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Groupe d'États contre la corruption

COUNCIL OF EUROPE



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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 75th Plenary Meeting
(Strasbourg, 20 -24 March 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Ireland to implement the recommendations issued in the Fourth Round Evaluation Report on Ireland which was adopted at GRECO's 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014, following authorisation by Ireland ([Greco Eval IV Rep \(2014\) 3E](#)). 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 Ireland submitted a Situation Report on measures taken to implement the recommendations. This report was received on 5 October 2016 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÖÖT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. 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 after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 11 recommendations to Ireland in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
7. The authorities report that the existing public ethics framework is subject to legal reform with the introduction of a bill in Parliament: the Public Sector Standards Bill 2015 is to consolidate and update the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001 and Part XV of the Local Government Act 2001. The Bill was published on 23 December 2015 and went through the second stage in the Dáil (lower House of Parliament) on 20 January 2016. The authorities state that the Bill will recommence at Committee Stage in the Dáil in April 2017 with a view to its enactment before the summer recess the same year. The Bill is available online¹.

¹ <http://www.per.gov.ie/en/public-sector-standards-bill/>

8. More precisely, the authorities explain that the aim of the Bill is to establish integrity principles in the public service; to enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks for all public officials, including MPs, in a single text. Also, the Bill provides the same obligations for MPs and ministers and that the legislation (if adopted) may be followed by codes of ethics. However, the staff of MPs are not included since they are employed by MPs and not by a public body.
9. GRECO takes note of the efforts to establish a new public sector normative framework, currently contained in the Public Sector Standards Bill 2015. GRECO welcomes this Bill which, if adopted, would appear to provide a uniform and consolidated legal framework for members of parliament, on an equal footing with other public officials. GRECO also notes that the Bill provides strengthened obligations, similar to those of office holders (ministers), concerning potential as well as actual conflicts of interest in various situations. GRECO notes that the Bill also covers publicly employed staff (e.g. civil servants of Parliament) but not the staff employed by the MPs themselves. GRECO reiterates its view expressed in the Evaluation Report that this situation may lead to discrepancies and different considerations depending on who is carrying out a particular task, the MP or his/her employee on behalf of the MP. Although GRECO sees the legal difficulty in bringing such staff under the same legislation as the public officials, it maintains its position that uniform standards ought to apply to the extent possible in this respect. Finally, it notes that the 2015 Bill has not yet been adopted by Parliament.
10. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.
11. *GRECO recommended that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protection and encouragement for whistle blowers contained in the Protected Disclosures Act 2014 are fully understood and implemented.*
12. The authorities state that the provisions of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 are not incompatible with the Protected Disclosures Act 2014. These provisions do not act as a disincentive to whistleblowing. Nor do they encroach on the right of a person to make a protected disclosure in accordance with the Protected Disclosures Act 2014. Section 111 of the 2013 Act explicitly does not apply to a member of parliament who made or received confidential communication, or who owns a private paper. At no time is a member prohibited by this legislation from disclosing any private paper that is their property. Similarly, either party to any confidential communication (including the MP) is entitled to disclose that communication. Section 111 of the 2013 Act refers specifically to knowing or reckless disclosure, which is not legitimate, by a person other than a member of parliament, and other than the person who made the confidential communication to the MP. In addition, Section 111 does not impact on any pre-existing rights of disclosure that a Member of Parliament may have.
13. Furthermore, Section 111 of the Act 2013 contains a number of caveats before the offence of knowingly or recklessly disclosing a confidential communication or private paper of a member of parliament can be committed. These include knowing or reckless disclosure and disclosure that is not authorised by the 2013 Act.
14. Disclosure is authorised by the 2013 Act in the following circumstances: Section 105(a) makes provision for a member (of parliament) to give consent to a third party to have access to or disclose their private paper. Additionally, section 105(b) permits the disclosure of a private paper upon application to the High Court if it: "is

relevant to the investigation of any offence alleged against the member (or parliament), or is essential by virtue of an overriding public interest arising in the context of proceedings before a court, tribunal, commission or Part 2 [parliamentary] inquiry”.

15. Section 106 of the 2013 Act makes it explicit that the provisions/offences within the 2013 Act do not impact on any pre-existing rights of a person to disclose information communicated to a Member i.e. *“Nothing in this Part prevents a person who has communicated with a member and who is otherwise entitled by law to disclose the fact or content of the communication from doing so whether or not the person represented to the member at the time of the communication that its source or content would be treated as confidential.”*
16. Where a person is to face prosecution for an offence under Section 111 of the 2013 Act, it shall be a defence (under section 15 of the Protected Disclosures Act 2014) for the person to show that, at the time of the alleged offence, the disclosure the subject matter of the offence *“was, or was reasonably believed by the person to be, a protected disclosure.”*
17. The Irish authorities conclude that the above provisions would enable a whistle blower rather than act as a disincentive.
18. GRECO takes note of the extensive information provided, which explains the meaning of and inter-relation between the different elements of the provisions concerned. It recalls that, as mentioned in the Evaluation Report, the purpose of the recommendation was to ensure that, for example, a staff member or third party may disclose potential corruption without fear of prosecution, under section 111. GRECO is of the opinion that the explanations provided by the authorities meet the concern of the recommendation.
19. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

20. *GRECO recommended the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members’ declarations to also include close or connected persons, in line with the existing rules for office holders.*
21. The authorities report that the existing regime on asset declarations is subject to reform; the Public Sector Standards Bill 2015 broadens the material and personal scope of declarable interests and provides for a common definition of declarable interests applying at both local and national level. Indeed, the authorities state that the Bill will, if adopted, strengthen the disclosure regime for members of parliament in that the obligations to declare will be the same as for the office holders.
22. More precisely, under the Bill, MPs will have to declare both assets and liabilities over certain thresholds to the Public Sector Standards Commissioner to be established by the Bill. The authorities specify that section 7 sets out the declarable interests which will be published, while section 8 provides that in the case of Category A officials (including members of parliament) the amount of income where it exceeds €2 600 and any individual assets (excluding pensions or the private home) and liabilities over €50 000, will have to be declared to the Commissioner. These interests and liabilities are to be declared on a non-public basis, which

entitles the Commissioner to monitor and carry out an investigation where considered appropriate. The authorities explain that this is in order to balance the right to privacy with the public interest.

23. In addition, the Bill rules that senior public officials and politicians (category A) will make periodic disclosures in relation to their own interests. The interests of an official's spouse or child must only be declared where the interest could reasonably be perceived to be connected with the performance of the public official's functions. Interests of family relatives are to be declared on a private basis to the Commissioner. Also, the authorities report that interests of connected persons (which includes relatives, as well as business partners and companies and other such legal arrangements that the official has a beneficial interest in or is a director of) will have to be disclosed by all officials in the context of making *ad hoc* disclosures where s/he has actual knowledge of interest and where it could reasonably be perceived to be connected with the performance of their functions.
24. GRECO welcomes this draft legislation underway to address the present recommendation and it encourages the authorities to pursue their efforts. Indeed, the Public Sector Standards Bill 2015 sets forth a unified declaration regime at both local and national level, extending the obligations upon all members of parliament in this respect. It would appear that quantitative data on MPs' significant financial and economic involvements are to be included in the declarations. GRECO notes that the declaration regime is intended to also cover connected persons. However, the Bill has not yet been adopted and GRECO is looking forward to scrutinising the legislation, once adopted by Parliament.
25. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.
26. *GRECO recommended that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of Parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity.*
27. The authorities report that the Public Sector Standards Bill 2015 is to replace the Standards Public Office Commission with a single Public Sector Standards Commissioner. In particular, the Commissioner will have increased powers of enforcement and through the establishment of an independent Deputy Commissioner will implement more streamlined and improved complaints and investigation procedures. The Commissioner will be empowered to initiate investigation, even in the absence of the receipt of a complaint. In addition, the authorities state that the Commissioner will have stronger powers of sanction and a broader role of guidance and advice and will have oversight of the Codes of Conduct applicable to public officials. The procedures and sanctions are set out in part 4 of the Bill which is available on-line².
28. The authorities add that under the existing legislation, an investigation report prepared by the Standards in Public Office Commission is published on the Commission's website, which entitles a wide scrutiny by the general public and media. Under the Bill, a report on an investigation is to be published when violations have been found.

² <http://www.per.gov.ie/en/public-sector-standards-bill/>

29. GRECO notes that the authorities have considered the establishment of a new monitoring mechanism, which may guarantee the supervision in respect of all members of parliament, regardless of whether they are office holders or not. Although the Bill has not yet been adopted, the establishment of a new independent monitoring mechanism has been duly considered by the Irish authorities as reflected in the Public Sector Standards Bill 2015. As a consequence, the recommendation is to be regarded as complied with.

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

Recommendation v.

31. *GRECO recommended that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.*

32. The authorities report that specific information sessions are provided by the Parliamentary Service from time to time. Following the 2016 General Election, members of parliament were provided with initial briefings by the Standards in Public Office Commission in relation to the existing ethical framework, namely the Ethics in Public Office Acts 1995 and 2001, the Codes of Conduct for the guidance of members drawn up pursuant to Section 10 of the 2001 Act and tax clearance and statutory declaration requirements under the Acts. The authorities also state that further sessions took place during the second half of 2016. In 2017, the Commission organised “drop-in clinic” to provide MPs with advice concerning their annual disclosures. The Commission has also identified a need for establishing further guidelines in 2017.

33. GRECO takes note of the information provided and acknowledges that some training sessions have taken place since the 2016 parliamentary election and that there are plans for more guidance and training in 2017. However, the current recommendation calls for regular dedicated training, which requires a more long term approach in respect of training in ethical matters. As a consequence, GRECO encourages the authorities to do more and to establish training programmes on a more permanent basis in order to keep the members of parliament aware of their obligations over time.

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

Corruption prevention in respect of judges

Recommendation vi.

35. *GRECO recommended that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.*

36. The authorities report that the drafting of legislation to provide for the establishment of a judicial council is well advanced and that significant progress has been made since the adoption of the Evaluation Report. Also, the authorities state that the independence of such a council is to be enshrined in a legislative framework.

37. GRECO takes note of the information provided. It welcomes the fact that legislation to establish a judicial council is underway. GRECO encourages the authorities to continue their efforts to establish such a body. However, considering that it has not

been made aware of any draft texts or details in respect of the progress made so far, GRECO cannot conclude that this recommendation has been complied with, even in part.

38. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

39. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*

40. The authorities report that the system for appointing judges has been under review in the Department of Justice & Equality since 2014. In addition, they report that a public consultation process was conducted in 2014 and comprehensive submissions were received from the Judiciary, the Bar Council, the Law Society, the Free Legal Aid Centres, the Irish Council for Civil Liberties and many other groups and individuals. The authorities furthermore submit that the 2016 Programme for Government contains a commitment to reform the judicial appointments system. To this end, the Government has approved a general scheme of the Judicial Appointments Commission Bill in December 2016, which was before the Justice and Equality Committee of Parliament on 25 January 2017. The Government intends to publish the Bill in March 2017. The intentions of the Government are, *inter alia*, to replace the current Judicial Appointments Advisory Board with a Judicial Appointments Commission (with a lay member majority), that appointments will be based on a reduced number of suggested candidates (three instead of seven) and that such a Commission is also to suggest candidates for promotion.

41. GRECO takes note of the information provided which indicate that reforms are underway. GRECO is not in a position to assess the substance of these reforms as it has not been provided with more than the current intentions of the Government. GRECO encourages the authorities to pursue their reform efforts in close consultation with the Judiciary to the extent feasible and looks forward to being further informed of the results of these efforts. However, considering that it has not been provided with any draft texts or details in respect of the progress made so far, GRECO cannot conclude that this recommendation has been complied with, even in part.

42. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

43. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*

44. The authorities report that the Government has established a Public Service Pay Commission, to provide advice on public service remuneration policy, to examine pay levels across the public service and to provide objective analysis on the appropriate pay levels for identifiable groups within the public sector. It is also foreseen that the Commission is to provide objective analysis on the appropriate pay levels and pensions for officeholders' and this will include the judiciary. The Commission will provide an initial report to the Government on these matters in the second quarter of 2017.

45. GRECO notes that the Public Service Pay Commission deals with general concerns concerning pay levels across the public service. Even if this Commission also covers pay levels within the judiciary, GRECO cannot see how this is a mechanism for questions concerning constitutional safeguards of the judiciary, at least not on its own. GRECO reiterates that this recommendation has strong links to the establishment of a judicial council. Indeed, a judicial council could make a significant impact on maintaining the high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges. GRECO also recalls that this recommendation would require a dialogue with judicial representatives, for example, via a future judicial council. Consequently, the establishment of the Public Service Pay Commission does not in itself address the concern raised in the current recommendation.
46. GRECO concludes that recommendation viii has not been implemented.
- Recommendation ix.
47. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*
48. The authorities report that a future judicial council legislation, once adopted, will provide for the establishment of a judicial council committee, which will be empowered to promote and maintain high standards of judicial conduct. In addition to investigating complaints concerning the conduct of individual judges, such a committee will also be given responsibility for preparing and submitting draft guidelines concerning judicial conduct and ethics to a future judicial council. The authorities also specify that an investigative mechanism will apply where there is an allegation of judicial misconduct and the definition of the term "judicial misconduct" is to be included in the legislation.
49. GRECO takes note of the information provided. It notes that the current situation remains much the same now as it was at the time of the adoption of the Evaluation Report. In addition to some basic ethical principles contained in the Constitution, there is no formal document reflecting standards of conduct for judges. That said, work to establish such a code already started in 2011, as noted in the Evaluation Report, but it has not come to completion. Moreover, in the current situation, including the fact that a judicial council has not yet been established, there is no accountability mechanism in place.
50. GRECO concludes that recommendation ix has not been implemented.
- Recommendation x.
51. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
52. The authorities report that the Committee for Judicial Studies is currently responsible for providing judicial training and ongoing education of the judiciary. More precisely, the aim is to enhance knowledge and understanding of law and legal principles among judges with particular regard to new developments in the law, including legislation. To this end, the Committee has an Induction and Mentoring Programme for new judges, to be organised by the respective court presidents. This is combined with a mentoring system in each court.

53. The authorities report that the draft legislation to establish a judicial council also provides for the formal establishment of a judicial studies committee to facilitate the continuing education and professional development of judges with regard to their judicial functions.
54. GRECO notes that the situation referred to in the Evaluation Report has not changed since the adoption of that Report. GRECO reiterates that the recommendation was issued in response to the observation made in the Evaluation Report (paragraph 161), that in-service training for judges had no formal structure and further measures were required to institutionalise training and to provide adequate resources and funding. As a consequence, GRECO can only repeat the recommendation and invites the authorities to take determined action on this issue.
55. GRECO concludes that recommendation x has not been implemented.

Corruption prevention in respect of prosecutors

Recommendation xi.

56. *GRECO recommended that the policy for handling complaints against the Prosecution Service be enhanced with a view to (i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and (ii) further developing the statistics concerning such complaints.*
57. The authorities state that the internal policy concerning the handling of complaints against the Prosecution Service has been reviewed in the light of this recommendation. The policy now includes an independent structure for managing all the complaints received and ensuring transparency in the complaints procedures. All complaints are considered by an officer, who is independent of the person against whom the complaint was made. Minor complaints, which can be resolved by providing additional information, correcting an error or through explanations, are replied to by the Section/Unit Head in consultation with the officer against whom the complaint was directed. The Divisional Head deals with complaints of a more serious nature. In addition, the policy now includes a review mechanism; a complainant may require the complaint to be reviewed. Such a review will be conducted by the Deputy Director or by the Director (DPP). In addition, a new unit has been set up within the DPP, the Communication and Victims Liaison Unit, which is responsible for monitoring and providing quality assurance in relation to the handling of all complaints. This Unit is also in charge of elaborating statistics related to complaints made against the office.
58. GRECO welcomes this review of the internal policy for the handling of complaints in the light of this recommendation. As explained by the authorities, the overall objective of the policy change was to create a more independent structure for dealing with complaints against prosecutors. For example, since the change, all complaints are to be considered by an officer independent of the person complained about. More serious complaints are to be dealt with by a hierarchically senior officer. In addition, a review mechanism has been introduced under the authority of the Deputy Director or the Director of the Service (DPP). Furthermore, GRECO is pleased that a new unit, the Communication and Victims Liaison Unit, has been established within the office of the DPP, with the responsibility of recording, monitoring and coordinating the complaints received as well as maintaining and developing the related statistics concerning the complaints received. To sum up, GRECO is pleased that a more solid mechanism to deal with complaints has been put in place and that this framework provides more independence to the process as well as enhanced oversight.
59. GRECO concludes that recommendation xi has been implemented satisfactorily.

III. CONCLUSIONS

60. In view of the foregoing, GRECO concludes that Ireland has implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Round Evaluation Report. Three recommendations have been partly implemented and five recommendations have not been implemented.
61. More specifically, recommendations ii and iv have been dealt with in a satisfactory manner and recommendation xi has been implemented satisfactorily. Recommendations i, iii and v have been partly implemented and recommendations vi-x have not been implemented.
62. With respect to members of parliament, GRECO welcomes the establishment of the Public Sector Standards Bill 2015, which has the potential to provide for a common and uniform legal framework for public officials, including members of parliament. GRECO also welcomes the proposed declaration regime, contained in the 2015 Bill, which aims at extending the obligations upon all members of parliament and to include close or connected persons. However, the 2015 Bill has not yet been finally prepared and voted in Parliament. Progress is also still required in respect of establishing dedicated regular training of MPs on issues such as ethics and conduct in situations of conflicts of interests and corruption prevention.
63. As far as judges are concerned, GRECO notes with concern that only limited progress has been made since the adoption of the Evaluation Report. However, GRECO notes that draft legislation for the establishment of a judicial council as well as in respect of other recommendations is reportedly under preparation, notably as regards the procedures for recruiting judges. GRECO urges the authorities to continue their efforts to reform the judiciary, as indicated in the Evaluation Report, and to carry this out in close co-operation with the judiciary.
64. As regards prosecutors, GRECO welcomes the establishment of a more independent policy in respect of the internal handling of complaints against the prosecutors and its service (DPP). The new policy also has the potential to develop enhanced oversight and transparency in respect of this complaints mechanism.
65. In view of the above, and in spite of the achievements made, GRECO concludes that the overall very low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Irish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i, iii-x and as soon as possible, but at the latest by 31 March 2018, pursuant to paragraph 2(i) of that rule.
66. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.