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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of
parliament, judges and prosecutors

COMPLIANCE REPORT

DENMARK

Adopted by GRECO at its 71st Plenary Meeting
(Strasbourg, 14-18 March 2016)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Denmark to implement the recommendations issued in the Fourth Round Evaluation Report on Denmark which was adopted at GRECO's 63rd Plenary Meeting (28 March 2014) and made public on 16 April 2014, following authorisation by Denmark ([Greco Eval IV Rep \(2013\) 6E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Denmark submitted a Situation Report on measures taken to implement the recommendations. This report was received on 7 October 2015 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected the United Kingdom and the Russian Federation to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr David MEYER, on behalf of the United Kingdom and Mr Aslan YUSUFOV, on behalf of the Russian Federation. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. 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

5. GRECO addressed six recommendations to Denmark in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

6. The authorities make reference to letters of 30 August 2013 and 4 February 2014 from Mogens Lykketoft, then Speaker of the Danish Parliament, on behalf of its Presidium to the GRECO Secretariat outlining some of the foundational thoughts behind the democratic system in Denmark and putting the relative lack of formal restrictions on the activities of Danish Members of Parliament into a broader perspective.

Recommendation i.

7. *GRECO recommended (i) that a code of conduct for members of parliament – including, inter alia, guidance on the prevention of conflicts of interest, on questions concerning gifts and other advantages and on how to deal with third parties seeking to obtain undue influence on MPs' work – be adopted and made easily accessible to the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling.*
8. The authorities explain that concerning the possibility of compiling a code of conduct for MPs, Mr Lykketoft wrote in his 4 February 2014 letter that "the Presidium has come to the conclusion that the possible production of a document directed to Members of Parliament addressing certain key ethical questions merits further debate. The precise form and contents of such a document will require very careful deliberation [...] due to the philosophical underpinnings of the relationship

between Danish Members of Parliament and their constituents [...]. The Presidium considers it vital that this relationship remains a dynamic one [and] accordingly sees a risk that if a document is adopted which is overly specific or imperative, that standard could become increasingly fossilised, leading to complacency and formalism rather than diligence and a heightened sense of responsibility. The Presidium therefore envisages a possible future document that primarily serves to raise the awareness of Members of Parliament on relevant ethical issues – such as those named in the recommendation – rather than prescribing or prohibiting specific actions in particular cases. The Presidium expects that the ethical messages contained in such a document will be complemented by the sound judgment of individual members on a case-by-case basis, but also that the party groups, which historically play an important role in the Danish parliamentary system, will assume a part of the responsibility for ensuring that the standards are upheld in practice”.

9. The Presidium further reflected on the issue, taking its findings and the above-mentioned concerns into consideration as well as studying a number of codes of conduct of other parliaments. The Presidium concurs to a very large extent with the views of GRECO regarding the need to uphold the highest of ethical standards among members of parliament in any democratic society and wishes to express its appreciation for the fact that GRECO has chosen to attend to this crucial, but until now somewhat under-addressed, issue in a pan-European perspective. The Presidium nonetheless considers it vital that any concrete measures taken to advance the cause of high ethical standards should be adapted to the circumstances of each individual country and its parliament. Taking that approach, the Presidium has reached the unanimous conclusion that the most appropriate content of a document on ethical standards in the context of Danish custom and political culture is not an elaborate code of detailed provisions prescribing or prohibiting specific actions in particular circumstances, but a more briefly stated message to MPs exhorting them to pay close attention to ethical questions that may arise in their political work. To accentuate that the document is to be taken as a personal call to attention to each member from a body of their peers rather than as a set of commands from on high, the Presidium has found that the most suitable format for the document is that of a letter. Accordingly, after the recent general election every member of parliament received a letter of 17 June 2015 from Mogens Lykketoft as outgoing Speaker on behalf of the whole outgoing Presidium (see Appendix I).
10. On a general note, GRECO appreciates that the Presidium of the Danish Parliament has given careful consideration to the issues covered by the Evaluation Report even before its adoption. Regarding the first part of the recommendation, GRECO welcomes the letter sent to all members of parliament after their election by the outgoing Speaker, which touches upon all the issues highlighted in the recommendation. This letter has merit in personally drawing MPs’ attention to ethical issues and to the shared responsibility for upholding public trust in the Parliament. GRECO shares the Presidium’s view that ethical standards should not be set in stone, that they must remain dynamic and evolve to adapt to current and emerging challenges. Yet it does not agree that enshrining these standards into a code is an obstacle to this necessary process. As GRECO has consistently underlined throughout its reports, parliamentary codes of conduct are to be drawn up and discussed by MPs themselves – and can therefore easily be updated in the same manner, an on-going debate further raising awareness of MPs on ethical issues. Such debates have not yet occurred in the Danish Parliament beyond the level of the Presidium. As to the form of a code, GRECO shares the view of the Presidium that it must be adapted to each country’s tradition and political culture. This is why a precise, prescriptive set of standards can be necessary in some parliaments, while others will prefer a shorter, more aspirational set of values. Both models are equally accepted by GRECO, as long as they provide enough guidance

to MPs to address concrete ethical dilemmas. This is why complementary measures, such as training and/or confidential counselling, are equally important, as highlighted in the second part of the recommendation. No such measures appear to have been taken by the Danish authorities. However, while substantive progress in line with the text of the recommendation has not been made, GRECO gives credit to the Presidium for the helpful letter of the outgoing Speaker which clearly establishes the principles by which all MPs should abide. While falling well short of the recommendation this helps clarify the situation for MPs and the values articulated therein can form the basis of a future code of conduct.

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

Recommendation ii.

12. *GRECO recommended that a requirement of ad hoc disclosure be introduced when a conflict between the private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings.*
13. The authorities note that Mr Lykketoft's letter of 4 February 2014 contains the following elements: "in the view of the Presidium, such a requirement can at the most take the form of an unenforced encouragement to Members of Parliament to declare any private interests in particular decisions and to consider not participating in a decision if doing so would appear improper. The Presidium cannot immediately see how, within the limits of the Danish Constitution, a requirement of ad hoc disclosure can be enforced in any way that legally impedes a member from acting in that capacity, even in cases where the member has a very clear and significant private interest. Similarly, it is the opinion of the Presidium that it would give rise to serious constitutional questions if other enforcement mechanisms were put in place which would place Members of Parliament in a position of serious disadvantage for failing to declare a personal interest or for acting in a matter in which they have a personal interest." Consequently, in its letter of 17 June 2015 (see Appendix I), the Presidium encouraged all members of parliament to consider either abstaining altogether from acting in cases where they or their relatives or associates have a personal interest, or to declare the interest. In light of the concerns outlined in the letter of 4 February 2014, however, the Presidium has not seen fit to take any initiatives towards the introduction of more stringent requirements or enforcement mechanisms.
14. GRECO welcomes the encouragement given in the Speaker's letter to MPs to either abstain or declare any interest that they or their relatives or associates hold, which may prevent them from acting in a given matter under consideration by parliament. While it draws attention of members to the issue of conflicts of interest and recommends possible courses of action, however, the letter does not bring any change to the voluntary regime that was analysed in the Evaluation Report. As GRECO highlighted (see paragraph 42 of that report), this regime does not guarantee an adequate level of transparency. The system still relies on voluntary abstention and public scrutiny. Such scrutiny can only be properly exercised if the public and the voters can properly monitor and determine if and how an MP's interest might have influenced the decision-making process. This is still not the case at present.
15. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

16. *GRECO recommended (i) that regular public registration of occupations and financial interests by members of parliament be made mandatory; (ii) that the existing system be further developed, in particular, by including quantitative data on the occupations and financial interests of members of parliament as well as data on significant liabilities; and (iii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).*
17. Regarding the first part of the recommendation, the authorities refer again to Mr Lykketoft's letter of 4 February 2014: "The Presidium remains of the opinion that the present system – under which registration is voluntary, but officially encouraged, and where the rules on registration must be accepted in their entirety by members who choose to register their interests and occupations – serves its purpose well. The Presidium is also reluctant to impose mandatory registration on members who oppose it and prefers that any consequences of those members' unwillingness to register should be drawn by the voters as part of the normal political process. It should be noted in that connection that information on each member's participation or non-participation in the registry is easily accessible on the website of the Danish Parliament. Crucially, the Presidium finds it difficult to imagine how a system of mandatory registration may be reconciled with the provisions of the Constitution that govern eligibility as a Member of the Danish Parliament – certainly if there are to be any palpable sanctions for failure to register, even if those sanctions would not include the loss or suspension of the member's mandate. The Presidium thus does not share the view taken by the GRECO Evaluation Team in this regard. Furthermore, the Presidium observes that the compatibility of particular arrangements with Danish constitutional law can be most accurately and appropriately assessed by Danish authorities. The Presidium is, however, prepared to revisit the question of making participation in the registry of occupations and financial interests mandatory for MPs, on the understanding that the obligation to register would be unenforced, or that sanctions for failing to register would be mild."
18. In keeping with this, the Presidium revisited the question of making participation in the registry mandatory during the autumn of 2014. After careful consideration a majority of the Presidium recommended to the Standing Orders Committee to amend the rules governing the registry in order to make participation mandatory for all members. On 18 December 2014 the Standing Orders Committee adopted an amendment to the rules, making participation mandatory and, as a consequence of this, abolishing the requirement of annual renewal of consent. The duty to participate in the registry is enforced by publication on the website of Parliament of a list of noncompliant members. The rules as amended came into force after the general election on 18 June 2015.
19. Regarding the second and third parts of the recommendation, Mr Lykketoft states in his letter that "the Presidium finds that the present scope of the registry strikes a fair balance between the need to inform the general public and the reasonable expectation on the part of Members of Parliament that some distinction may be maintained between their public lives and their personal and financial situations. The Presidium finds that the present system, where a financial interest, gift etc. is recorded if it exceeds a certain value threshold, ensures that interests, gifts etc. are registered to the extent that they can generally be deemed significant, and the Presidium can see little if any added value in including quantitative data.

20. It is imperative in the view of the Presidium that the registry on financial interests and occupations of Members of the Danish Parliament should only contain information about members themselves, not about their spouses or dependent relatives. As mentioned above, Members of Parliament can reasonably expect a certain distinction between their public lives and their personal and financial situations, in other words, a degree of privacy. This, in the opinion of the Presidium, applies a fortiori to persons who have not chosen a life in the public eye for themselves, but who are merely related to someone who has. The Presidium therefore does not envisage any extension of the current registration scheme to include spouses or dependent relatives of Members of Parliament." Accordingly, no changes were recommended by the Presidium to the categories of information recorded, such as the inclusion of quantitative data, information on liabilities or information on the financial circumstances of spouses or dependent relatives of members.
21. GRECO welcomes that registration of occupations and financial interests has been made compulsory for MPs, thereby complying with the first part of the recommendation. However, the registration system has not been further developed, as per the second part of the recommendation. As to the third part of the recommendation, the Presidium report having considered this, however no detail of these considerations has been provided. Without evidence that an appropriately pertinent, detail and well-documented consideration of GRECO's concerns has taken place, GRECO cannot conclude that this part of the recommendation has been met. While it is the prerogative of the authorities not to follow this part of the recommendation on substance, it still needs to be given proper, and properly evidenced, consideration.
22. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

23. *GRECO recommended that appropriate measures be taken to ensure supervision and enforcement of i) the rules on registration of the occupations and financial interests by members of parliament and ii) standards of conduct applicable to them, where necessary.*
24. The authorities report that the Presidium has not seen fit to take any initiatives towards formal new mechanisms with regard to compliance with the principles of ethics contained in Mr Lykketoft's letter of 17 June 2015 (see Appendix I), given the nature of the contents of the letter. As to the obligation of MPs to register their occupations and financial interests, it is enforced through publication on the website of the Danish Parliament of a list of non-compliant members, as explained above. This list is compiled and kept up to date by the Legal Services Office of the Parliament.
25. GRECO notes with regret that no measures have been taken to give effect to the second part of the recommendation. As to the first part of the recommendation, GRECO assesses positively the publication on the Parliament's website of the list of non-compliant members. This "naming and shaming" sanction appears pertinent, given that it is subject to a high degree of transparency and that – as a result – the political consequences may be significant for MPs who violate these rules. GRECO therefore takes the view that the first part of the recommendation has been met.
26. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

27. *GRECO recommended i) that a set of clear ethical standards/code of professional conduct – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues – be made applicable to all judges and be made easily accessible to the public; and ii) that it be complemented by practical measures for its implementation, including dedicated training for professional judges, lay judges and expert judges.*
28. The authorities report that the Association of Danish Judges set up a committee, which consisted of a number of judges and a district court president to prepare ethical principles for judges. The committee held nine meetings and presented in March 2014 a draft of ethical principles to be discussed in the board of the association. The draft was approved by the board in April 2014, after which all judges were given an opportunity to comment on it. The principles were then adjusted and finally approved at a general meeting of the Association of Danish Judges in October 2014. The principles apply to all judges, including lay judges and expert judges, although some of the principles have a special focus on professional judges. The ethical principles have been published online and have since then been the subject of an article¹ in the February 2015 issue of "Retten Rundt", a magazine published by the Danish Court Administration for the staff at the courts and for interested users. The ethical principles are also the subject of a training course on "Ethics into the modern judge's working day" offered as part of a multi-day course programme at the Academy of Judges.
29. GRECO welcomes the Ethical Principles adopted by the Association of Danish Judges, their online publication, as well as the process that led to the adoption of this text, which included a broad consultation of all judges. It notes that the text of the Ethical Principles is a fairly general collection of ten principles, under the headings "Independence, impartiality and integrity, respectful treatment and privacy, quality, openness and accountability". In conclusion, the text mentions that the principles will be kept under discussion and possible revision, including in the light of changes in society and Denmark's international obligations, which is positive. However, GRECO recalls that the first part of the recommendation also calls for the ethical standards to be complemented by practical examples and/or explanatory comments. The article referred to by the Danish authorities serves more to put the Ethical Principles in context than to serve for this purpose. Some of the principles, such as principle 4, stating that judges enjoy freedom of speech and of association, but must be aware of their and the judiciary's role in society when exercising these rights, would clearly benefit from further illustration and guidance. The first part of the recommendation can, therefore, only be regarded as partly implemented. As to the second part of the recommendation, GRECO takes note of the training course offered by the Academy of Judges and takes the view that this part of the recommendation has been met.
30. GRECO concludes that recommendation v has been partly implemented.

¹ <http://www.domstol.dk/om/publikationer/HtmlPublikationer/Retten%20Rundt/Retten%20Rundt%2019/kap09.htm>

Recommendation vi.

31. *GRECO recommended i) that a set of clear ethical standards/code of professional conduct – based on the general Code of Conduct in the Public Sector and accompanied by explanatory comments and/or practical examples specifically for prosecutors, including guidance on conflicts of interest and related issues – be made applicable to all prosecutors and be made easily accessible to the public; and ii) that complementary measures for its implementation, including dedicated training, be made available to all prosecutors.*
32. As regards the first part of the recommendation, the authorities indicate that, as a supplement to the Code of Conduct in the Public Sector of 2007, the Director of Public Prosecutions has produced a set of guidelines on good conduct and ethics at the Prosecution Service. These guidelines focus on a range of issues and special circumstances that an employee in the prosecution service must be aware of as well as the special responsibilities encompassed in the role as an employee in the Prosecution Service. Thus, the guidelines set forth a number of clear and concrete requirements regarding the behaviour of prosecutors and other employees, which they must adhere to at all times, including guidelines on conflicts of interest and related issues. The text also specifies that action contrary to the guidelines may result in the imposition of sanctions. The guidelines furthermore contain a wide variety of practical examples. They have been drafted on the basis of contributions from a working group comprised of prosecutors from different departments, levels and degrees of experience in the prosecution service. The guidelines are made available in a flyer format and have been distributed to all employees of the prosecution service, as well as made available to the general public on the official website of the prosecution service².
33. Concerning the second part of the recommendation, the authorities explain that all employees of the prosecution service will receive targeted training on the ethical guidelines. The Director of Public Prosecution has developed a “training package”, which supplements the flyer. It consists of a standard programme for training sessions, an action plan to be used by the instructor(s), a set of PowerPoint slides and a collection of cases concerning good conduct and ethical dilemmas to be used in the training sessions. The flyer and training package have been distributed to all departments and units in the Danish Prosecution Service in September 2015, with the instruction that all employees must complete a training session by the end of 2015. Furthermore, in order to ensure that all future new employees of the prosecution service receive training in the ethical guidelines, the second module of the current basic training programme for prosecutors has, as of January 2016, an amended element on ethics. All prosecutor trainees will receive the flyer, which along with dilemmas from the training package is included in the module’s curriculum.
34. GRECO welcomes the measures reported, which fulfil the aims of both parts of the recommendation. It notes in particular that the guidelines provide guidance on a range of practical situations, both at and outside work and that disregard for the guidelines may result in the imposition of sanctions. As regards the second part of the recommendation, GRECO notes that in-service prosecutors had to undergo training in 2015 and that prosecutor trainees will be receiving dedicated training as of January 2016.
35. GRECO concludes that recommendation vi has been implemented satisfactorily.

² www.anklagemyndigheden.dk

III. CONCLUSIONS

36. **In view of the foregoing, GRECO concludes that Denmark has implemented satisfactorily only one of the six recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, four have been partly implemented and one has not been implemented.
37. More specifically, recommendation vi has been implemented satisfactorily, recommendations i, iii, iv and v have been partly implemented and recommendation ii has not been implemented.
38. With respect to members of parliament, it is to be welcomed that all recommendations have been considered by the Presidium of the Danish Parliament. While most of the issues raised by GRECO in the Evaluation Report have been acknowledged, more affirmative action needs to be taken on a number of issues. Positive developments have occurred, such as a letter sent by the outgoing Speaker of the parliament to all members after the recent parliamentary elections, to draw their attention on ethical issues, the fact that the registration of occupations and financial interests by members of parliament has been made compulsory, or that the list of members that do not comply with this requirement will be published on the parliament's website. Regarding other measures recommended, GRECO expects further progress as regards awareness and more concrete guidance on ethical issues, more transparency on possible *ad hoc* conflicts of interest that may arise for members of parliament in connection with matters under consideration by parliament and additional arrangements for supervision and enforcement of rules on integrity. GRECO moreover regrets that the Presidium has so far not seen fit to recommend any changes to the categories of information to be recorded by members of parliament and encourages it to reconsider its position.
39. As far as judges and prosecutors are concerned, GRECO is pleased that ethical norms have been developed and adopted by members of both professions. As required by the recommendation it received, the prosecution service's guidelines contain a range of practical examples and are complemented by awareness and training measures addressed to all current and future prosecutors. Training on the ethical norms is also proposed to judges, but the code still needs to be complemented with further illustration and guidance.
40. In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. However, bearing in mind that several positive measures have already been taken and on the understanding that the Danish authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Denmark to submit additional information regarding the implementation of recommendations i to v by 30 September 2017.
41. Finally, GRECO invites the authorities of Denmark 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.

APPENDIX I

Letter sent to all recently elected members of the Danish Parliament by the outgoing Speaker

Dear Member of Parliament,

Congratulations on attaining the office of Member of Parliament.

Being a Member of Parliament is one of the most distinguished positions of trust that one can attain as a citizen of Denmark. It is an expression of the fact that our fellow citizens have chosen to entrust each of us with the special responsibility, and shown each of us the confidence, of letting us make some of the most important decisions in society on their behalf.

How to exercise that office and live up to that confidence is – within the framework of the Constitutional Act of Denmark, other applicable laws and the rules for our cooperation that we establish for ourselves in the Standing Orders – up to each individual member. Precisely because being a Member of Parliament is a position of trust, it is to a very high degree left to each individual member to determine what he or she wants to work for, and how. This is a choice that each member must make on the basis of his or her own conscience and sense of responsibility towards his or her electors.

In addition to our individual responsibility towards our electors we also have a shared responsibility for, and a shared interest in, preserving and strengthening public trust in the nation's legislative assembly. We should all contribute to that in our day-to-day political work. We can do so by being inspired by, and acting in accordance with, values such as integrity, diligence, responsibility and care for the reputation of Parliament.

It is a natural part of the work of a Member of Parliament to seek knowledge about the society that surrounds us, e.g. by meeting with representatives of special interest groups or businesses or with other interested parties.

As Members of Parliament we should of course not exploit our office to gain undue advantages for ourselves or others. Naturally, each individual member is mindful of that. We should, however, be equally mindful of avoiding giving the general public such an impression. This implies that in our association with representatives of special interests – and particularly if we receive any gifts, hospitality, travel, etc. – we should pay close attention to whether the intention could be to influence our views in an improper manner, as well as to whether such an intention could be perceived to be present by the general public.

It is on the basis of concerns such as these that the Standing Orders Committee has decided that all members must register their occupations and financial interests in the publicly accessible registry in accordance with the rules governing the registry.

Legally speaking, Members of Parliament are permitted to act – with very few exceptions – in all cases under consideration in Parliament. Even if a member has a very clear and significant personal advantage or disadvantage e.g. from the passage or non-passage of a bill, that member is not legally restricted from acting in the matter.

The concerns mentioned above nevertheless make it advisable for a member who has, or whose relatives or associates have, a particular personal interest in a case to consider abstaining from acting in the case or declaring the interest. This however will generally not be relevant in cases where a member stands to gain an advantage solely by virtue of belonging to the population in general or to a wide class of people in society.

As Members of Parliament we work for society and the common good, but as mentioned, the determination of how best to do that is left to each member to make based on his or her conscience and convictions. This is all part of the statement of trust that is being elected Member of Parliament.

The purpose of this letter, therefore, is not to impose restrictions on the political work of Members of Parliament, but to encourage further attention and reflection on how each of us can contribute to bearing our shared responsibility for the integrity and reputation of Parliament.

Once again, congratulations on attaining the office of Member of Parliament.

On behalf of the Presidium,
(signed) Mogens Lykketoft
Speaker of Parliament