

Strasbourg, 23 March 2018

Public
GrecoRC3(2018)3

Third Evaluation Round

Compliance Report on Liechtenstein

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

* * *

"Transparency of Party Funding"

Adopted by GRECO
at its 79th Plenary Meeting
(Strasbourg, 19-23 March 2018)

I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Liechtenstein to implement the 20 recommendations issued in the Third Round Evaluation Report on Liechtenstein (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 2 June 2016, following authorisation by Liechtenstein (Greco Eval III Rep (2016) 2E, [Theme I](#) and [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Liechtenstein authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 15 December 2017 and served as a basis for the Compliance Report.
4. GRECO selected Malta and the Slovak Republic to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Kevin VALLETTA, on behalf of Malta, and Mr Martin GAJDOŠ, on behalf of the Slovak Republic. 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 is recalled that GRECO in its evaluation report addressed 12 recommendations to Liechtenstein in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended that Liechtenstein proceeds swiftly with the ratification of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191).*
8. The authorities report that Liechtenstein deposited its instrument of ratification of the Criminal Law Convention and its Additional Protocol on 9 December 2016. The two instruments entered into force on 1 April 2017.
9. GRECO welcomes the ratification and entry into force of the Criminal Law Convention and its Additional Protocol and concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

10. GRECO recommended improving the consistency of the incriminations of bribery of domestic public officials as is already foreseen, so that all the pertinent categories of persons are clearly reflected, in line with Articles 2 and 3, combined with Article 1, of the Criminal Law Convention on Corruption (ETS 173).
11. The authorities of Liechtenstein report that a revision of the Criminal Code (CC) entered into force on 1 June 2016. The definitions of “public official” and “arbitrator” in items 4a and 4b of Article 74 para. 1 CC now read as follows:

Article 74 – Other definitions

1) For the purposes of this Act:

4a. Public official: anyone who

a) for the State, a municipal association, a municipality or another person under public law, with the exception of a church or religious community, for another State or for an international organisation performs duties as a body or employee of the legislature, administration or justice,

b) is otherwise entitled in the name of a corporate body mentioned in lit. a to conclude dealings related to the implementation of the law or

c) is acting as a body or employee of an enterprise which is run, managed or supervised by one or more domestic or foreign local public authority(ies), whether directly or indirectly and alone or in conjunction with other such authorities, as a result of the ownership of more than half of the capital stock, share capital or equity, or as a result of any financial, business and organisational arrangements implying the effective control over such an enterprise.

4b. Arbitrator: any person rendering a decision in an arbitration court in the meaning of Articles 603 et seq. of the Civil Procedure Code, having its seat in the country or a seat which is yet-to-be determined (Liechtenstein arbitrator), or its seat abroad.

12. The new provisions relating to passive and active bribery read as follows:

Article 304 – Passive bribery

1) A public official or an arbitrator, who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for performing or refraining from performing an official act contrary to duty shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for delivering an incorrect evidence or expertise.

2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six months up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.

Article 305 – Acceptance of a benefit

1) A public official or an arbitrator who demands an advantage or who accepts or allows him/herself to be promised an undue advantage (para. 3), for him/herself or a third person, for performing or refraining from performing an official act in accordance with his/her duties shall be punished by imprisonment up to two years.

2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.

3) The following advantages are not considered undue:

1. advantages, the acceptance of which is explicitly permitted by law, or which are granted in the framework of events which are being attended because of an official or objective interest,

2. advantages for charitable purposes on the usage of which the public official or arbitrator does not exercise any decisive influence, and
3. in the absence of permissive rules as in lit. 1, customary tokens of courtesy of minor value as they exist at local or national level, unless the act is committed on a professional scale.

Article 306– Acceptance of a benefit for an influence

- 1) A public official or an arbitrator who, in cases other than those falling under Articles 304 and 305, acts with the intention to let him/herself being influenced in the performance of official duties, demands an advantage or accepts or allows him/herself to be promised an undue advantage (Article 305 para. 3), for him/herself or a third person, shall be punished by imprisonment of up to two years.
- 2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.
- 3) Accepting or allowing oneself to be promised merely a minor advantage is not to be punished in accordance with paragraph 1 unless the act was committed with the objective of obtaining a regular benefit.

Article 307 – Active bribery

- 1) Whoever offers, promises or grants an advantage to a public official or an arbitrator for him/herself or a third person for performing or refraining from performing an official act contrary to duty, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or grant an advantage to an expert (Article 304 para. 1) for him/herself or a third person for delivering an incorrect evidence or expertise.
- 2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from one year up to ten years.

Article 307a – Granting of a benefit

- 1) Whoever offers, promises or grants an undue advantage (Article 305 para. 3) to a public official or an arbitrator, for him/herself or a third person, for performing or refraining from performing an official act in accordance with his/her duties shall be punished by imprisonment of up to two years.
- 2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.

Article 307b – Granting of a benefit for an influence

- 1) Whoever in circumstances other than those falling under Articles 307 and 307a, offers, promises or grants an undue advantage (Article 305 para. 3) to a public official or arbitrator, for him/herself or for a third person, with the intention thereby to influence him/her in the performance of official duties, shall be punished by imprisonment of up to two years.
- 2) Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment of up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months to five years.

13. According to the Liechtenstein authorities, the new incriminations pursue a different approach from the ones which they replace. The passive bribery offences (Article 305 and 306 CC) and the active bribery offences (Article 307, 307a and 307b CC) deal with acts involving public officials and arbitrators. They aim to incriminate bribery involving a breach of duty as the basic mechanism (Article 304 and 307 CC). Additional offences cover the granting or taking of advantages (Article 305 and 307a CC) which are defined as not involving a breach of duty. An additional set of incriminations cover the granting and taking of advantages specifically for the exertion of an influence (Article 306 and 307b CC). They refer to a new concept of public officials which is defined in broad terms and covers anyone performing at state or municipal level functions in the legislature, administration or justice, as a body thereof or as an employee (Article 74 para. 1, new item 4a CC).

14. GRECO welcomes the entry into force of the new incriminations of bribery in the Criminal Code. It notes that they were adopted by Parliament without any changes to the text submitted by the Government, which had been analysed in the Evaluation Report. In line with the requirements of the recommendation, the problems of consistency between the incriminations of bribery of domestic public officials have been resolved through a clearer, broader notion of “public official” under new Article 74 para. 1 new item 4a CC, which is now used throughout the different incriminations (Article 304-307 CC). This is in line with Articles 2 and 3, combined with Article 1 of the Criminal Law Convention on Corruption and therefore the recommendation has been complied with.

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

Recommendation iii.

16. *GRECO recommended to examine whether additional initiatives need to be taken to ensure that the incriminations of bribery and trading in influence adequately capture all forms of undue advantages and those of an intangible nature including for the determination of the appropriate level of punishment.*

17. The authorities of Liechtenstein report that the recommendation was examined within the framework of the current partial revision of the Criminal Code. It was concluded that instead of issuing a note of general guidance, it would be more efficient if case-specific expert opinions are routinely obtained in order to qualify the material value(s) involved. They add that such case-specific approach appears more precise in order to decide on the level of punishment.

18. GRECO notes that the new text of incriminations of bribery does not retain the provisions of the old definitions whereby minor advantages did not attract criminal responsibility for public sector bribery offences when no breach of duties was involved (unless the act was committed with the intention of obtaining a regular income), which is a positive step. However, the new incrimination of trading in influence does keep this possibility.

19. Another matter of concern was the fact the incriminations of bribery and trading in influence were construed in a way that benefits must have or can be attributed a financial value; the new incriminations do not depart from this logic. GRECO has pointed out that the objective of the Convention is to outlaw any form of bribery. Countries should be able to prosecute bribery or trading in influence involving less tangible forms of benefits, such as honorific distinctions, preferential treatment or a professional opportunity. The explanatory report to the new amendment does stress that undue advantages can be either material or non-material, which is a step in the right direction. However, the Evaluation Report already highlighted that there was a risk that cases involving intangible advantages (or those which cannot be valued with precision) could be treated as basic offences sanctioned with the lowest penalty, in a way that would not necessarily be proportionate to the seriousness of the offence.

20. That said, from the information provided by the Liechtenstein authorities, these concerns, which were the background of the recommendation, were duly examined during the review of the Criminal Code, which was the requirement of the recommendation. Therefore, in spite of the above-mentioned concerns on substantial issues, GRECO considers that the recommendation has been complied with.

21. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendations iv to vi.

22. GRECO recommended:

- *that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of domestic assembly members established under Article 4 of the Criminal Law Convention on Corruption (ETS 173) are adequately reflected in Liechtenstein law (recommendation iv);*
- *that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of foreign public officials and members of foreign public assemblies established under Articles 5 and 6 of the Criminal Law Convention on Corruption (ETS 173) are properly covered under Liechtenstein law and take into account all pertinent categories of persons (recommendation v);*
- *that the criminal law provisions be amended, as is already foreseen, to the effect that both active and passive bribery of officials of international organisations, members of international assemblies, and bribery of judges and officials of international courts established under Articles 9, 10 and 11 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law (recommendation vi).*

23. The authorities of Liechtenstein report that, with the new definition in Article 74 para. 1 item 4a CC, assembly members (including parliamentarians, mayors and members of municipal councils) foreign officeholders and employees of the legislature, administration or justice, as well as officeholders and officials of the legislature, administration or justice coming within an international organisation come under the notion of “public official” for the purpose of Articles 304 to 307b CC.

24. GRECO welcomes the new broader definition of “public official” contained in Article 74 para. 1 item 4a CC, which now covers all assembly members (including parliamentarians, mayors and members of municipal councils), officeholders and employees of the legislature, administration or judiciary of another State or an international organisation to whom Articles 304-307 CC on active and passive bribery apply equally. This therefore meets the requirements of the above-mentioned recommendations.

25. GRECO concludes that recommendation iv to vi have been implemented satisfactorily.

Recommendation vii.

26. *GRECO recommended that adequate incriminations of active and passive bribery in the private sector be introduced, as is already foreseen, to the effect that Articles 7 and 8 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein law.*

27. The authorities of Liechtenstein report that with the revision of the Criminal Code a new provision has been introduced which reads as follows:

Article 309 – Passive and active bribery in commercial matters

- 1) *The employee or agent of a business entity who, in the context of commercial dealings, demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person in return for performing or refraining from performing an act in violation of his/her duties shall be punished by imprisonment of up to two years.*
- 2) *Shall be punished in the same way whoever offers, promises or grants an advantage to the employee or agent of a business entity, in the context of commercial dealings, for him/herself or a third person, for him or her to perform or refrain from performing an act in violation of his/her duties.*
- 3) *Whoever commits the act in relation to a benefit in excess of CHF 5 000 shall be punished with imprisonment up to three years, and where the benefit is in excess of CHF 75 000, with imprisonment from six months to five years.*

28. The authorities point out that this offence has to be prosecuted *ex officio* in any case. The thresholds in paragraph 3 may establish aggravating circumstances; they are not meant to trigger *ex officio* prosecution.
29. GRECO takes note of the above. As already observed in the Evaluation Report about the draft provision whose text was identical, Article 309 CC transposes almost word for word the offences of active and passive bribery contained in Articles 7 and 8 of the Convention. It deals with situations involving a breach of duties and with business transactions and it covers as bribe-takers any person paid, employed by or hired to represent the business entity in line with the Convention. The situation is therefore in compliance with the recommendation.
30. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

31. *GRECO recommended that Article 308 of the Criminal Code on illicit intervention be amended, as is already foreseen, so that the various elements of the offences of active and passive trading in influence established under Article 12 of the Criminal Law Convention on Corruption (ETS 173) are implemented in Liechtenstein criminal law.*
32. The authorities of Liechtenstein report that new Article 308 CC reads as follows:

Article 308 – Illicit intervention

- 1) *Whoever demands, accepts or allows him/herself to be promised an advantage for himself/herself or for a third person for exercising improper influence on the decision-making of a public official or an arbitrator shall be punished by imprisonment up to two years.*
- 2) *Likewise, shall be punished whoever offers, promises or grants an advantage to someone for him/her to exercise improper influence on the decision-making of a public official or an arbitrator.*
- 3) *Whoever commits the offence with regard to a value of the advantage exceeding CHF 5 000 shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding CHF 75 000 shall be punished by imprisonment from six months up to five years.*
- 4) *The influence over the decision-making of a public official or an arbitrator is considered improper where its purpose is the performance or refraining from performing a legal act contrary to duties or where it involves the offering, promising or granting of an undue advantage (Article 305 para. 3) to the public official or for him/her through a third person.*
- 5) *The perpetrator is not to be punished according to the provisions above if the act is punishable with a more severe punishment according to other legal provisions.*

33. The authorities indicate that the amendments introduced by the revision lower the intentional element to the first level (“purpose”) since the reference to the word “knowingly” is abandoned.

They capture the act of trading in influence at an early stage, in accordance with the Convention: whether the influence was exerted or not (and thus leads to the intended result or not) is immaterial. These amendments have to be seen in conjunction with the introduction of new offences under Articles 306 and 307a CC which also contain an element of exertion of influence (active and passive).

34. GRECO takes note of the above. The text of Article 308 CC had already been analysed positively in the Evaluation Report when still a draft and has since then been adopted without changes: it incriminates both active and passive forms of trading in influence; the target of the influence is redefined in a way which is in line with the Convention; the influence does not have to be effectively exerted or to achieve the intended result, etc. Furthermore, the explanatory report to the provision makes it clear that the purpose of the new offence is to criminalise the illicit behaviour right at the beginning and that the actual exertion of the influence (or not) is irrelevant. As mentioned by the authorities, the offence is based on the lowest intentional element. Article 308 para. 4 CC refers to an “improper” influence and GRECO considers that it pursues the same objective as the wording of Article 12 of the Convention. Therefore, the requirement of the recommendation has been complied with.

35. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

36. *GRECO recommended that the criminal law provisions be amended, as is already foreseen, to the effect that bribery of domestic and foreign arbitrators established under Articles 3 to 4 of the Protocol to the Criminal Law Convention on Corruption (ETS 191) are implemented in Liechtenstein law.*

37. The authorities of Liechtenstein report that the various revised provisions on bribery and trading in influence contained in Articles 304 to 308 CC refer explicitly to arbitrators in addition to public officials. Moreover, Article 74 para. 1 item 4b CC contains a new definition of arbitrator that is broad enough to cover arbitration domestically and abroad, involving national or foreign arbitrators.

38. GRECO welcomes the legislative amendments defining and referring explicitly to arbitrators, whether national or foreign, in connection with the incriminations of bribery. This is in compliance with the Protocol to the Criminal Law Convention on Corruption.

39. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

40. *GRECO recommended that the penalties incurred for acts of bribery and trading in influence be increased, as is already foreseen, and thereby i) ensuring these are effective, proportionate and dissuasive and ii) extending the one-year and three-year limitation periods for the prosecution of these offences.*

41. The authorities of Liechtenstein report that the different offences contained in the new text of Articles 304 to 309 CC entail that the limitation period amounts to at least five years in all cases, and 10 years for the most serious forms of passive and active bribery. They point out that the sanctions in the former provisions varied between up to one year and five years' imprisonment for passive bribery involving a civil servant and between up to six months imprisonment (or a fine) and up to two years' imprisonment for active bribery involving a civil servant.

42. GRECO welcomes amendments to the Criminal Code which have resulted in sanctions being increased to levels comparable to many member states. As already mentioned in the Evaluation Report, it is however regrettable that the maximum penalty for private sector bribery and trading in influence is lower than in respect of the public sector. That aside, GRECO is also satisfied that the increase in sanctions has resulted in longer limitation periods of at least five years and in some serious case to 10 years. GRECO therefore considers that the recommendation has been complied with.

43. GRECO concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

44. *GRECO recommended to take further measures (for instance specialised training, circulars or other initiatives) to raise awareness of the Directive of 4 December 2007 on organisational measures to implement the fight against corruption, and ultimately of the yet to be enacted criminal law provisions concerning bribery and trading in influence.*

45. The authorities of Liechtenstein report that the new Code of Conduct for Public Officials on Corruption Prevention, which entered into force on 1 May 2016, explicitly states that the obligation for public sector employees to report suspicions of corruption and other offences may also be complied with by directly contacting the specialised Anti-Corruption Unit within the National Police, established by the Directive of 4 December 2007. For this purpose a dedicated electronic mailbox and a hotline have been established, with a specific Internet page raising awareness of both.¹

46. Moreover, members of the Working Group on Corruption Prevention (i.e. the head of the Criminal Police and the Deputy Prosecutor General) have been carrying out awareness-raising activities for several offices of the national administration as well as for a number of municipal councils and local authorities on the implications of the revised anti-corruption provisions of the Criminal Code. During the last five years over 200 staff members have been trained.

47. GRECO welcomes the Liechtenstein authorities' continued efforts to raise awareness of the Directive of 4 December 2007 on organisational measures to implement the fight against corruption, in particular through the specialised Anti-Corruption Unit, and the awareness-raising activities organised in connection with the revision of the Criminal Code concerning anti-corruption offences.

48. GRECO concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

49. *GRECO recommended to broaden jurisdictional rules in accordance with Article 17 of the Criminal Law Convention on Corruption (ETS 173) and its Protocol (ETS 191), as is already foreseen, and thereby ensuring that they cover i) acts of bribery and trading in influence committed abroad by foreigners, but involving Liechtenstein nationals serving for instance as officials of international organisations, members of international parliamentary assemblies and officials of international courts; ii) acts of active bribery involving foreign arbitrators.*

50. The authorities of Liechtenstein report that, in respect of Article 17 para. 1b of the Convention, domestic law provides that cases where the offender is a Liechtenstein national² are covered by

¹ <https://www.landespolizei.li/Informationen/Korruption.aspx>

² The term "national" means: (i) any individual possessing the nationality or citizenship of Liechtenstein; and (ii) any person other than an individual deriving its status as such from the laws in force in Liechtenstein.

new Article 64 para. 1 item 2a lit. a CC; and cases where the offender is a Liechtenstein public official are covered by new Article 64 para. 1 item 2 CC. Since members of public assemblies are included in the definition of public officials pursuant to new Article 74 para. 1 item 4a CC, this provision also applies in case the offender is a member of a Liechtenstein public assembly.

51. As regards Article 17 para 1c of the Convention, domestic law provides that cases where the offence involves one of Liechtenstein's public officials are now covered partly by Article 64 para 1 item 2a lit. b CC and partly by Article 64 para. 1 item 2 CC. Since members of public assemblies as well as persons referred to in Articles 9 to 11 of the Convention who are at the same time Liechtenstein nationals, are included in the definition of public officials, jurisdiction extends to cases involving those categories of persons.

Article 64 – Criminal offences abroad being punished irrespective of the laws which are valid at the place where they are committed

1) The following criminal acts committed abroad are subject to prosecution according to Liechtenstein criminal law irrespective of the criminal law of the foreign state where the criminal act was committed:

1. (...)

2. criminal acts committed against a Liechtenstein civil servant (Article 74 para. 1 item 4), a Liechtenstein public official (Article 74 para. 1 item 4a) or a Liechtenstein arbitrator (Article 74 para. 1 item 4c) while he/she fulfils his/her tasks or because he/she fulfils his/her tasks and criminal acts committed by someone as Liechtenstein civil servant, public official or arbitrator;

2a. apart from item 2 criminal violations of the official duty, corruption and other related criminal acts (Articles 302 to 309) if

a) the perpetrator was a national of Liechtenstein at the time the act was committed or

b) the act was committed for the benefit of a Liechtenstein public official or arbitrator.

52. Acts of bribery and trading in influence committed abroad by a foreigner involving a Liechtenstein national serving as an official of an international organisation, a member of an international parliamentary assembly or an official of an international court, are thus covered by new Article 64 para. 1 item 2a lit. b. CC.
53. Acts of active bribery involving foreign arbitrators committed by a natural person³ without Liechtenstein citizenship but legal residence in Liechtenstein are prosecutable domestically since such acts can be linked to Liechtenstein in accordance with Article 67 CC. The authorities point out that this reflects the specific requirement of Article 17 para. 1a of the Convention that the act was committed "in whole or in part on [the country's] territory".

54. Article 67 CC reads as follows:

Article 67 – Time and place of the act

1) The perpetrator shall be deemed to have committed an act carrying a penalty at the time s/he acted or should have acted; it shall be irrelevant when the result occurs.

2) The perpetrator shall be deemed to have committed an act carrying a penalty at the place where s/he acted or should have acted or where a result corresponding to the elements of the offence occurred in whole or in part or, as conceived by the perpetrator, should have occurred.

55. Acts of active bribery involving foreign arbitrators committed by a legal person with residence in Liechtenstein are covered by Article 74e CC concerning domestic jurisdiction:

³ Legal persons with residence in Liechtenstein are considered nationals of Liechtenstein (see footnote 2).

Article 74e – Domestic jurisdiction

If the law makes the application of Liechtenstein penal laws for offences committed abroad dependent on the residence or abode of the offender in Liechtenstein or on his Liechtenstein nationality, the place of business or establishment shall be decisive for legal entities.

56. GRECO takes note of the above which responds to both parts of the recommendation as domestic law now covers i) acts of bribery and trading in influence committed abroad by foreigners, but involving Liechtenstein officials serving for instance as officials of international organisations, members of international organisations, members of international parliamentary assemblies and officials of international courts; and ii) acts of active bribery involving foreign arbitrators.
57. GRECO concludes that recommendation xii has been implemented satisfactorily.

Theme II: Transparency of Party Funding

58. It is recalled that GRECO in its evaluation report issued eight recommendations in respect of Theme II. Compliance with these recommendations is dealt with below.
59. The Liechtenstein authorities indicate at the outset that on 12 December 2017 the Government adopted a draft bill on the revision of the Law of 28 June 1984 on the payment of contributions to political parties (Liechtenstein Legal Gazette 1984 No. 31) and submitted it for the official consultation procedure. The deadline for the submission of comments is set for 15 March 2018.
60. As background information, the Liechtenstein authorities add that, under the People's Rights Act, which governs political rights, candidates to parliamentary elections must submit an application signed by at least 30 voters of the constituency concerned. In the context of this Act, the term "electoral group", rather than "political party", is used. While electoral groups are not required by the Law on the payment of contributions to political parties (LPCPP) to apply for state support, the authorities underline that there is a strong incentive for them to constitute themselves as political parties as the LPCPP also provides financial support to parties which have participated in the last elections in the country's two constituencies and obtained at least 3% of votes, even with no seats won. They add that, in practice, all electoral group/political party which have won at least one seat in the past have applied for state support under the LPCPP. Finally, they stress that political parties play the central role in campaigns rather than candidates and state support is essential to their political impact and survival.

Recommendation i.

61. *GRECO recommended to ensure that political parties in Liechtenstein take an appropriate status and legal form, which takes into account the specificities of political parties and entails the necessary legal capacity.*
62. The authorities of Liechtenstein have provided the text of the Government draft bill revising the LPCPP, which has been submitted for consultation procedure, which, in respect of recommendation i, reads as follows:

Article 2 – Eligibility; Application

1) Entitled to the allocation of contributions are political parties that are established in the form of an association (Articles 246 et seq. of the Persons and Companies Act) **and registered in the Commercial Registry**, that are committed to the principles of the Constitution and can demonstrate activities within the meaning of Article 1.

(...)

4) For the payment of the first semi-annual instalment after the elections to the Diet, the following documents have to be submitted to the Financial Affairs Unit by 31 March:

a) the party statutes;

b) the extract from the Commercial Registry.

63. GRECO takes note of the above. As stated in the Evaluation Report, the absence of a clear status and legal capacity can sometimes encourage parties to resort to arrangements which can make it unnecessarily difficult to hold them to account or to draw a reliable financial picture of their activities. It had been found in the Evaluation Report that not all political parties appeared to be registered in Liechtenstein as there was no legal requirement to do so; and the statute of political parties in Liechtenstein needed clarification to limit risks for the level of transparency and the future enforcement of strengthened legislation on political financing.
64. GRECO considers that the proposed amendment to Article 2 in the draft bill revising the LPCPP requiring registration for political parties would appear to respond to the particular concern expressed in the Evaluation Report. The draft bill has been endorsed by Government and submitted for public consultation. However, it is yet to be adopted by Parliament. This recommendation can thus only be considered partly implemented.
65. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

66. *GRECO recommended i) that adequate accounting rules and forms be introduced which would clearly apply to the financing of all political parties and of election campaigns, which would take into account the various sources of income, expense, assets, debts and liabilities, and ii) that accounts be properly consolidated with the inclusion of all entities which are related directly or indirectly to a political party or are otherwise under its control.*
67. The authorities of Liechtenstein have provided the relevant text of the aforementioned Government draft bill revising the LPCPP:

Article 2 – Eligibility; Application

(...)

2) The **annual** application for the allocation of contributions has to be submitted to Government **the Financial Affairs Unit by 15 September of the claim year** by the party organ appointed for external relations in accordance with the party statutes.

3) The annual application shall be accompanied by:

a) the financial statements relating to the last financial year, established in accordance with Article 6 and published on the Internet; (...)

Article 6 – Obligations Annual financial statements

The political parties have to keep accurate records of the use of the contributions and store the relevant documents. The annual financial statements have to be published in an appropriate manner. The Government may appoint an independent audit firm to audit.

1) Each political party shall publicly account for the nature of its income and expenditure annually with annual financial statements (consisting of balance sheet, income statement and attachment). Contributions of the local authorities to the local groups shall be listed in the attachment.

2) The annual financial statements shall be published by the political parties on their website for at least five years.

3) The annual financial statements must be prepared in accordance with the principles of proper accounting (Articles 1050 to 1054 of the Persons and Companies Act).

4) The financial statements shall show separately at least the following types of income and revenue:

a) membership fees;

b) contributions from the mandatories of each party;

c) income from a party's own economic activity;

d) income from shareholding in undertakings;

e) receipts from other assets;

f) donations (with the exception of points h and i);

g) income from events, from the production and distribution of publications and similar income directly related to party activities;

h) income in the form of staff made available free of charge or without corresponding remuneration;

i) benefits in kind;

k) borrowing;

l) state contributions to the party;

m) contributions to the parliamentary group in the Diet;

n) contributions/cost sharing by local groups;

o) other income and receipts, whereby those exceeding 5% of the respective annual income are to be shown separately.

5) The financial statements shall show separately at least the following types of expenditure:

a) personnel;

b) office expenses and purchases, excluding low-value assets;

c) general public relations expenses, including press releases;

d) events;

e) car fleet;

f) other administrative expenses;

g) membership fees and international work;

h) legal, audit and consulting fees;

i) borrowing costs and loan repayments;

k) travel and voyage expenses;

l) payments to shareholding in undertakings;

m) expenses for the parliamentary group in the Diet;

n) contributions/cost sharing for the local groups;

o) other types of expenditure, with the latter being shown separately in the amount of more than 5% of the respective annual expenditure.

68. GRECO takes note of the above. From the draft bill revising the LPCPP, GRECO notes that a more precise framework is proposed for annual financial statements provided by political parties, on different sources of revenues as well as expenditure. The applications for state contributions to which the submission of annual financial statements is linked would have a fixed date which would in turn provide a unified reference period – currently lacking – for annual financial statements. As to election campaigns, it was highlighted in the Evaluation Report that political parties play a central role in campaigns rather than candidates and that the relevant information of the financing of campaign would be included in their financial statements. That said, the Government's draft bill remains to be examined and adopted by Parliament.
69. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

70. *GRECO recommended Liechtenstein seeks ways to increase the transparency of contributions by third parties in the financing of political parties and election campaigns.*
71. The authorities of Liechtenstein refer to Article 6 para. 4 d and o of the Government's draft bill revising the LPCPP as reproduced under recommendation ii. These provisions would ask political parties to provide in their annual statements the detail of their income.
72. GRECO takes note of the above. GRECO considers that paragraph 4 d. and o. of Article 6 of the draft bill to the LPCPP could potentially bring more transparency regarding contributions by third parties. The Government's draft bill has yet to be submitted to Parliament.
73. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

74. *GRECO recommended i) that political parties – and other campaign participants as the case may be – be required by law to record all forms of funding and private support with information on their nature and value, including for goods and services provided free of charge or at preferential value, as well as in respect of loans; ii) to introduce a general ban on donations from persons or bodies that fail to reveal their identity to the political party or candidate concerned and iii) that the legal situation regarding funding from parliamentary groups and private support to these groups be clarified and that the financial flows concerned be properly accounted for in that context.*
75. The authorities of Liechtenstein refer to the Government draft bill to the LPCPP. In respect of the first part of the recommendation, the authorities point to proposed Article 6 para. 4 and in particular the following subparagraphs which would require parties to indicate in their financial statements: c) income from their own economic activity; e) receipts from other assets; f) donations; g) income from events, the production and distribution of publications and related activities; h) income in the form of staff made available free of charge or without corresponding remuneration; i) benefits in kind; and k) borrowing. Regarding the second part of the recommendation, the authorities refer to Article 6a of the draft bill which would require parties to publish their donation regulations on their website and that would prohibit parties from accepting donations from anonymous donors when they exceed CHF 1 000 (approximately EUR 853). In this respect, the draft bill's explanatory report justifies the exception regarding donations below a threshold of CHF 1 000, as a way to allow political parties to collect spontaneous donations in the context of certain party events, without placing a disproportionate burden on parties to record such contributions individually. As to the third part of the recommendation, the authorities refer to the following proposed provisions requiring parties to report: contributions from their mandatories (Article 6 para. 4 b); contributions to their parliamentary group (Article 6 para. 4 m); expenses for their parliamentary group (Article 6 para. 5 m).

Article 6a – Donations

1) The political parties have to publish their donation regulations on their website.

2) Political parties may not accept donations from anonymous donors, provided that the donation amounts to more than CHF 1,000 in individual cases.

76. GRECO takes note of the above. As regards the first aspect of the recommendation, GRECO notes that Article 6 as proposed in the draft bill to the LPCPP would set out a clearer framework for sources of funding for political parties as they would be required to furnish details of their income coming from economic activities they engage in; assets; income from events, publications and similar party-related activities; benefits in kind; loans; and staff made available free of charge or without corresponding remuneration.
77. Insofar as the second part of the recommendation is concerned, the Evaluation Report had highlighted the absence of rules on donations received by parties. Article 6 para. 4 f of the draft bill would require from parties to include donations in their financial statements and Article 6a would require them not to accept anonymous donations in excess of CHF 1 000 (approximately EUR 853). However, this falls short of a general ban on donations from unknown donors or what could be considered an acceptable *de minimis* exception to this general ban.
78. As regards the third aspect of the recommendation, the Evaluation Report highlighted that some parties benefit in practice from financial flows from their respective parliamentary groups which can receive financial contributions from private sources which could be repaid partly to the parties as group contributions. The Evaluation Report called for the situation to be clarified, by either forbidding such flows or by ensuring that they are accounted for properly. The proposed new provisions included in the draft bill would require parties to indicate in their financial statements contributions made to their parliamentary groups (Article 6 para. 4 m) and the expenses for these parliamentary groups (Article 6 para. 5 m), which appear to respond, at least to some extent, to the concerns underpinning this part of the recommendation.
79. GRECO considers that overall the adoption and entry into force of these amendments to the LPCPP would introduce what appears to be a clearer framework regarding sources of funding of political parties in Liechtenstein. However, the exception to the general ban on donations from unknown donors appears too broad and the draft bill prepared by the Government has yet to be submitted to Parliament.
80. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

81. *GRECO recommended i) that measures be taken to ensure the effective, regular and timely publication of adequate financial statements concerning political parties and – as appropriate – other election campaign participants and ii) that individual donations above a certain minimum level, together with the identity of donors, be disclosed in that context.*
82. The authorities of Liechtenstein draw attention to the following provisions of the aforementioned draft bill prepared by the Government on revising the LPCPP concerning the first part of the recommendation: Article 6 on annual financial statements would require political parties to publish annual financial statements with a balance sheet and an income statement (paragraph 1) and make them available on their website for a least five years (paragraph 2). In addition, Article 2 para. 3 a would require the parties' application for state contributions should be accompanied by the financial statements relating to the last financial year and published on the Internet (Article 2 para. 3 a).
83. GRECO takes note of the above information. As for the first part of the recommendation, GRECO notes that the draft bill prepared by the Government to revise the LPCPP would require political parties to publish annual financial statements (including a balance sheet and income statement) on their website. The Evaluation Report underlined that the problem about the publication of annual financial statements of political parties was that there was no indication as to who was responsible

for their publication and how it should be done. The proposed provisions would therefore clarify this and comply with this part of the recommendation.

84. As for the second part of the recommendation, GRECO notes that the draft bill would require political parties to record different types of donations in their public financial statements without, however, disclosing the identity of donors, as per the recommendation.
85. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

86. *GRECO recommended i) to establish a mechanism for the independent supervision of the financing of political parties and election campaigns, which would have the necessary authority and resources to ensure proper supervision; and that ii) political parties and other election campaign participants as appropriate, be required to present periodically – and at least annually in the case of political parties – financial statements comprising adequate information for enabling proper supervision.*
87. The authorities of Liechtenstein refer to the Government's draft bill on revising the LPCPP and more specifically Article 2 para. 3 b and Article 5 para. 4:

Article 2 – Eligibility; Application

3) The annual application shall be accompanied by:

(...)

b) the report of the statutory auditors on the review of the financial statements (Article 1058 of the Persons and Companies Act).

Article 5 – Decisions on the allocation of contributions

(...)

4) The Government may, at the request of the Financial Affairs Unit, commission an independent auditing firm to carry out a supplementary audit. The costs of the supplementary audit shall be borne by the political party concerned.

88. According to the authorities, insofar as supervision is concerned, the important new element is the obligation that would be made on political parties to have their financial statements reviewed in accordance with Article 1058 of the Persons and Companies Act (Article 2 paragraph 3 b of the draft bill). This new obligation would entail an independent audit review by a certified public accountant or an auditing company, in accordance with the standards of the Liechtenstein Association of Professional Auditors. Professionally active auditors and auditing companies are licensed and supervised by the Financial Market Authority (FMA) in accordance with the relevant EU legislation applicable to the European Economic Area. The independence of this supervisory mechanism is ensured through the mandatory annual independent audit of the parties' financial statements in combination with the obligation of the Financial Affairs Unit to report any suspicion of an offence as criminalised under new Article 7 to the Prosecutor General's Office.
89. Furthermore, audits under Article 5 of the draft bill would now be supplementary audits at the cost of the political party concerned. According to the authorities, this potential sanction creates a clear incentive to comply with the new mandatory accounting standards stipulated by Article 6 paragraph 3, which further strengthens the supervisory mechanism.

90. GRECO takes note of the above. At the outset, it refers to the Evaluation Report which highlighted that Liechtenstein needed to introduce a fully-fledged reporting mechanism for parties and possibly other campaign participants to submit detailed financial statements to the supervision of a public authority (paragraph 59).
91. GRECO considers that the requirement for political parties to provide, together with their application for state financial support, an audit report carried out by a certified public accountant or auditing company, as proposed in the draft bill, would be a positive development insofar as independent external auditing is concerned. The Evaluation Report already noted that, in accordance with existing legislation, the Government could appoint an independent audit firm; the novelty which the bill puts forward in this regard is that such audits would be supplementary to the aforementioned audits, and that their cost would have to be borne by the party concerned, which could act as an incentive for them to comply with their auditing obligations.
92. In addition to such external audits, there does not appear to be any plans of entrusting the task of financial supervision of political parties to an independent public authority. In this respect, the Evaluation Report had also pointed to the need of reviewing the arrangements involving the Government's Financial Affairs Unit, which would remain the competent public authority under the proposed bill, so as to entrust a sufficiently independent body with the task of supervision (paragraph 59).
93. As to the second part of the recommendation, the draft bill would require parties to submit annual financial statements with a certain amount of information on funding and expenditure as already examined under recommendation ii, which would appear to comply with this part of the recommendation. However, the draft bill is yet to be submitted to Parliament.
94. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

95. *GRECO recommended that the improved supervisory arrangements include the periodic publication of results and findings concerning individual party compliance.*
96. The authorities of Liechtenstein do not refer to provisions addressing this recommendation either in the Government's draft bill on revising the LPCPP or elsewhere.
97. GRECO takes note of the above. The Evaluation Report noted that audit results of the Financial Audit Office were not published and that there was no sufficiently independent public body to supervise party funding. The authorities should ensure that the supervisory arrangements provide for the periodic publication of results and findings concerning individual party compliance.
98. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

99. *GRECO recommended i) that the legislation be supplemented by effective, proportionate and dissuasive sanctions for various breaches of the regulations on the financing of political parties and – as the case may be – of elections campaigns and ii) that for such purposes, the supervisory authority be clearly allowed to forward to the prosecutorial body those cases for which there is a suspicion of a criminal offence.*

100. The authorities of Liechtenstein point to Article 5 paras. 3 and 4 and Article 7 of the Government's draft bill on revising the LPCPP.

Article 5 – Decisions on the allocation of contributions

(...)

3) If the supporting documents submitted are not sufficient for a final assessment and decision on an application, the Financial Affairs Unit shall require the applicant to complete the documentation within a specified deadline. If the deadline is not met, the application shall be rejected.

4) The Government may, at the request of the Financial Affairs Unit, commission an independent auditing firm to carry out a supplementary audit. The costs of the supplementary audit shall be borne by the political party concerned.

Article 7 – Penalties

1) The Court of Justice shall, unless the offence is punishable by a more severe penalty in accordance with another provision, punish by a fine of up to CHF 50 000 for infringement, or by imprisonment of up to six months in the case of non-collectibility, anyone who obtains financial support under this Act on the basis of untrue or incomplete information or by providing false documents or in any other way which he is not entitled to.

2) In the event of a negligent commission, the upper penalty limit shall be reduced by half.

101. As regards the second part of the recommendation, reference is made to Article 53 para. 1 of the Criminal Procedure Code, which stipulates that if an authority is aware of a suspicion of a criminal act to be pursued *ex officio*, it must file a complaint with the Prosecutor General's Office or the National Police. The Financial Affairs Unit, in carrying out its functions under the law on the payment of financial contributions to political parties, must therefore report any suspicion of a criminal offence to the law enforcement authorities.
102. GRECO takes note of the information provided by the Liechtenstein authorities. Regarding the first part of the recommendation, the Evaluation Report noted that there were no sanctions for either formal or substantial matters concerning parties' financial statements. The draft bill would introduce administrative sanctions (state contributions being refused and payment of the cost of any additional audit) as well as criminal sanctions (with penalties of up to CHF 50 000, approximately EUR 42 660, or a prison sentence of up to six months).
103. As regards the second part of the recommendation, GRECO is satisfied that any suspicions of a criminal offence would need to be reported to the law enforcement authorities.
104. However, for the time being, the draft bill has yet to be submitted to Parliament, and therefore the recommendation can only be considered partly implemented.
105. GRECO concludes that recommendation viii has been partly implemented.

III. CONCLUSIONS

106. **In view of the above, GRECO concludes that Liechtenstein has implemented satisfactorily twelve of the twenty recommendations contained in the Third Round Evaluation Report.** Out of the eight remaining recommendations, seven have been partly implemented and one has not been implemented.
107. More specifically, with respect to Theme I – Incriminations, recommendations i to xii have been implemented satisfactorily. With respect to Theme II – Transparency of Party Funding, recommendations i-vi and viii have been partly implemented and recommendation vii has not been implemented.
108. With regard to incriminations, GRECO commends the progress achieved by Liechtenstein with the ratification on 9 December 2016 and entry into force on 1 April 2017 of the Criminal Law Convention on Corruption (ETS 173) and its Additional Protocol (ETS 191), and with the entry into force of the revision of the Criminal Code on 1 June 2016, which have responded to the different recommendations made by GRECO in its Evaluation Report. The notions of “public official” and “arbitrator” in connection with the bribery offences has been broadened and clarified; in particular, “public official” now explicitly covers all assembly members, as well as officeholders and employees of the legislature, administration or judiciary of another State or an international organisation. The incriminations of active and passive bribery in the private sector have also been introduced. The notion of trading in influence has been revised in line with Article 12 of the Convention. Moreover, sanctions for bribery and trading in influence have been increased and brought to levels comparable to other member states. Finally, training and awareness raising measures have been taken to sensitise the relevant professionals.
109. With regard to political financing, GRECO notes that the Law on the Payment of Contributions to Political Parties (LPCPP) is in the process of being revised with a view to providing a clearer framework for the financing of political parties and more transparency. The draft bill revising the LPCPP has been prepared by the Government and submitted for public consultation. If adopted by Parliament, it would respond to a number of, if not all, recommendations. While there would be compulsory independent auditing, the bill does not provide for financial supervision by a sufficiently independent public authority. The draft bill, as it stands, would benefit from further adjustments to better comply with some of GRECO’s recommendations.
110. GRECO invites the Head of the delegation of Liechtenstein to submit additional information regarding the implementation recommendations i to viii (Theme II – Transparency of Party Funding) by 30 September 2019 at the latest.
111. Finally, GRECO invites the authorities of Liechtenstein 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.