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Third Evaluation Round

Fifth Interim Compliance Report on Switzerland

“Transparency of party funding”

Adopted by GRECO
at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

I. INTRODUCTION

1. The Third Round Evaluation Report on Switzerland was adopted at the 52nd plenary meeting of GRECO (21 October 2011) and was made public on 2 December 2011, following authorisation by Switzerland (Greco Eval III Rep (2011) 4E, [Theme I](#) and [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the authorities of Switzerland submitted a Situation Report on measures taken to implement the recommendations.
3. In the Compliance Report adopted at its 61st plenary meeting (14-18 October 2013), GRECO concluded that Switzerland had implemented satisfactorily three out of the eleven recommendations contained in the Third Round Evaluation Report. In view of this outcome, GRECO categorised the very low level of compliance with the recommendations so far as "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the head of the Swiss delegation to provide a report on progress made in implementing the pending recommendations (i.e. recommendations i and iii regarding Theme I, and recommendations i to vi regarding Theme II) pursuant to paragraph 2(i) of that rule.
4. In the Interim Compliance Report and the Second Interim Compliance Report adopted at its 64th and 68th plenary meetings respectively (16-20 June 2014 and 15-19 June 2015), GRECO again categorised Switzerland's level of compliance with the recommendations as "globally unsatisfactory" since the total number of recommendations outstanding remained unchanged.
5. In the Third Interim Compliance Report, adopted at its 72nd plenary meeting (27 June – 1 July 2016), GRECO held that the two outstanding recommendations concerning Theme I had now been implemented satisfactorily. GRECO therefore decided to terminate the compliance procedure on this theme, all the recommendations having been implemented. Given the lack of positive developments with regard to Theme II, however, GRECO concluded that Switzerland's overall level of compliance with the recommendations remained "globally unsatisfactory".
6. In the Fourth Interim Compliance Report, adopted at its 76th plenary meeting (19-23 June 2017), GRECO held that the outstanding recommendations regarding Theme II remained unimplemented. Consequently, in accordance with Rule 32, paragraph 2 (ii) c), GRECO asked the Swiss authorities to receive a high-level mission with a view to examining, on the spot, with all the stakeholders, means for speeding up the legislative and policy changes called for in the present report and asked the Head of the Swiss delegation to provide a report on progress in implementing these recommendations by 31 March 2018. This report, which was submitted on 28 March 2018, served as a basis for the Fifth Interim Compliance Report.
7. GRECO selected France to appoint a rapporteur for the compliance procedure. France appointed Ms Agnès MAITREPIERRE who was assisted by the GRECO Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Theme II: Transparency of political party funding

8. It will be noted that, in its Evaluation Report, GRECO addressed six recommendations to Switzerland concerning Theme II. In the Compliance Report and the four Interim Compliance Reports, GRECO considered that none of these recommendations, discussed below, had been implemented.

Recommendations i to vi.

9. *GRECO had recommended:*

- *(i) introducing accounting rules for political parties and election campaigns that provide for full and appropriate accounts to be kept; (ii) ensuring that income, expenditure and the various elements of assets and liabilities are accounted for in detail and in full and presented in a coherent format; (iii) exploring ways of consolidating accounts to include parties' cantonal and local branches and bodies directly or indirectly linked to them or otherwise under their control; (iv) ensuring that adequate financial information is readily available to the public in good time; (v) where appropriate, inviting the cantons to adapt their own regulations in line with this recommendation. (recommendation i)*
- *(i) introducing a general obligation for political parties and candidates to elections to provide information on all donations received, including donations in kind, above a certain size together with the identity of the donors; (ii) introducing a general ban on donations from persons or bodies that fail to reveal their identity to the political party or candidate concerned; (iii) inviting cantons that do not yet have such measures to adopt them. (recommendation ii)*
- *(i) seeking ways of increasing the transparency of the financing of political parties and election campaigns by third parties; (ii) inviting also the cantonal authorities to consider these matters. (recommendation iii)*
- *(i) ensuring that, as far as possible, independent audits are carried out on political parties subject to the obligation to maintain accounts and on election campaigns accounts; and (ii) inviting cantons to do the same. (recommendation iv)*
- *(i) ensuring the effective and independent supervision of the financing of political parties, and election campaigns, in accordance with Article 14 of Council of Europe Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and election campaigns; and (ii) inviting cantons to do the same. (recommendation v)*
- *that the future rules on the financing of political parties and election campaigns be accompanied by effective, proportionate and dissuasive sanctions. (recommendation vi)*

10. As in the case of the previous reports, the information provided by the Swiss authorities is general in nature and does not specifically concern the individual recommendations. It describes fresh developments at federal and cantonal levels since the Fourth Interim Compliance Report, namely:

11. At federal level, as in the previous reports, the authorities note that, on 12 November 2014, after holding talks with the chairs of the governing parties and the parliamentary groups, the Swiss

government decided not to legislate in this field. The Swiss government has not changed its opinion since then and reiterated its position in January 2018 when examining the popular initiative on transparency (see below).

12. The government considers that the particularities of the Swiss political system are scarcely reconcilable with a law on party funding and election campaigns. The system of direct democracy, with its frequent popular votes, means that the parties are far from being the only political players in Switzerland. At the same time, the cantons enjoy a broad degree of autonomy. It would therefore go against the principles of federalism to impose uniform national legislation on them in respect of party funding. In addition, in Switzerland politics and party funding are perceived as a largely private matter, rather than a State responsibility. Because of the system of part-time politicians, the parties' financial needs are far smaller in Switzerland than in other countries.
13. The federal popular initiative calling for "Greater transparency in the financing of public life" (transparency initiative), launched on 26 April 2016, succeeded on 31 October 2017.¹ It seeks to insert a new Article 39a "Publication of funding for political parties, election campaigns and referendum campaigns" in the Federal Constitution. The text of the initiative underwent a preliminary examination by the Federal Chancellery on 12 April 2016.²
14. The draft of this new constitutional article, on which the Swiss people and cantons will be called upon to vote, states that the Swiss Confederation shall legislate on the publication of funding for political parties, campaigns for elections to the Federal Assembly and finally campaigns for federal-level referendums (Art. 39a para. 1). The political parties represented in the Federal Assembly would have to annually disclose to the Federal Chancellery their balance sheet, profit and loss account and the amount and origin of any donations received in cash or in kind above 10 000 francs per person per annum; in each case it must be possible to identify the donor (Art. 39a para. 2). Anyone spending in excess of 100 000 francs with a view to election to the Federal Assembly or a federal referendum should disclose to the Federal Chancellery, prior to the election or referendum, their total budget, the amount they have funded themselves and the amount and origin of any donation received in cash or in kind above 10 000 francs per person; in each case it must be possible to identify the donor (Art. 39a para. 3).
15. The Federal Chancellery would have to annually publish information on the balance sheets and profit and loss accounts of political parties. It would be required to publish information concerning donations sufficiently in advance of an election or referendum and to publish the final statement of finances after the ballot has taken place (Art. 39a para. 4).
16. Accepting anonymous donations in cash or in kind would be prohibited, subject to certain exceptions established in law (Art. 39a para. 5). A system of sanctions would be provided for (Art. 39a para. 6).
17. Finally, the initiative also stipulates that if Parliament fails to enact the implementing provisions required within three years following the acceptance of this new Art. 39a of the Federal Constitution by the people and the cantons, the Federal Council should enact them within one year (Art. 197, ch. 12).

¹ <https://www.admin.ch/opc/fr/federal-gazette/2017/6519.pdf>

² Feuille fédérale 2016 3447, <https://www.admin.ch/opc/fr/federal-gazette/2016/3447.pdf>

18. On 31 January 2018, the Federal Council decided to propose that Parliament reject the initiative and refrain from drafting a counter-proposal³. A message from the Federal Council to this effect will have to be submitted to Parliament in the autumn 2018. Parliament will be free in turn to adopt a position on the initiative, and to issue a recommendation to citizens on how they should vote, although it cannot prevent the ballot from taking place. The latter will be held by 2020, or perhaps even 2021. As with all federal popular initiatives, a double majority of citizens and cantons is needed in order for the initiative to be approved.
19. At cantonal level, two popular initiatives have been approved in popular votes held in the cantons of Fribourg and Schwyz.
20. In Fribourg, a new constitutional Article 139a, approved by 68.5% of voters, reads as follows:

Art. 139a (new) Disclosure requirement

¹ Political parties, political groupings, campaign committees and organisations taking part in electoral campaigns or referendum and initiative campaigns shall publish their accounts. The following in particular shall be published:

- a) in the case of electoral campaigns or referendum and initiative campaigns, the sources of funding, together with the total budget for the relevant campaign;*
- b) in the case of funding for the above-mentioned organisations, the names of the legal entities contributing to the funding of the said organisations, and the amount of the payments;*
- c) the identity of any natural persons contributing to the funding of the said organisations, except for those whose payments are equal to or less than 5 000 francs per calendar year.*

² Elected members of cantonal authorities shall publish, at the beginning of the calendar year, any income which they earn from their mandate, and any income from activities connected therewith.

³ The data published under paragraphs 1 and 2 shall be verified by the cantonal administration or an independent entity. Once verified, these data shall be made available online and on paper.

⁴ Otherwise, the law shall govern implementation. It shall have regard, inter alia, to professional secrecy.

21. In Schwyz, a constitutional initiative with a wording similar to that of the Fribourg initiative⁴ – but which states that the threshold above which donations from legal entities are to be made public is 1 000 francs, as compared with 5 000 francs from legal persons in the Fribourg initiative – was approved by a narrow margin, with 50.28% of the vote. This outcome was generally considered to be a surprise.
22. Along with Ticino, Geneva and Neuchâtel, five Swiss cantons now have legislation on political party funding.
23. GRECO welcomes the official conclusion of the federal-level transparency initiative, which broadly reflects GRECO's recommendations on political funding, and the fact that Fribourg and Schwyz have joined the ranks of Swiss cantons which have legislation on political funding. A fifth of all cantons, representing the country's three main language communities, now have such legislation in place. In GRECO's view, this shows that there is demand for greater transparency in the funding of politics at both federal and cantonal level in Switzerland and that, even allowing for the particular features of the political system, solutions to this effect can be found. GRECO invites the Parliament to bear this in mind when adopting a position on the federal popular initiative. For now, given that the popular initiative has yet to secure the support of the federal authorities and that the drafting of legislation along these lines is not on the agenda, GRECO has no choice but to consider that its recommendations remain unimplemented.

³ See Federal Council press release:

<https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-69662.html>

⁴ The original text of the constitutional article in German is available at:

https://www.sz.ch/public/upload/assets/27766/196_2017_Transparenzinitiative.pdf

24. GRECO concludes that recommendations i to vi remain unimplemented.

III. CONCLUSIONS

25. **In view of the above, GRECO concludes that no tangible progress has been achieved by Switzerland, as regards the overall implementation of the recommendations that were deemed to be not implemented in the Third Round Compliance Report. The total number of recommendations implemented or addressed satisfactorily – five out of eleven – remains unchanged as compared with the Fourth Interim Compliance Report.**
26. With regard to Theme I – Incriminations, GRECO notes that all the recommendations (i to v) had been implemented satisfactorily at the time of the Third Interim Compliance Report. As regards Theme II – Transparency of political party funding, all the recommendations (i to vi) remain not implemented.
27. With regard to transparency of political party funding, GRECO is disappointed that the federal authorities are adhering to their decision not to legislate on transparency in the funding of political parties and electoral campaigns. The official conclusion of the federal transparency initiative and the success of the popular initiatives in the cantons of Fribourg and Schwyz clearly show that in Switzerland as elsewhere in Europe there is a demand for greater transparency. These developments also show that even in the particular political context of Switzerland, it is possible to find ways to meet this demand and to put an end to the Swiss exception in this area. GRECO invites the Parliament to bear this in mind when adopting a position on the federal popular initiative. To this end, GRECO remains in close contact with the Swiss authorities regarding the organisation, in due course, of a high-level mission, as decided in the Fourth Interim Compliance Report.
28. In view of the above, GRECO concludes that the current very low level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3, of the Rules of Procedure.
29. Pursuant to paragraph 2(i) of Article 32 of its Rules of Procedure, GRECO asks the Head of the Swiss delegation to provide a report on progress in implementing the outstanding recommendations (i.e. recommendations i to vi of Theme II) by 31 March 2019.
30. Lastly, GRECO invites the Swiss authorities to authorise publication of this report as soon as possible and to translate it into the other official languages and make these translations public.