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Third Evaluation Round

Sixth *Interim* Compliance Report on Switzerland

"Transparency of Party Funding"

Adopted by GRECO
at its 83rd Plenary Meeting
(Strasbourg, 17-21 June 2019)

I. INTRODUCTION

1. The [Third Round Evaluation Report](#) on Switzerland was adopted by GRECO at its 52nd plenary meeting (21 October 2011) and 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 Swiss authorities 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), it had been concluded that Switzerland had satisfactorily implemented three of the eleven recommendations contained in the Third Round Evaluation Report. In the light of these results, GRECO had concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of its Rules of Procedure. It had therefore decided to apply Rule 32 paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the head of the Swiss delegation to submit a report on progress in implementing the outstanding recommendations (namely recommendations i and iii relating to Theme I and recommendations i-vi relating to Theme II).
4. In the [Interim Compliance Report](#) and the [Second Interim Compliance Report](#) adopted at the 64th and 68th plenary meetings (16-20 June 2014 and 15-19 June 2015) GRECO again qualified 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 (1 July 2016), GRECO considered that the two recommendations outstanding with respect to Theme I had now been satisfactorily implemented. 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 of speeding up the legislative and policy changes called for in the report and asked the Head of the Swiss delegation to provide a report on progress in implementing these recommendations by 31 March 2018.
7. In the [Fifth Interim Compliance Report](#), adopted at its 80th plenary meeting (22 June 2018), GRECO considered that the very low level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure and asked the Head of the Swiss delegation to provide a report on progress in implementing these recommendations by 31 March 2019 at the latest. This report, which was submitted on 29 March 2019, together with a supplementary report submitted on 16 May 2019, served as a basis for the Sixth Interim Compliance Report.
8. GRECO selected France to appoint a rapporteur for the compliance procedure. France appointed Ms Agnès MAITREPIERRE, who was assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

Theme II: Transparency of Party Funding

9. In its Evaluation Report, GRECO addressed six recommendations to Switzerland concerning Theme II. In the Compliance Report and the five Interim Compliance Reports, GRECO considered that none of these recommendations, discussed below, had been implemented.
10. At federal level, the authorities point out that the federal popular initiative calling for “Greater transparency in the financing of public life” (transparency initiative) was officially completed on 31 October 2017¹. The initiative sought to have a new Article 39a "Publication of funding for political parties, election campaigns and referendum campaigns" inserted in the Federal Constitution².
11. On 29 August 2018, the Federal Council sent a Dispatch to Parliament regarding the popular initiative on transparency³, proposing that it reject the initiative and not draft a counter-proposal⁴.
12. The first of the parliamentary committees to examine the initiative, the Political Institutions Committee of the Council of States (PIC-S) nevertheless decided on 22 January 2019 to draw up legal provisions for the publication of information on funding for political activities⁵. The PIC-S considers that measures should be taken as regards transparency of funding of political parties and also of election and referendum campaigns. However, its preference would be for a solution at the level of legislation rather than detailed provisions at the level of the Constitution, of the kind foreseen by the popular initiative on transparency. For that reason, it decided, by 8 votes for, 3 against and 2 abstentions, to draw up a committee initiative (19.400 lv. pa. PIC-S. More transparency in the funding of politics⁶).
13. Along similar lines to its Council of States counterpart, the Political Institutions Committee of the National Council (PIC-N) also thought that measures were required in the area of transparency of funding of political parties and also of election and referendum campaigns⁷. It approved the PIC-S initiative on 22 February 2019 by 12 votes in favour, 11 against and 1 abstention.
14. Accordingly, the PIC-S has prepared an indirect counter-proposal to the popular initiative on transparency. This draft amendment to the Federal Act on political rights (PRA) and the explanatory report thereto were made public on 7 May 2019 and submitted for public consultation until 28 August 2019⁸.
15. Depending on the outcome of this consultation, the draft will be finalised and submitted to the Federal Council for it to adopt a position. The PIC-S will then approve the final version of the draft which will be discussed – together with the explanatory report and the Federal Council’s position – as per the regular parliamentary procedure, first by the Council of States and then by the National Council. Both Chambers of Parliament have to approve the draft for it to be adopted.

¹ Feuille fédérale 2017 6519, <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>

³ <https://www.admin.ch/opc/fr/federal-gazette/2018/5675.pdf>

⁴ <https://www.admin.ch/gov/fr/accueil/documentation/communiqués/communiqués-conseil-federal.msg-id-71984.html>

⁵ See Swiss Parliament press release:

<https://www.parlament.ch/press-releases/Pages/2019/mm-sp-k-s-2019-01-22.aspx>

⁶ <https://www.parlament.ch/en/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20190400>

⁷ See Swiss Parliament press release:

<https://www.parlament.ch/press-releases/Pages/mm-sp-k-n-2019-02-22.aspx?lang=1036>

⁸ <https://www.parlament.ch/fr/organe/commissions/commissions-thematiques/commissions-cip/rapports-consultations-cip/consultation-cip-19-400>

16. Through this draft, the PIC-S intends to secure the enshrinement in legislation of transparency rules applicable to parties as well as to the committees tasked with election or referendum campaigns. Given that the regulation of elections to the Council of States does not lie within the remit of the Confederation, the committee has included special provision in this respect. Where the members of the Council of States are concerned, the obligations of transparency regarding the funding of their campaigns will be applicable only once they have been elected.
17. At cantonal level, the parliament of Vaud (the Swiss canton with the third highest population) passed a motion on 12 March 2019 aimed *inter alia* at introducing an obligation of transparency for donations to political parties and in connection with election and referendum campaigns at cantonal level⁹. The cantonal government is to propose measures in connection with the revision of the cantonal law on political rights. In a popular vote on 19 May 2019, the citizens of the canton of Schwyz accepted by 54.4% of the votes the cantonal law on the transparency of political life¹⁰ which concretises the constitutional provisions already adopted last year in popular vote.

Recommendation i.

18. *GRECO 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.*
19. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.
20. The Swiss authorities state that the draft of this new constitutional article put forward in the federal popular initiative stipulates 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). The Federal Chancellery would have to annually publish information on political parties' balance sheets and profit and loss accounts. 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).

⁹ <https://www.vd.ch/toutes-les-autorites/grand-conseil/depute-e-s/detail-objet/id/650569/membre/20277/>

¹⁰ https://www.sz.ch/public/upload/assets/40863/Abstimmungsbrosch%C3%BCre_19_Mai_2019.pdf (only available in German)

21. The legislative counter-proposal by the PIC-S (Art. 76b, para. 1) establishes the principle that the political parties represented in the Federal Assembly must declare their funding. Art. 76c governs the obligation to declare funding during campaigns relating to a referendum or an election and also campaigns to gather signatures at federal level for an initiative or referendum. Art. 76d governs the time limits and arrangements for making declarations. Art. 76f provides for the publication of the information and documents by the competent authority (Art. 76g). Finally, the head of the Federal Department of justice and police had already written to the cantons on 15 February 2012, inviting them to adopt their own regulations.
22. GRECO notes that both the draft constitutional article and the counter-proposal appear to be along the lines of the recommendation. The draft constitutional article stipulates that political parties and organisers of election and referendum campaigns must disclose their balance sheet and profit and loss account to the Federal Chancellery while the counter-proposal provides for disclosure of revenue but not expenditure, which is regrettable. The threshold set by the latter for the obligation of transparency to become effective, namely 250 000 CHF, also appears on the high side, whereas the threshold of 100 000 CHF set by the federal initiative seems more appropriate. Both drafts provide for timely publication of the information disclosed, which is commendable. Finally, GRECO had already noted and welcomed in an earlier report the letter from the head of the Federal Department inviting the cantons to adopt their own regulations.
23. GRECO notes that the counter-proposal emanates from the relevant committee of the Council of States, which brings together all the parties represented in this chamber, and that its counterpart from the National Council has also accepted the parliamentary initiative founding the counter-proposal. This proposal has been published on the internet and is currently under public consultation. It also notes that at this stage of the legislative process, the Federal Council is no longer in a position to halt or even modify the PIC-S's proposal. As for the draft constitutional article, it will necessarily be the subject of a popular vote, unless the initiative committee decides to withdraw it. In view of these elements, GRECO takes the view that the recommendation should be considered as partly implemented.
24. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

25. *GRECO recommended (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; (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.*
26. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.
27. The Swiss authorities point out that the draft new constitutional article sets out transparency rules for donations (see paragraph 20). Articles 76b and 76c of the legislative counter-proposal stipulate that all revenue and donations in excess of CHF 25 000 per donor and per annum must be disclosed to the competent authority. Art. 76d paras. 3 and 4 set out the content of the declaration required. This information would then be made public in accordance with Art. 76f. As regards the second part of the recommendation, Article 76h of the draft foresees that anonymous donations cannot be accepted. Regarding the third part of the recommendation, the authorities refer to the letter by the head of the Federal Department of justice and police inviting cantons to adopt their own regulations (see paragraph 21).

28. GRECO welcomes the transparency rules provided for in the two drafts in respect of donations, as well as the prohibition of anonymous donations. However, the thresholds set for the triggering of these rules seem high, especially that of CHF 25 000 provided for in the draft law. Accordingly, it invites the authorities to reconsider this point.

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

Recommendation iii.

30. *GRECO recommended (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.*

31. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.

32. The Swiss authorities have not provided any specific information on this recommendation.

33. GRECO recalls that this recommendation was intended to ensure transparency of the accounts of entities linked to political parties and concludes that recommendation iii has still not been implemented.

Recommendation iv.

34. *GRECO recommended (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.*

35. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.

36. The Swiss authorities have not provided any specific information on this recommendation.

37. GRECO recalls that this recommendation calls for an independent audit of political funding and concludes that recommendation iv has still not been implemented.

Recommendation v.

38. *GRECO recommended (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.*

39. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.

40. The Swiss authorities state that Art. 76e of the draft legislation provides for an audit of documents by an authority appointed by the Federal Council (Art. 76g). If any failings are uncovered, that authority must refer the matter to the prosecution authorities (Art. 76e para. 3).

41. GRECO welcomes the fact that the draft law provides for the creation of an authority tasked with supervising compliance with rules on the transparency of funding. The composition, role and powers of that authority are yet to be defined.

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

Recommendation vi.

43. *GRECO recommended that the future rules on the financing of political parties and election campaigns be accompanied by effective, proportionate and dissuasive sanctions.*

44. GRECO recalls that this recommendation was deemed not to have been implemented in the previous reports.

45. The Swiss authorities have explained that both the federal popular initiative (Art. 39a para.6) and the counter-proposal (Art. 76j) provide for a system of sanctions.

46. GRECO welcomes the fact that both drafts provide for a system of sanctions. It notes that the federal popular initiative refers to subsequent legislation which will establish the details. The draft law provides for a criminal sanction of up to CHF 40 000 for an intentional violation of its provisions and a criminal sanction of up to CHF 20 000 for violation by negligence.

47. GRECO concludes that the recommendation vi has been partly implemented.

III. CONCLUSIONS

48. **In view of the above, GRECO concludes that some progress has been achieved by Switzerland, as regards the overall implementation of the recommendations that were deemed not to have been 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 Fifth Interim Compliance Report.** Of the remaining recommendations, four have now been partly implemented and two remain not implemented.

49. 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, recommendations i, ii, v and vi are partly implemented and recommendations iii and iv remain not implemented.

50. With regard to Theme II – Transparency of political party funding, GRECO welcomes the draft amendment to the Federal Law on political rights drawn up by the Political Institutions Committee of the Council of States. Both this draft and the draft constitutional article which is put forward by the federal popular initiative broadly correspond to the recommendations made in the 2011 Evaluation Report – even if some elements still require further improvement, such as the threshold for triggering the application of transparency rules. GRECO encourages the Swiss authorities to pursue their efforts to bring one or other initiative to fruition. Furthermore, GRECO welcomes the fact that the cantonal parliament of Vaud has for its part also decided to change the canton's legislation with a view to greater transparency of donations to political parties and that the canton of Schwyz now has a law on the transparency of political life.

51. In view of the above, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" within the meaning of Rule 31, paragraph

8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

52. In application of paragraph 8.2 of Article 31 of the Rules of Procedure, GRECO asks the head of the Swiss delegation to provide a report on the measures taken to implement the outstanding recommendations (recommendations i to vi of Theme II) by 30 June 2020 at the latest.
53. 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.