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Groupe d'États contre la corruption

COUNCIL OF EUROPE



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**Confidential**  
**GrecoRC3(2018)6**

## **Third Evaluation Round**

### ***Sixth Interim Compliance Report on Denmark***

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

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#### **"Transparency of Party Funding"**

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

## I. INTRODUCTION

1. The Third Round Evaluation Report on Denmark was adopted at GRECO's 43<sup>rd</sup> Plenary Meeting (2 July 2009) and made public on 25 February 2010, following authorisation by Denmark (Greco Eval III Rep (2008) 9E Theme I / Theme II). In accordance with its Rules of Procedure, GRECO had selected Albania and the Netherlands to appoint Rapporteurs for the compliance procedure.
2. In the Compliance Report, which was adopted by GRECO at its 51<sup>st</sup> Plenary Meeting (Strasbourg, 23-27 May 2011), it was concluded that out of the five recommendations under Theme I - Incriminations, three had been implemented satisfactorily or dealt with in a satisfactory manner, one had been partly implemented and one had not been implemented. In respect of Theme II – Transparency of Party Funding, none of the nine recommendations had been implemented. The overall level of compliance was considered “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
3. In the first Interim Compliance Report, which was adopted by GRECO at its 55<sup>th</sup> Plenary Meeting (Strasbourg, 16 May 2012), the level of compliance was unchanged and was again assessed as “globally unsatisfactory” since there had been no improvement. Therefore, in accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructed its President to transmit a letter to the Head of Delegation of Denmark<sup>1</sup>, drawing attention to the non-compliance with the relevant recommendations and the need to take determined steps with a view to achieving decisive progress.
4. In the Second Interim Compliance Report, adopted at GRECO's 61<sup>st</sup> Plenary Meeting (Strasbourg, 18 October 2013), Denmark's level of compliance increased slightly (four out five Theme I recommendations had been complied with), but the level remained “globally unsatisfactory” as none of the Theme II recommendations had been implemented). In accordance with Rule 32, paragraph 2 subparagraph (ii) c), on 27 November 2013, the Secretary General of the Council of Europe, invited by GRECO, sent a letter to the Minister of Foreign Affairs of Denmark, drawing attention to the non-compliance of Denmark with pending recommendations.
5. In the Third Interim Compliance Report, which was adopted by GRECO at its 65<sup>th</sup> Plenary Meeting (10 October 2014), GRECO maintained its assessment that the level of compliance with the recommendations was “globally unsatisfactory” and the authorities were again requested to report on this matter.
6. In the Fourth Interim Compliance Report, adopted by GRECO at its 69<sup>th</sup> Plenary Meeting (16 October 2015), it was again concluded that no concrete progress had been achieved and that the level of compliance remained “globally unsatisfactory”. Furthermore, GRECO requested the authorities of Denmark to receive a high-level mission in order to discuss - on the spot with the stakeholders concerned - ways to expedite pending legislative and policy changes concerning political financing.
7. On 25 May 2016, the High-level meeting was held at the premises of the Ministry of Justice in Copenhagen, at which the GRECO delegation (headed by the President of GRECO) met with the Minister of Justice, Mr Søren PIND, and other representatives of the Ministry of Justice and the Ministry of Social Affairs and the Interior and the Head of the Danish Delegation to GRECO. In a

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<sup>1</sup> The letter was sent on 15 June 2012.

separate meeting, the delegation of GRECO met with representatives of all political parties in the Danish Parliament (Folketinget). The Minister made a commitment to actions to be taken aiming at improving the level of compliance with GRECO's recommendations (concerning political financing). It was also stated that discussions between all political parties represented in the Folketinget were about to start.

8. In the [Fifth Interim Compliance Report](#) adopted by GRECO at its 74<sup>th</sup> Plenary meeting (2 December 2016), GRECO again concluded that no tangible results had been achieved in respect of the pending recommendations.
9. The current Report, the [Sixth Interim Compliance Report](#), was drawn up by Ms Teuta VODO (Albania) and Ms Marja van der Werf (the Netherlands), with assistance from the GRECO Secretariat. It evaluates further steps taken by the authorities to comply with the pending recommendations (i.e. recommendation i under Theme I and recommendations i-ix under Theme II) since the adoption of the Fifth Interim Compliance Report.

## **II. ANALYSIS**

### **Theme I: Incriminations**

10. It is recalled that under Theme I, only recommendation i was pending as not being complied with.

#### **Recommendation i.**

11. *GRECO recommended to put beyond doubt that all forms of "undue advantages" are covered by the relevant bribery offences concerning foreign public officials and officials of international organisations/assemblies/courts.*
12. It is recalled that this recommendation has been assessed as not implemented, lastly in the Fifth Interim Compliance Report. In summary, GRECO had taken note of the authorities' interpretation of Section 122 of the Criminal Code (CC), which remained the same as analysed and criticised in the Evaluation Report. As for the Guidelines issued by the Director for Public Prosecution (DPP), GRECO had found that they fell short of the requirements of the recommendation and, moreover, that the Ministry of Justice's booklet on "How to avoid corruption", which had been updated in 2015 to fall in line with the DPP's Guidelines represented a step backwards. The revised text indicated that small facilitation payments, although generally to be discouraged, made in connection with international business transactions in order to induce a public official to act in contravention of his/her duties (but only in this situation), would always be undue and thus constitute a criminal offence. Moreover, the situation concerning the different forms of bribery of officials of foreign assemblies and courts had not been clarified. The authorities had also submitted that, in September 2014, an "Anti-Corruption Forum" (bringing together representatives of the Ministry of Justice, the DPP, SØIK, the Ministry of Foreign Affairs, the Ministry of Finance, etc.) had been launched with the goal of attaining improved co-ordination and information sharing between authorities for the fight against corruption. The authorities had also reported that, in September 2015, the SØIK was to establish a reinforced international unit for investigating and prosecuting cases with an international dimension, including all cases in Denmark concerning bribery of foreign public officials. Despite this information, GRECO could not conclude that all forms of "undue advantages" had been covered by the relevant bribery offences concerning foreign public officials.

13. The Danish authorities now reiterate their position, as stated at the adoption of the Evaluation Report in 2009 and throughout the compliance procedure - including the clarifications referred to above - that Danish law criminalises bribery, including in respect of facilitation payments to the extent required by the Criminal Law Convention.
14. GRECO notes that the legal situation remains the same to date as it did at the time of the adoption of the Evaluation Report.
15. GRECO concludes that recommendation i remains not implemented.

## **Theme II: Transparency of Party Funding**

16. It is recalled that, in the Evaluation Report, GRECO had addressed nine recommendations to Denmark in respect of Theme II and that all of them remained not implemented in the previous compliance reports.
17. The authorities of Denmark report that on 1 February 2017, the Government, consisting of the Liberal Party, Liberal Alliance and the Conservative Party, reached an agreement with the Social Democratic Party regarding transparency on private funding of political parties. The settlement contains five elements, all regarding transparency in the private funding of political parties. The main part, four elements, of the agreement was presented to Parliament in April 2017 and was passed by Parliament on 1 June 2017. The new legislation, the Accounts of Political Parties Act and the Grants to Political Parties Act, entered into force on 1 July 2017. The fifth and last element of the agreement is to be introduced as a set of guidelines in 2018, according to the Danish authorities.

### **Recommendation i.**

18. *GRECO recommended to introduce a ban on donations from donors whose identity is not known to the political party/election candidate.*
19. The authorities report that the new legislation, Section 2a of Accounts of Political Parties Act (APPA), introduces a ban on donations exceeding 20 000 DKK (approx. EUR 2 700) from donors whose identity is not known to the political party/list of candidates. The threshold is to be indexed annually as of 2018 (Section 5a APPA). Donations exceeding this amount must be returned to the donor, or – if this is not possible – transferred to the state. Furthermore, the total amount of anonymous donations given to the parties and to lists of candidates and the total amount of anonymous donations returned (to the donor or transferred to the state) must be reported and is to be made public.
20. The authorities add that a ban on anonymous donations to individual candidates has not been introduced. However, the total amount of anonymous donations to all individual party candidates, who stand for election for each party, must be reported and is to be made public if the list of candidates applies for public funding at regional or local level. The total amount of anonymous donations to independent candidates, who stand for parliamentary elections, must also be reported and will be made public, if they apply for public party funding.
21. GRECO takes note of the new legislation, i.e. that a ban on donations from donors whose identity is not known has been introduced in law (Section 2 a APPA). This is clearly a step in the right direction which is to be welcomed. Having said that, GRECO also notes that the ban only applies

in respect of donations to political parties and lists of candidates, but not in respect of individual candidates, contrary to what is required by the recommendation. GRECO is also concerned about the high threshold (approx. EUR 2 750 in 2018) below which anonymous donations would be acceptable. It follows that the new legislation only meets the recommendation partly.

22. GRECO concludes that recommendation i has been partly implemented.

**Recommendation ii.**

23. *GRECO recommended that the accounting/reporting obligation in respect of donations exceeding the threshold stipulated in the Accounts of Political Parties Act, be complemented with an obligation upon political parties to report the total value of donations provided by each donator, in addition to the identity of the donors.*
24. The authorities of Denmark report no progress in respect of this recommendation.
25. GRECO concludes that recommendation ii remains not implemented.

**Recommendation iii.**

26. *GRECO recommended to provide further guidance on the reporting and valuation of in-kind contributions to political parties.*
27. The authorities report that the Government and the opposition have agreed that guidelines are to be developed in order to clarify the existing regulations in respect of various forms of contributions, including in-kind contributions. Guidelines are expected in 2018.
28. GRECO takes note of the information provided and concludes that recommendation iii remains not implemented.

**Recommendation iv.**

29. *GRECO recommended to consider introducing more frequent reporting on income and expenditure relating to election campaigns and to make sure that relevant information is disclosed in a way that provides for access by the public.*
30. The authorities report that the Committee on Transparency of Party Funding<sup>2</sup> has considered whether to introduce special provisions for transparency in connection with elections to political assemblies. However, the committee did not recommend introducing such special provisions nor introducing more frequent reporting of income/expenditure in relation to election campaigns. The authorities add that the Government shares this position and does not intend to pursue this recommendation any further.
31. GRECO takes note of the position taken by the Danish authorities. While regretting the outcome, it notes that this recommendation has been subject to consideration by the Committee on

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<sup>2</sup> The Committee on Transparency of Party Funding was established by the Danish Government in 2014. It was tasked to consider recommendations of international organisations concerning transparency of party funding. The Committee delivered a report in March 2015, following consideration of GRECO's recommendations and proposed different models for future regulations in the area of transparency of political financing. This was commended by GRECO in its Fourth Interim Compliance report on Denmark.

Transparency of Party Funding (which delivered a public report in 2015) as well as by the Government. It follows that the matter has been duly considered, as required by the recommendation.

32. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

**Recommendation v.**

33. *GRECO recommended to consider expanding political parties' accounting/reporting obligations to include income from the parties' own activity and property at central, and to the extent possible, regional and local levels and to seek ways to increase the transparency of contributions by "third parties" (e.g. related entities and interest groups etc) to political parties.*
34. The authorities of Denmark report that the Danish Committee on Transparency of Party Funding (see recommendation iv and footnote) and the Government have considered the current recommendation. In particular, as regards third parties, the Government recognises that further identification requirements in these cases can provide increased transparency to the public, because the possibility of concealing the real donor, when the donation is granted through an association etc., is reduced. However, it is the opinion of the Government that consideration must also be given to the protection of the internal and economic affairs of the associations etc. and to the protection of the political and economic dispositions of private persons. Moreover, it is assumed that such requirements will cause more administrative work for the political parties that receive donations from associations etc. With this background, the Government has not implemented the substance of the recommendation.
35. GRECO takes note of the explanation provided by the Government, following its consideration in respect of the current recommendation. In addition, GRECO recalls that the Danish Committee on Transparency of Party Funding (see recommendation iv and footnote) has also considered this recommendation prior to the Government doing so. GRECO regrets the outcome of these considerations, but it accepts that the recommendation has been considered by the authorities, which was required by the recommendation.

36. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

**Recommendation vi.**

37. *GRECO recommended to ensure through appropriate regulations that, to the extent feasible, donations to lists of candidates and individual candidates above a certain threshold (including the identity of the donor and the total of donations by the same donor) are to be disclosed.*
38. The authorities report that the new legislation, Sections 7d, 10b and 11d of the Grants to Political Parties Act (GPPA) introduces rules that ensure transparency regarding private funding to lists of candidates as well as in respect of individual candidates. All private donations, exceeding 20 000 DKK, as indexed, (in 2018 approx. EUR 2 750), are to be reported and made public, including the name and address of the donor as well as of the receiver. These new transparency rules are thus in line with what was already in place in respect of political parties. The authorities explain that donations of a smaller value are to be cumulated per year and once the threshold has been reached, the publication requirement of making the donations public will apply.

39. GRECO takes note of the information provided and the amended legislation. It is to be welcomed that private funding to lists of candidates as well as to individual candidates are now subject to public transparency. This is a step in the right direction and GRECO notes that the new rules are in compliance with what applies in respect of political parties. That said, the current recommendation requires that not only the identity of the donor is to be revealed, but also the value of the donation/donations. In this respect, the new legislation is not in full compliance with the recommendation as the amended law concerning lists of candidates and individual candidates does not require that the value of the donation/donations need to be specified more than that it is above the threshold. GRECO understands that the law now applies in the same way whether a donation is provided to political parties, lists of candidates or individual candidates. The lack of transparency also in respect of the total value of the donation/donations was criticised in respect of political parties (recommendation ii). The same lacuna now applies to lists of candidates and individual candidates. It follows that the legislative measures taken in respect of the current recommendation do not fully meet the requirements of the current recommendation.
40. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

41. *GRECO recommended to ensure independent and consistent auditing in respect of all political parties registered for national elections, elections to the European Parliament and as appropriate those involved at regional and local level; and to establish clear rules / guidelines ensuring the necessary independence of auditors who are to audit the accounts of political parties.*
42. The authorities report that, according to the new Section 4(3) APPA, the accounts of political parties which participate in elections to the Danish Parliament or the European Parliament are now to be audited and that the auditor must be an officially approved auditor, in accordance with the statutory requirements for independence and competence of the Approved Auditors and Audit Firms Act. These auditors are subject to the compliance control system of this legislation. The Danish authorities explain that the Government, before suggesting the new legislation, recognised that it was important to bring such an obligation under statute at the level of national and European elections. However, parties and lists of candidates at regional and local elections are not covered by the requirement of an auditor's approval, first of all because they are not covered by the same accounting requirement. While Government recognises that a requirement for an auditor's approval can provide increased transparency to the public, it is of the opinion that a requirement for an auditor's approval cannot justify the administrative and economic burden that would be imposed on the regional and local level by extending the requirement to apply to parties and lists of candidates performing at regional and local level. Furthermore, the Danish Committee on Transparency of Party Funding has considered whether it is advisable to introduce a requirement for an auditor's approval of the accounts prepared by the respective party units and individual candidates. An introduction of a requirement for audited accounts from all levels of a party would add considerable costs to the political parties and potentially also to the individual candidates. The Committee therefore solely recommended introducing a requirement for auditor's approval of the central organisations' accounts. The authorities have also considered the last part of the recommendation; the Committee on Transparency of Party Funding noted GRECO's concern, but took the view that the safeguards concerning impartiality and independence provided in the Approved Auditors and Audit Firms Act<sup>3</sup> were sufficient also in respect of the auditing of political parties' accounts.

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<sup>3</sup> Section 16. The auditor shall be the representative of the public during the performance of assignments in pursuance of Section 1 (2). The auditor shall perform the assignments in accordance with generally accepted auditing practices, and the

43. GRECO takes note of the information provided. It welcomes this new legislation (Section 4(3) APPA) making it clear that political parties which participate in national or European elections are obliged to have their accounts audited by an independent officially (under law) approved auditor. This was the case in the past, only in the context of requesting public funding. The new law establishes that such auditing has now become a general rule. This clear rule is a major step forward. Furthermore, GRECO notes that the Danish Committee on Transparency of Party Funding and the Government considered but decided not to make a similar requirement in respect of parties and election lists participating in regional and local elections, in order to avoid unnecessary administrative and financial burden upon such entities, which are considerably smaller than the national parties and are not subject to the same accounting requirements as the parties and lists of candidates that participate in national and European elections. GRECO takes note of this explanation, which follows its practice in this respect, i.e. that a more flexible approach may be acceptable at the regional and local level and in relation to smaller parties etc., as was highlighted in the Evaluation Report. As far as the last part of the recommendation is concerned, GRECO takes note of the details stipulated by the Approved Auditors and Audit Firms Act as to what an auditor must follow in order to be considered "independent" and "impartial" (see [footnote 3](#)) and takes the view that these rules are generally applicable to any form of auditing, including in respect of political parties, but are not specific in respect of certain issues, particularly relevant for political parties, such as party membership and the time the same auditor may audit a political party etc. As no rules/guidelines have been established in this respect, it follows that this part of the recommendation has not been complied with.
44. GRECO concludes that recommendation vii has been partly implemented.

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auditor shall show the accuracy and expediency that the nature of the assignments permits. Generally accepted auditing practices also entail that the auditor shall show integrity, objectivity, confidentiality, professional behaviour, professional competence and due care in the performance of the assignments.

(2) The assignments in pursuance of (1) may only be performed in audit firms, cf., however, Section 10 (3), Section 11 and Section 17.

(3) During the performance of assignments in pursuance of Section 1 (3), the auditor shall show professional competence and due care. If the auditor does not act independently in connection with the performance of the assignments, cf. Section 24, this must be disclosed in the report.

(4) The Commerce and Companies Agency may lay down further rules on ethics, the performance of audit assignments and the auditor's provision of auditors' reports, including the auditor's statements on management's reviews in pursuance of the Danish Financial Statements Act, and on the auditor's provision of other assurance reports.

**Section 24.** An auditor who performs assignments covered by Section 1 (2) must be independent of the company that the assignment concerns and must not be involved in the decisions made in the company.

(2) An auditor is not independent if there is a direct or indirect financial, business or employment relationship or other relationship, including the provision of services not covered by Section 1 (2), between the auditor and the company that the assignment concerns that may raise doubt in a well-informed third party about the auditor's independence. The same shall apply if there is such a relationship between other persons in the audit firm who are attached to the assignment or who are in a position to influence the outcome of the assignment, the audit firm or the audit firm's network and the company that the assignment concerns.

(3) In the event of threats to the auditor's or audit firm's independence, including self-review, self-interest, advocacy, close personal relations, including familiarity, or intimidation, the auditor or the audit firm shall apply safeguards aimed at mitigating such threats. If the threat is of such a nature in relation to the safeguards applied that the auditor's or the audit firm's independence has been compromised, the auditor shall abstain from performing assignments in pursuance of Section 1 (2).

(4) An auditor must not perform assignments in pursuance of Section 1 (2) that concern a company covered by Section 21

(3) if this involves self-review or self-interest. The auditor(s) who sign(s) the auditors' report in such a company must not take up a managerial position in said company until two years after the auditor in question has resigned from his or her position as the company's auditor.



### **Recommendation viii.**

45. *GRECO recommended to ensure independent and substantial monitoring in respect of the funding of political parties and electoral campaigns, in line with Article 14 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns.*
46. The authorities report that they have not introduced any other new form of monitoring other than the obligation upon political parties to have their accounts monitored by an independent auditor, as required in recommendation vii.
47. GRECO takes note of the information provided by the authorities not to implement the current recommendation. It wishes to stress that the current recommendation is aimed at changing the prevailing insufficient situation in Denmark, where Parliament plays a passive role and the State Audit, which is a body under Parliament, has never checked party accounts and where the Ministry of Social Welfare (which is not independent as such) only checks accounts for the purpose of state funding. GRECO has already welcomed the new requirement to audit party accounts (recommendation vii), which is not sufficient in order to meet the concern of the current recommendation.
48. GRECO concludes that recommendation viii remains not implemented.

### **Recommendation ix.**

49. *GRECO recommended that yet-to-be-established rules on financing of political parties and electoral campaigns be accompanied by flexible sanctions, for example of an administrative nature, which are effective, proportionate and dissuasive.*
50. The authorities of Denmark report that the Committee on Transparency of Party Funding has considered whether further sanctions, including penal provisions in the Accounts of Political Parties Act and in the Grants to Political Parties Act should be introduced. However, the Committee found the current penal provisions to be appropriate. Furthermore, the Committee has not come across any cases of violation of these Acts. On this basis, the Government has chosen not to implement recommendation ix.
51. GRECO takes note of the information provided. It acknowledges that this recommendation is closely linked to the establishment of a monitoring mechanism, as recommended under recommendation viii. In the current situation, GRECO can only observe that the situation, as described in the Evaluation Report, has not changed.
52. GRECO concludes that recommendation ix remains not implemented.

### **III. CONCLUSIONS**

53. **GRECO concludes that following some progress, Denmark has now implemented satisfactorily or dealt with in a satisfactory manner in total six of the fourteen recommendations contained in the Third Round Evaluation report. Three recommendations have been partly implemented and five remain not implemented.**

54. With respect to Theme I, only recommendation i remains not implemented out of five recommendations. As far as Theme II is concerned, recommendations iv and v have been implemented satisfactorily or dealt with in a satisfactory manner; recommendations i, vi and vii have been partly implemented and recommendations ii, iii, viii and ix have not been implemented.
55. Concerning Theme II (transparency of political financing), GRECO is rather disappointed overall by the limited results achieved so many years after the adoption of the Evaluation Report. Despite the thorough considerations in its report in 2015 by the Danish Committee of Transparency of Party Funding, as well as the High-level meeting held in May 2016 between representatives of GRECO, the Danish Government and representatives of all political parties in Parliament (Folketinget) – several recommendations remain only partly or not implemented at all.
56. That said, GRECO welcomes the progress made: A ban on donations from anonymous donors has been introduced, which is a step in the right direction, but it is of concern that the ban only applies in respect of donations to political parties and lists of candidates and not in respect of individual candidates. The high threshold applied (currently approx. EUR 2 750) below which anonymous donations would be acceptable is also a critical concern in terms of transparency. The obligation to disclose the identity of donors that contributed over the aforementioned threshold has been expanded from only applying to political parties, to also include lists of candidates and individual candidates. This is to be welcomed; however, also in this respect GRECO is critically concerned that there is still no obligation to report the actual value of the contributions provided (more than that they exceed the stipulated threshold). GRECO is pleased that a clear obligation upon parties which participate in national and/or European elections to have their accounts audited by an independent auditor has been included in the law. That said, specific guidelines concerning the entities of political parties are still missing and it is regrettable that an overall independent monitoring mechanism is still not in place to supervise political financing in respect of political parties and election campaigns, as required by European standards. GRECO is of the view that, for example, the State Audit would appear appropriate to carry out such a function.
57. In view of the progress made, although rather limited in respect of furthering the transparency of party funding, GRECO concludes that the current level of compliance with all recommendations (Themes I and II) is no longer “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. It therefore decides not to continue applying rule 32 in respect of Denmark.
58. Pursuant to paragraph 8.2 of Rule 31 of the Rules of Procedure, GRECO requests the Head of the Danish delegation to provide a report regarding further actions taken to implement pending recommendation i of Theme I and recommendations i, ii, iii, vi, vii, viii and ix of Theme II by 31 December 2018 at the latest.
59. GRECO invites the authorities of Denmark to translate the report into the national language and to make this translation public.