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Third Evaluation Round

Second Compliance Report on San Marino

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

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"Transparency of Party Funding"

Adopted by GRECO
at its 86th Plenary Meeting
(26-29 October 2020)

I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of San Marino to implement the five pending recommendations issued in the Third Round Evaluation Report on San Marino (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 71st Plenary Meeting (18 March 2016) and made public on 12 July 2016, following authorisation by San Marino (Greco Eval III Rep (2016) 2E, [Theme I](#) and [Theme II](#)). The Third Round Compliance Report was adopted by GRECO at its 80th Plenary Meeting (22 June 2018) and made public on 18 March 2019, following authorisation by San Marino ([GRECO RC3\(2018\)9](#)).
3. As required by GRECO's Rules of Procedure, the authorities of San Marino submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 January 2020 and served as a basis for this Second Compliance Report.
4. GRECO selected Iceland to appoint a rapporteur for the compliance procedure on Theme I - Incriminations. The Rapporteur appointed was Mr Helgi Magnús GUNNARSSON. He was assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. It is recalled that GRECO in its Evaluation Report addressed four recommendations to San Marino in respect of Theme II – Transparency of Party Funding and all of them were considered implemented satisfactorily or dealt with in a satisfactory manner in the Compliance Report. Thus, there are no further recommendations concerning Theme II to be assessed in this report and the focus is on Theme I – Incriminations (see below).

II. ANALYSIS

Theme I: Incriminations

6. It is recalled that GRECO in its evaluation report addressed six recommendations to San Marino in respect of Theme I. Recommendation i was considered satisfactorily implemented. Compliance with the remaining recommendations is dealt with below.

Recommendation ii

7. *GRECO recommended ensuring that all bribery offences are construed in such a way as to explicitly cover instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official him/herself but for third parties.*
8. GRECO recalls that a draft amendment to the law had been prepared by the Inter-departmental Working Group on GRECO; however, given its early stage, the recommendation was assessed as not implemented.

9. The authorities of San Marino now indicate that Law No. 119 of 2 August 2019 (Article 3) introduces amendments to the Criminal Code (Article 374 *quater*), which provide for all bribery offences to cover instances of bribery committed through intermediaries, as well as instances where the advantage is not intended for the official him/herself but for third parties.
10. GRECO has seen the amended legislation and is pleased to note the action taken by San Marino to ensure that all bribery offences cover intermediaries and third parties. It will be important to ensure that this will also be the case once San Marino criminalises trading in influence, as per recommendation iv.
11. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii

12. *GRECO recommended explicitly criminalising active and passive bribery of domestic and foreign arbitrators and of foreign jurors in conformity with Articles 4 and 6 of the Additional Protocol to the Criminal Law Convention on Corruption.*
13. GRECO recalls that draft legislation had been prepared by the Inter-departmental Working Group on GRECO; however, given its early stage, the recommendation was assessed as not implemented.
14. The authorities of San Marino now report that Law No. 119 of 2 August 2019 (Article 2) introduces amendments to the Criminal Code (Article 374 *ter*), which explicitly criminalise active and passive bribery of domestic and foreign arbitrators and of foreign jurors.
15. GRECO has seen the new legislation and is pleased to note the action taken by San Marino to cover bribery of domestic and foreign arbitrators and foreign jurors and concludes that recommendation iii has been implemented satisfactorily.

Recommendation iv

16. *GRECO recommended criminalising active and passive trading in influence in line with Article 12 of the Criminal Law Convention on Corruption.*
17. GRECO recalls that a draft law had been prepared by the Inter-departmental Working Group on GRECO; however, given its early stage, the recommendation was assessed as not implemented.
18. The authorities of San Marino now explain that trading in influence is not yet criminalised under domestic legislation. However, the issue is not yet settled. Parliamentary elections took place in December 2019 and the electoral programmes of some parties advocated for the introduction of the criminal offence of trading in influence.
19. GRECO regrets that trading in influence is still not a criminal offence in San Marino. It urges the authorities to take resolute action in this regard and concludes that recommendation iv has not been implemented.

Recommendation v

20. *GRECO recommended criminalising bribery in the private sector in accordance with Articles 7 and 8 of the Criminal Law Convention on Corruption.*

21. GRECO recalls that a draft law had been prepared by the Inter-departmental Working Group on GRECO; however, given its early stage, the recommendation was assessed as not implemented.
22. The authorities of San Marino explain that, pursuant to Law No. 119 of 2 August 2019 (Article 1), the offence of bribery in the private sector has been introduced in the Criminal Code (Article 317 bis), as follows:

Article 317bis, Criminal Code: Bribery in the private sector

The director, manager, auditor, curator, liquidator, extraordinary administrator, attorney of a company or other entity, even without legal personality, carrying out business activities, who receives for himself or others any undue advantage, or accepts the promise of the advantages for omitting, delaying or carrying out an act in violation of the obligations inherent in his office or in violation of the duty of loyalty, shall be punished with second-degree imprisonment, disqualification from public offices and political rights and daily fine.

If the offence is perpetrated by a person that is subject to the direction or supervision of one of the persons indicated in the first paragraph, he shall be punished with first-degree imprisonment, disqualification from public offices and political rights and second-degree daily fine.

The punishments referred to in the preceding paragraphs shall also apply to the person giving or promising the undue advantage.

The punishments provided for in the preceding paragraphs shall be increased by one degree if the company or entity has benefited from tax or social security reliefs, financing, benefits or support from the State in relation to the activity to which the act that has been carried out, delayed or omitted refers. The same punishments shall apply if the company or entity is wholly or partly owned by the State.

23. GRECO notes that the current wording of the offence of bribery in the private sector is different from that prepared by the Inter-departmental Working Group and submitted for GRECO's perusal at the time of the Compliance Report. At that time, the offence followed more closely the Criminal Law Convention on Corruption (ETS 173). As things stand now, the newly introduced offence of bribery in the private sector does not cover all material components of the offence, notably, the "offering" (active bribery) and the "request" (passive bribery) of the undue advantage.
24. Moreover, regarding the scope of perpetrators, the current wording of the offence exhaustively lists management positions (director, manager, auditor, curator, liquidator, extraordinary administrator, attorney of a company or other entity, even without legal personality), which in turn risks leaving out of the scope other persons who direct a private sector entity. When it comes to other types of positions, legislation refers to persons subject to the direction or supervision of the former list of persons with management positions, but it is not unequivocally clear whether it would cover other types of relationships, even if there is no contract of employment. GRECO notes that the wording of the Convention is broader in order to allow for the full coverage of "any person who direct or work for, in any capacity, private sector entities". For this reason, GRECO has misgivings as to whether the criminalisation of private bribery in San Marino may not be complicating in excess, and even restricting, the scope of perpetrators of the offence, as compared to the Convention. While future jurisprudence may clarify these issues, GRECO is of the view that further legal adjustments would be beneficial in this domain.
25. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

26. *GRECO recommended ensuring jurisdiction over all offences of bribery committed abroad (i) by Sammarinese nationals, Sammarinese public officials or members of public assemblies, in*

accordance with Article 17, paragraph 1, subparagraph b; (ii) or involving Sammarinese public officials or any other person referred to in Article 17, paragraph 1, subparagraph c of the Criminal Law Convention on Corruption.

27. It is recalled that GRECO in the Compliance Report welcomed the adoption of Decree Law No. 80 of 20 June 2016 establishing broad jurisdiction for bribery in the public sector. GRECO noted, however, that adjustments had yet to be done for jurisdiction rules regarding the offences of private sector bribery, trading in influence and bribery of jurors and arbitrators. Consequently, recommendation vi was assessed as partly implemented.
28. The authorities of San Marino now indicate that Law No. 119 of 2 August 2019 (Article 4) introduces amendments to the Criminal Code (Article 6), which extend jurisdiction over bribery of jurors and arbitrators, as well as private sector bribery.
29. GRECO welcomes the new legislative development. San Marino has broad jurisdiction to prosecute all offences of public/private bribery criminalised in domestic legislation. It will be important to ensure that this broad jurisdiction basis is kept in mind when further adjusting national legislation to the requirements of the Criminal Law Convention on Corruption (ETS 173) with regard to the criminalisation of trading in influence, as per recommendation iv.
30. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

31. **In view of the above, GRECO concludes that San Marino has implemented satisfactorily or dealt with in a satisfactory manner eight of the ten recommendations contained in the Third Round Evaluation Report.** Out of the remaining recommendations, one has been partly implemented and one has not been implemented as yet.
32. More specifically, with respect to Theme I – Incriminations, recommendations i, ii, iii and vi have been implemented satisfactorily. Recommendation v has been partly implemented. Recommendation iv has not been implemented. With respect to Theme II – Transparency of Party Funding, all recommendations (i to iv) have been satisfactorily implemented (see paragraph 5).
33. As regards the compliance with the recommendations assessed in this report, GRECO welcomes the adoption of Law No. 119 of 2 August 2019, which introduces amendments to the Criminal Code regarding bribery offences, notably, by specifically addressing intermediaries and third-party beneficiaries, providing for a broader basis of jurisdiction, and very importantly, criminalising private sector bribery. With respect to the latter, further legislative adjustments appear necessary to provide for a broader coverage of material acts and the scope of perpetrators of the offence. Finally, San Marino has not yet criminalised trading in influence; more resolute action must follow to this end.
34. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of San Marino.
35. Finally, GRECO invites the authorities of San Marino 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.