting reports if deemed necessary. As far as election coalitions are concerned, the annual accounts continue to be the only form for reporting donations in addition to the campaign reports. GRECO notes that apart from the rules concerning political parties, the authorities have not substantiated any real progress in line with the recommendation. Furthermore, the proposed rules seem not to have taken into consideration the value of reporting reasonably contemporaneous donations to a party during a election campaign nor are the reports of donations to independent candidates and election coalitions regularly available. GRECO therefore considers that what has been achieved so far represents only partial improvements in terms of the transparency of donations.

58. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

59. *GRECO recommended that the timeframes for publication of annual reports by political parties be clearly specified by law.*
60. The authorities of Estonia state that the concern of the recommendation is dealt with in the draft PPA, § 12⁹, which stipulates that the financial year coincide with the calendar year and that political parties are to submit their annual accounts – no later than on the 30th of June of the following year – to the registration department of the pertinent court, which in turn is responsible for the publishing of the accounts on the Internet (web search system).
61. GRECO notes that if the draft legislation is adopted, the current system, where the publication of party accounts lies with the parties themselves, will be replaced by a system where the public authorities, i.e. the competent courts, will be responsible instead. GRECO welcomes this proposal – which goes beyond the current recommendation – as such a model is likely to overcome the problem in Estonia described in the Evaluation report of parties publishing their accounts in an uncoordinated manner and as late as possible, if at all.

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

Recommendations vi and vii.

63. GRECO recalls that recommendations vi and vii deal with closely related matters. Following the Estonian proposal of mandating one single body (the National Electoral Committee) to monitor regular political financing as well as election campaign financing, these recommendations will be dealt with together but in the opposite order.

64. *GRECO recommended to assign the monitoring in respect of the funding of political parties and electoral campaigns to an independent body which is given the mandate, the authority, as well as the financial and personnel resources to effectively supervise such funding, to investigate alleged infringements of political financing regulations and, as appropriate, to impose sanctions. (recommendation vii)*
65. *GRECO recommended that the monitoring of campaign financing should be complemented by a supervision of political parties' accounts. (recommendation vi)*
66. The authorities of Estonia report that it is foreseen in the draft PPA to replace the current system of monitoring of party financing by the Select Committee of the Parliament, with a model where all monitoring of political financing (not only in respect of parties) is to be under the responsibility of the National Electoral Committee. The authorities stress that the National Electoral Committee, which consists of high level state officials, and which would also include members of the Financial Supervision Authority (State Audit) and the Estonian Board of Auditors, would fulfil the requirements of independence and professionalism. Moreover, the National Electoral Committee is already assisted by a permanent secretariat.
67. The authorities explain that the draft PPA broadens the mandate of the National Electoral Committee in comparison with the current mandate of the Select Committee. Above all, it is supposed to centralise the monitoring of the financing of political parties, candidates nominated by parties, election coalitions and individual election candidates, in respect of regular financing as well as the financing relating to election campaigns. The competences of the Committee are contained in § 12¹⁰ of the draft PPA, which reads:
- “(1) The National Electoral Committee shall verify whether a party, an election coalition and an independent candidate comply with the requirements set out in this Act.
- (2) If the National Electoral Committee, based on the donor's financial status, has the suspicion of the donor's ability to donate from his or her assets, the National Electoral Committee has the right to obtain data on donor's income declaration from the Tax and Customs Office. If the National Electoral Committee, based on the income declaration, has the suspicion of the donor's ability to donate from his or her assets, then the donor is required to demonstrate to the committee from which assets the donation is made.
- (3) The National Electoral Committee has the right to request upon verification of reports of a political party, election coalition, independent candidate and third party, the relevant documents. The National Electoral Committee has the right to receive information from the Tax and Customs Office on income declaration of a person who stood as a candidate in elections.
- (4) The National Electoral Committee has the right to issue a precept.
- (5) If the National Electoral Committee identifies, in the verification process, acts with misdemeanour or criminal elements, it shall transfer the materials to the pre-trial investigator or to the investigative body.”
68. The authorities stress in respect of recommendation vi that the draft PPA provides the Electoral Committee with a mandate to monitor also expenditures outside the narrow scope of an election campaign. Moreover, political parties, independent candidates and election coalitions would according to the draft PPA be obliged to have a bank account for the election financing and it would be their obligation to report the details of such accounts to the National Electoral Committee.
69. GRECO recalls that the current monitoring system of political financing in Estonia was considered in the Evaluation report not to be fully in line with the requirements of Article 14 of *Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns* for three main reasons. Firstly, there was no comprehensive framework providing for a precise mandate to carry out substantial monitoring. GRECO notes that the draft PPA provides for such a framework which covers regular monitoring as well as

supervision in respect of elections. Secondly, it was considered by GRECO that the Select Committee was not sufficiently equipped to carry out monitoring which could require a proactive approach. In this respect, GRECO notes that the draft PPA aims at providing the National Electoral Committee with appropriate expertise and that it has a sufficient secretariat. The third point of criticism in the Evaluation report was the lack of independence from the parties of the Select Committee. The National Electoral Committee, which consists of various high level officials appointed by the Chief Justice of the Supreme Court and other officials appointed by the Chancellor of Justice, the Auditor General, the Chief Public Prosecutor, the Secretary General of Parliament and the State Secretary, has the status of an independent body. Furthermore, it is foreseen to provide the Electoral Committee with powers to investigate cases and to impose sanctions concerning regular as well as election financing of political parties, candidates and election coalitions. Consequently, it would appear that the draft PPA is also in this sense in line with the requirements of such a mechanism.

70. GRECO concludes that recommendations vi and vii have been partly implemented.

Recommendation viii.

71. *GRECO recommended to establish, in addition to the existing arsenal of criminal sanctions, more flexible sanctions with regard to the infringement of rules concerning the funding of political parties and electoral campaigns, including administrative sanctions.*
72. The authorities of Estonia state that the draft PPA provides the National Electoral Committee with the power to issue instructions (§ 12¹¹) and to impose penalty payments (up to 100 000 kroons – 6 390 EUR) (§ 12¹²) to political parties, election coalitions or independent candidates, in case of failure to comply with precepts issued.
73. GRECO takes note of the content of the draft legislation, providing for administrative sanctions, which are supposed to be used without having to involve the more cumbersome criminal procedure. The draft legislation would, if adopted, address the core requirements set out in the recommendation.
74. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

75. *GRECO recommended to provide for effective, proportionate and dissuasive sanctions with regard to the infringement of rules concerning electoral campaigns by candidates for election or by election coalitions, and to require candidates and election coalitions to return illegal donations to the donor or to the State budget.*
76. In respect of the first part of the recommendation, i.e. to provide for sanctions in respect of infringements by election candidates or election coalitions, the authorities of Estonia refer to the response under recommendation viii. In addition, they report that the draft PPA, contains sanctions in case of infringements of certain obligations, such as registration of donations or late submission of election campaign reports. Political parties, independent candidates and election coalitions may in these situations be subject to a fine of up to 300 units (18 000 kroons – 1 154 EUR).

77. Concerning the second part of the recommendation, (“illegal donations”), the authorities refer to the draft PPA (§ 12⁴), according to which a political party is to return a prohibited donation immediately to the donor and if this is not possible, the party is obliged to transfer the donation – or its value – to the state budget. In case these rules are not adhered to, the party may be sanctioned with a loss of part of its state allocations or to pay a penalty – in both cases equivalent to three times the value of the illegal donation. According to the draft PPA, these rules would also apply in respect of election coalitions and independent candidates (§§ 5¹ (3), 5¹ (4) in conjunction with section 12⁴). The authorities also report that pecuniary penalties in respect of political parties, election coalitions and individual candidates for such violations are foreseen to be introduced into the Penal Code.
78. GRECO takes note of the information provided. It welcomes the intentions to establish a legal framework to provide for sanctions as a result of infringements of the rules foreseen in respect of political financing, covering political parties, election candidates and election coalitions. The draft legislation, if adopted, would appear to meet the requirements of recommendation ix.
79. GRECO concludes that recommendation ix has been partly implemented.

III. CONCLUSIONS

80. **In view of the above, GRECO concludes that Estonia has implemented satisfactorily only one of the seventeen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation v has been implemented satisfactorily, recommendations i – iv and vii have been partly implemented and recommendations vi and viii have not been implemented. With respect to Theme II – Transparency of Party Funding, all recommendations (i – ix) have been partly implemented.
81. In relation to Theme I (Incriminations), Estonia has dealt with some fundamental lacunae in its criminal legislation through the adoption of new legislation; the criminalisation of bribery of members of foreign and international public assemblies is an important achievement and, furthermore, draft legislation aiming at the criminalisation of bribery of domestic members of public assemblies, bribery in the private sector and bribery of arbitrators appears to be well underway (pending before Parliament). Estonia has also produced draft legal amendments where minor adjustments of the law are necessary for full compliance with the Criminal Law Convention, for example, to include “third party beneficiaries” in the bribery offences. However, the authorities have not yet reported any concrete measures for the inclusion of active trading in influence into the Penal Code and furthermore, they have not convinced GRECO that new legislation reported in respect of the extension of Estonian jurisdiction abroad complies fully with the requirements of the Criminal Law Convention. In conclusion, Estonia has entered into an in-depth reform process which has already lead to some noticeable achievements; however, further determined efforts in respect of a number of recommendations are indispensable.
82. In so far as Theme II (transparency of party funding) is concerned, GRECO is pleased that Estonia has presented a substantial and holistic reform process, where almost all concerns raised by GRECO in its Evaluation report have been considered carefully. The draft law on “*Political Parties and Persons Running as a Candidate for Elections financing Act*”, currently before Parliament would, if adopted, appear to meet a large majority of the concerns raised by GRECO. The authorities are encouraged to pursue their commendable efforts in this respect to establish a solid legal framework for political financing in Estonia.

83. In the light of what has been stated in paragraphs 80 – 82, GRECO notes that Estonia has been able to demonstrate that substantial reforms with the potential of achieving an acceptable level of compliance with the pending recommendations within the next 18 months are underway. GRECO therefore concludes that the current low level of compliance with the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO’s Rules of Procedure. GRECO invites the Head of delegation of Estonia to submit additional information regarding the implementation of recommendations i – iv and vi – viii (Theme I – Incriminations) and recommendations i – ix (Theme II – Transparency of Party Funding) by 30 September 2011.
84. Finally, GRECO invites the Estonian authorities 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.