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First Evaluation Round

Evaluation Report on Iceland

Adopted by GRECO
at its 6th Plenary Meeting
(Strasbourg, 10-14 September 2001)

I. INTRODUCTION

1. A GRECO Evaluation Team (GET) visited Reykjavik from 2 to 4 May 2001 within the framework of GRECO's first evaluation round. It was composed of Mr. Patrick BREHONY, Detective Superintendent, National Bureau of Criminal Investigations, Dublin (Ireland, law-enforcement expert), Mr. Vicente J. GONZÁLEZ MOTA, anti-corruption prosecutor (Spain, criminal-justice expert) and Mr. Algimantas CEPAS, Deputy Chief of the Criminological Research Department of the Lithuanian Institute of Law (Lithuania, general-policy expert). This GET was accompanied by Mr. Alexander SEGER and Mr. Stephanos STAVROS from the Secretariat General of the Council of Europe. Before the beginning of the visit, the GET experts had been provided with a comprehensive reply by the Icelandic authorities to the Evaluation questionnaire (Greco Eval I (2001) 8E).
2. The GET met representatives of the following governmental institutions: Ministry of Justice, Public Prosecution, Ministry of Commerce, National Commissioner of Police, National Audit Office, Competition Authority, Financial Supervisory Agency and Government Procurement Agency. Furthermore it met representatives of the Althing/Parliament and of the following non-governmental organisations: Confederation of Icelandic Employers, Icelandic Press Association and Icelandic Chamber of Commerce.

The list of persons and institutions met is attached as Appendix 1.

3. It is recalled that GRECO agreed, at its 2nd Plenary meeting (December 1999), that the 1st Evaluation round would run from 1 January 2000 to 31 December 2001, and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would be based on the following provisions:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
4. Following the mission to Iceland, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Icelandic authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Iceland, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Iceland is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Iceland in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

a. **The phenomenon of corruption and its perception in Iceland**

5. The Republic of Iceland has a surface of 103 000 km² and is situated just below the Arctic Circle in the North Atlantic Ocean. Iceland has a population of approximately 282 000. The country looks back at a long democratic history. Its Parliament, the "Althing", was first established in 930. In 1918 Iceland became sovereign State in personal union with Denmark. The Act of Union was repealed and the Republic of Iceland established in 1944.
6. The General Penal Code Act 19/1940 as amended by Act No. 147/1998 criminalizes active and passive bribery of public officials. The definition of bribery refers to gifts and any other advantage¹. The notion of public officials is understood to cover members of Parliament. Legal persons can be held criminally liable for the offence of active bribery. No criminal proceedings have been instituted against legal persons to date. Corruption is also a predicate offence in so far as money laundering is concerned under Section 264 of the Penal Code as amended in 1997. The Act on measures against money laundering applies to individual or legal persons (Act 80/1993).
7. In addition, the General Penal Code Section 6 (10) as amended by Act No. 147/1998 makes Bribery of Foreign Public Officials punishable under Icelandic law regardless of where it was committed and by whom.
8. Bribery within the Private Sector generally does not constitute a criminal offence, although it is prohibited under the Competition Act (no 8/1993).
9. Iceland has signed the Criminal and Civil Law Conventions on corruption. The necessary amendments to the legislation to ratify these conventions are under consideration. In October 1997, it ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS 141). Iceland is a member of the Financial Action Task Force. In August 1998, Iceland deposited its instrument of ratification of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
10. Crime rates in Iceland are below European average. The prison population is less than 100. The country has witnessed an increase in violent crime and is faced with growing drug trafficking and consumption (although not comparable with the problems encountered in other industrialised countries). Organised crime is not considered an issue. In 1999, some 10 040 "crimes of enrichment" were reported, of which 9 343 were related to "theft, breaking and entering". 58 cases were related to embezzlement and 412 cases to fraud. At the same time, the Icelandic authorities met by the GET mentioned only three cases related to bribery which included two convictions for attempts to bribe traffic police.
11. Transparency International's Corruption Perception Index places Iceland among the countries with the lowest level of corruption in the world (rank 4 in 2001). The Icelandic authorities do not perceive corruption as an actual problem but as a potential one and a risk for the future. Iceland's clean power sources, privatisation and company mergers are a basis for great economic opportunity, increase in economic activity, and growth in foreign investment. Iceland is in a process of privatisation but the State still has a stake in the economy, including a majority

¹ The text of the provisions figures in Appendix II.

shareholding in the two main banks and the telecommunication company. Given the size and location of the country, the number of investors and competitors in the privatisation process is limited. The increase in economic activity and flow in cash, and the close links between Government and the business community, can generate additional opportunities for corruption.

12. A number of regulations (e.g. on access to information, on conflicts of interest) and institutions exercising control functions (e.g. Ombudsman, Competition Authority, National Audit Office, Financial Supervisory Authority, Government Procurement) as well as non-governmental organisations are in place which can contribute to the control and prevention of corruption.
13. At the same time there are certain shortcomings which could constitute problems in the future, and opportunities which have not been fully exploited for anti-corruption purposes. They are raised in the present report. At this point it should be mentioned that the financing of political parties is not regulated (with the exception of foreign donations which are prohibited according to Act no. 62/1978). Politicians are not required to disclose donations, the donor's identity, assets or conflicts of interest. There are no rules ensuring transparency and accountability or preventing access or influence from being sold.

b. Bodies and institutions in charge of the fight against corruption

b1. The Prosecution Authority and the Court system

14. The Prosecutor General is the highest holder of the prosecution authority (Act no 19 of 26 March 1991). S/he is appointed by the Minister of Justice for an indefinite period of time. According to Article 25 of the Act on Criminal Procedure, the Prosecutor General enjoys the same terms of service and salary – and the same legal benefits – as Supreme Court judges. The Minister of Justice can temporarily relieve the Prosecutor General from office, but within two months s/he must take legal action before the District Court of Reykjavik to have him/her dismissed. The procedure and grounds for dismissal are the same as for a Supreme Court judge. The Prosecutor General is assisted by a Deputy Prosecutor General and other prosecutors who are commissioned by the Minister of Justice for a period of five years. These prosecutors can only receive instructions from the Prosecutor General.
15. The role of the Prosecutor General is to ensure that legally prescribed sanctions are applied. S/he provides general instructions on the exercise of the prosecution authority and supervises the exercise of the prosecution authority by the National Commissioner and other commissioners of police. The Prosecutor General prosecutes most serious offences under the Penal Code, including active and passive bribery. He may decide to commence an investigation, give orders as to its conduct and supervise it. The Prosecutor General decides whether to appeal against a judgement, and is in charge of any appeals to the Supreme Court.
16. The Prosecutor General may give instructions to other prosecutors, including police commissioners exercising a prosecutorial function (see para. 20 below), concerning specific cases, which they have a duty to obey. The Prosecutor General and all other prosecutors must withdraw from any case in which there is a risk that they will not be able to act impartially.
17. The Icelandic Penal Code provides for a mandatory system of prosecution, since section 111 provides that “every punishable act shall be subject to public indictment, unless a different arrangement is provided for by law”. Under Section 112 if the prosecutor, after the investigation, considers that the established facts will not be adequate or likely to secure a conviction, s/he shall let the matter rest. If not, legal action shall be brought. Section 113 establishes the

circumstances under which it is possible not to prosecute. The first paragraph of the provision refers to cases “where the provisions on suspension of indictment may be applied” and to cases where the suspect has accepted a settlement” as provided in the law. The second paragraph reads as follows:

“A decision not to prosecute may also be taken in the following cases:

- a. if the offence is of a very minor nature;
- b. if the suspect seems not to be responsible under criminal law and a request for a security commitment according to the provisions of the General Penal Code is unnecessary;
- c. if the offence has caused the offender himself extraordinary suffering and prosecution is not deemed important with a view to general prevention;
- d. if a person is to be prosecuted in a single case on account of many offences, a decision may be taken not to prosecute on account of offences that may be assumed to be of little or no importance for the determination of the penalty;
- e. if a person has been subjected to duress or blackmail by a threat to report a punishable offence, a decision may be taken not to prosecute on account of that offence provided it is not too grave;
- f. in special cases when prosecution is not deemed dictated by the public interest.”²

18. All decisions not to prosecute can be appealed to the Prosecutor General by the victim.
19. If a prosecutor decides not to prosecute for reasons other than insufficient evidence, i.e. under section 113 para. 2 of the Code, s/he must inform the Prosecutor General.
20. If the Prosecutor General overrules a decision not to prosecute s/he may decide to prosecute on his/her own or order the prosecutor to do so. A decision by the Prosecutor General not to prosecute can be appealed to the Minister of Justice. If the Minister of Justice considers that a decision by the Prosecutor General not to prosecute is not in accordance with the law or otherwise absurd, s/he may suggest to the President of Iceland to annul the decision under Article 26 para. 2 of the Act on Criminal Procedure. This provision has never been used to date.
21. The Icelandic court system includes eight district courts with a total of 38 judges, a Supreme Court with nine judges, and a Labour Court. In addition, there is a Court of Impeachment. The systems is considered rather efficient. Civil cases on average take 251 days to come to a decision and criminal cases only 69 days, since the action is lodged in court. Civil cases require 17 weeks from a decision to a final decision on appeal. There is no backlog of cases at the Supreme Court.

b2. The National Commissioner of Police

22. The National Commissioner of Police is in charge of the police under the authority of the Ministry of Justice. The National Commissioner performs various administrative functions, provides instructions and support to the regional commissioners and ensures coordination. An investigation department is directly attached to the office of the National Commissioner. The National Commissioner is also authorised to prosecute cases of tax and economic offences in the lower judicial instance.
23. At the level of districts, 26 regional Commissioners of Police are in charge of criminal investigations. The commissioners of police are authorised to prosecute minor offences in the

² Under section 29 of the Constitution the President of Iceland may decide that a prosecution for an offence committed should be discontinued if there are strong reasons for this. However, today this is regarded as a formal power, which has never been exercised.

lower judicial instance. The total number of police officers in Iceland amounts to 675 (in January 2001) of which about two thirds are based in Reykjavik.

24. If a commissioner of police decides not to prosecute for reasons other than insufficient evidence s/he shall inform the Prosecutor General. The Prosecutor General can overrule this decision and decide to prosecute on his/her own or to order a commissioner of police to do so. This matter is covered by the provisions referred to above in connection with a decision not to prosecute taken by a prosecutor, all of which also apply to decisions not to prosecute taken by police commissioners.
25. Specialised anti-corruption units are not in place. However, regulation no 406/1997 on the Investigation and Prosecution of Economic Crime led to the creation of a Unit within the Office of the National Commissioner of Police in charge of investigating and prosecuting economic and environmental crime, including tax and fiscal offences, offences under the customs act, fraud, embezzlement, corporate fraud, breach of trust, and offences related to foreign currencies, pricing, securities and credit transactions. The Unit is part of Division 5, which is headed by a prosecutor acting as an agent of the National Commissioner of Police. It is currently staffed with ten investigators. Additional experts can be called in to assist in specific investigations. The Unit is also in charge of investigating cases of bribery, but hands over the file to the Prosecutor General for prosecution. A different unit within the same Division is processing information on money laundering and functions as a financial intelligence unit.
26. As far as the abuse of office by police is concerned, under Section 35 of the Police Act, a complaint against a member of the police on account of an alleged punishable offence committed in the course of his/her function shall be submitted to the Prosecutor General for investigation. However, there is no legal obligation to report suspected corruption. The evaluators were informed that there were no corruption cases within the Police Force. At the same time there seemed to be some concern within the Police concerning low pay and the lack of a systematic approach to promotions.

b3. Methods of investigation and collaborators of justice

27. The Code of Criminal Procedure contains a range of measures, which are referred to as measures of compulsion for criminal investigation purposes. They include seizure, search, arrest and custody on remand. Sections 86 to 88 contain special investigative measures such as monitoring or recording of telephone conversations, recording of other telecommunications, or recording images, and taking photographs or motion pictures without the knowledge of the persons concerned. A court decision is required for the use of these techniques. The conditions to be met include that the offence may result in a sentence of eight years in prison or that important public or private interests demand that the measure is taken. Bribery offences under the Criminal Code do not carry an eight-year prison sentence. However, in such cases special investigative measures can be applied if it can be shown that an important public or private interest demands them.
28. There are no legal provisions for the use of undercover agents. Internal rules would allow a prosecutor to authorise the deployment of a police officer as undercover agent. However, given the size of the country, the use of undercover agents is not considered a practicable measure, and it has therefore never been applied so far.
29. Bank secrecy does not constitute an obstacle to criminal investigations. According to Act no 113/1996 on Commercial and Savings Banks, law enforcement authorities can obtain any

relevant information from banks and firms providing investment services on the basis of a court decision. On the basis of Section 49 paragraph 4 of the Code of Criminal Procedure a court can order disclosure of any information relating to financial investigations. Finally, the Financial Supervisory Authority can obtain and exchange financial information with counterparts abroad.

30. According to Section 78 of the Code of Criminal Procedure items which are believed to be of evidential value in a criminal case, items which have been obtained by criminal means, or items which are reasonably believed to become subject to confiscation shall be seized.
31. The Code of Criminal Procedure provides for fines or imprisonment (up to six years) for violence or threats of violence against public servants or witnesses. However, no special programmes or institutions for the protection of witness or vulnerable targets have been established. The fact that Icelandic procedural law does not contain provisions aimed at protecting suspects or sentenced persons who agree to cooperate with the criminal justice system does not necessarily prevent the police from taking measures providing protection in particular cases.
32. In principle, a judgement shall be rendered on the basis of evidence presented in court. Under certain conditions (defined in Section 74a), statements can be received by a judge at the pre-trial stage (for example from minors or if it can be assumed that the witness will not be able to attend a court session). Icelandic procedural law does not provide for anonymous testimony. Giving evidence by audio-video-link is possible. Statements given by informants have no evidential value, unless given as testimony in court.
33. The conduct of a defendant after the commission of an offence can be assessed in his/her favour when the sentence is determined, for example, if s/he has acknowledged the commission of the offence or if s/he has disclosed the involvement of others (Section 70 paragraph 1 (9) was modified in this respect in 2000). Instruction no 4/2000 of the Prosecutor General to the commissioners of police details that the police may explain to a suspect the possibility that the prosecution could advocate a reduced sentence but that the decision remains with the judge. This instruction only applies to serious criminal cases, such as major drug cases, homicide, serious physical assault or extensive and serious forms of economic crime.

b4. Other bodies and institutions with control and preventive functions

The Ombudsman of the Althing

34. The Ombudsman is elected by the Parliament (Althing) for a period of four years (Act no 87/1987 on the Ombudsman of the Althing). The role of the Ombudsman is to secure the rights of the citizens in their relations with public authorities and to supervise the state and municipal administration. S/he is to ensure that equality and impartiality are respected in the exercise of public administration. The Ombudsman is independent from any orders, including from Parliament, when exercising his/her functions. S/he can request from administrative authorities any information, documents and reports and the staff of these institutions are required to provide him all necessary assistance.
35. The Ombudsman may take up a matter following a complaint and launch an investigation. Where s/he becomes aware of a breach of office punishable by law, s/he may notify the appropriate authority. S/he may cause a person to be summoned before a district judge to give evidence on a particular case. Criminal procedure law applies in such cases.

36. Article 11 of the Act provides that where the Ombudsman detects flaws in the legislation or public rules s/he shall notify the Althing or the authority concerned.
37. According to information provided by the Ombudsman to the GET, he has so far not come across cases of corruption. There have been some complaints that the appointment or promotion of public servants may have been due to nepotism and political considerations rather than merit, and some complaints related to public tendering and procurement. Two complaints were lodged against the police and the prosecution who had dismissed cases.

The Competition Authority

38. The Competition Act (no 8/1993) is to promote effective competition by preventing unreasonable limitations or barriers to economic activities, unfair trade practices and harmful oligopolies, and by facilitating the entry of new competitors into the market. The Minister of Commerce is in charge of implementing this act through the Competition Council, the Competition Authority and the Competition Appeals Committee.
39. The Competition Authority does not have the power to institute criminal proceedings but has substantial authority with regard to the search and seizure of evidence. As soon as criminal provisions apply, the file is handed over to the police for investigation. Most of the cases investigated are related to the abuse of dominant market positions, price fixing and insider trading. The Competition Authority can impose administrative fines of up to 40 million ISK. Representatives of the Authority argued that they could be more efficient if the Authority could institute criminal proceedings itself. A major obstacle encountered by the Authority appears to be that judges have difficulties to fully understand the competition law.
40. Under Article 39 of the Act the Competition Authority can request any information from other administrative authorities, including tax and customs, "irrespective of their duty not to reveal confidential information". The Competition Authority is empowered to set aside bank secrecy.
41. In 1994, the Competition Authority published a comprehensive report on the structure and the links within Icelandic business and finance. A report on the situation in 1999 making links and networks within the business and finance community more transparent was about to be published at the time of the GET visit³.
42. Article 26 of the Competition Law de facto prohibits bribery in the private sector. However, the Competition Authority has not come across a case under this article.

The National Audit Office

43. The National Audit Office exercises control over the implementation of the Budget Act. It audits the accounts of State institutions or other institutions managing funds on behalf of the State. The State Auditor is in charge of the office and is accountable to Parliament. The Office and its staff are independent from any Government ministry or from any institution audited by the Office.
44. The Office can request financial statements from institutions receiving funds or guarantees from the State and perform administrative audits. It shall notify the relevant authorities of its findings, including deviations from proper practices.

³ The report was published after the GET visit.

45. The National Audit Office shall furthermore provide delivery assessment reports on public construction projects to the Budget Committee of the Parliament and the Cooperation Committee on Public Construction Projects.

The Government Procurement Agency

46. The Ministry of Finance is financially responsible for public construction projects (Act no 63/1970) and according to Act no 52/1987 for public procurement. Public procurement is managed by the Government Procurement Agency. The Board of Directors (three persons) is appointed by the Minister of Finance for a period of two years.
47. The Act on Public Procurement of 1987 provides for the general principle that bids shall be invited in the European Economic Area for procurement by state and municipal authorities and any associations, institutions or enterprises subject to them. If a bidder considers that provisions of this law have been violated s/he can lodge a complaint to the Ministry of Finance. A Regulation on Public Procurement (no 302/1996) provides further details.

The Financial Supervisory Authority

48. The Financial Supervisory Authority is to ensure that the operations of commercial and savings banks, insurance companies and pension funds are carried out in conformity with relevant laws, regulations, rules and administrative provisions (Act no 87/1998 on Official Supervision of Financial Operations). The Financial Supervisory Authority is a State institution with a Board of Directors and is accountable to the Minister of Commerce.
49. Parties subject to the supervision of this Authority are obliged to provide access to financial records, documents and other evidence. The Authority can carry out checks and special examinations and seize documents. It can impose fines if requested information is not provided and enforce compliance. The mandate of the Authority overrules bank secrecy provisions.

c. Immunities from investigation, prosecution and adjudication for corruption offences

50. The Constitution of Iceland (article 49) grants immunity to members of Parliament for statements made in the Althing. With regard to criminal action the same article states that no member of Parliament may be remanded in custody during a session of the Parliament without the permission of the Parliament unless s/he is caught in the act of committing a crime. The Code of Criminal Procedure (Section 104) furthermore states that a Member of Parliament may not be placed in custody on remand while Parliament is in session or recess provided that this period does not exceed 14 days at a time. This does not apply if a Member of Parliament is caught in the act of crime.
51. According to Article 51 of the Constitution, Ministers are entitled to a seat in the Althing. It has therefore been held in legal theory that a Minister of the Government enjoys the same protection as Members of the Parliament.
52. The Parliament may impeach a Minister of the Government on account of his/her acts in office (Article 14 of the Constitution, Act no 4/1963 on Liability of Ministers of the Government). Such cases are to be resolved by the Court of Impeachment (Act no 3/1963 on the Court of Impeachment). However, to date the Parliament has never proceeded along this line and the Court of Impeachment has never assembled.

53. The provisions of the Constitution and similar provisions granting immunity from prosecution were designed to ensure that Members of Parliament could remain active and independent without interference. Their purpose is not to protect Members of Parliament individually.

III. ANALYSIS

a. **A policy for the prevention of corruption**

54. The GET shares the overall assessment of Iceland as one of the least-corrupted countries in Europe. The Icelandic authorities are confident that corruption is not an important issue of concern for Icelandic society. This confidence is based among other things on the very low number of investigations and convictions for bribery. The Icelandic authorities are aware of the potential and future risks which corruption could pose to their country.
55. The Government of Iceland is responding to these risks by acceding to international instruments and by changing the national legislation accordingly. Amendments to the legislation to ratify the two Council of Europe conventions are under consideration. The GET suggested to the authorities to speed up this process.
56. In order to comply with the OECD convention, in 1998, bribery in international business transactions was criminalized and a law was enacted on criminal liability of legal persons on account of bribery of public officials. To date the relevant legal provisions have not been applied in practice, although some of the interlocutors met by the GET expressed doubts about the attitude of Icelandic companies doing business abroad, in particular in eastern European countries.
57. The GET is of the opinion that the perspective of the Icelandic authorities regarding the phenomenon of corruption is somewhat narrow, focusing on bribery only, and does not sufficiently take into account related problems such as trading in influence or fraud. A comprehensive anti-corruption strategy is not in place. The GET is of the opinion that a more pro-active and a broader approach would be required to effectively prevent corruption in the country. The GET suggested to use the ratification process of the two Council of Europe conventions to develop a broader, more comprehensive anti-corruption policy.
58. The fact that Iceland is a country with a small population on the one hand can help ensure transparency but on the other hand can generate conflicts of interest and compound corruption. In this context the GET was particularly concerned about the absence of regulations on the financing of political parties. This concern was shared by representatives of the media met by the evaluators. Apparently, attempts to draft regulations have failed in the past. The GET observes that it is desirable to place this issue again on the agenda of the Parliament.
59. While bribery in international business transactions was criminalized in 1998, the GET is not aware of any effort made to raise awareness among the business community or to follow up on allegations made. Obviously, within a society which is convinced that it is more or less free of corruption, it is difficult to create awareness and promote preventive action on a potential or future risk. Nevertheless, the GET recommended to the authorities to engage more actively in awareness raising in general and to exploit the capacities of already existing provisions and institutions in view of a more pro-active approach against corruption.

60. For example, the Icelandic Bar Association has adopted a code of conduct which is in effect as of December 2000. The Association of Certified Public Auditors has also issued rules of conduct for auditors. At the same time, and while there are general rules on the rights and duties of public servants including some conflict of interest provisions (Administrative Act no 37/1993), no codes of conduct or similar provisions have been adopted for elected representatives or public officials. The GET suggested to the authorities to consider such codes as a tool to raise awareness and prevent corruption. Such codes should also include an obligation of public officials to report corruption cases.
61. The public enjoys wide access to information from public authorities (although article 4 (1) of the Information Act no 50/1996 may appear somewhat restrictive when exempting access to documents related to State Council and Cabinet meetings) and media are reported to take advantage of this. The GET was informed that the media are able to exercise their role without undue political pressure from shareholders or owners or politicians.
- b. Institutions, bodies and services dealing with the prevention, investigation, prosecution and adjudication of corruption offences**
- b1. Police and the prosecution**
62. It is very difficult to evaluate the effectiveness of criminal justice institutions with regard to the investigation and prosecution of corruption as only three cases of bribery have been investigated so far leading to two convictions (both cases were of minor significance).
63. The Unit for the investigation and prosecution of economic and environmental crime within the office of the National Commissioner Police plays a crucial role in the fight against economic crime on the whole. However, due to its present staffing level of ten investigators the Unit is only able to react to cases forwarded to the Unit. The GET recommended that this Unit pursue a more pro-active approach to the prevention, investigation and prosecution of corruption, and that the Government provide the necessary resources for this purpose. Considering the limited experience with corruption cases additional training would be required for the staff of the Unit in order to enhance their specialisation. The Unit could thus become the main specialised law enforcement organ dealing with corruption cases.
64. The Prosecutor General is responsible for prosecuting all cases of corruption. The fact that the division responsible for the investigation of economic crime within the office of the National Commissioner Police is headed by a prosecutor is an efficient arrangement ensuring close cooperation between the police and the prosecution.
65. The GET took note of Article 26 § 1 of the Act on Criminal Procedure under which the " ... Minister of Justice supervises the exercise of prosecution authority and may demand reports on particular cases from the Prosecutor General. Specific legal provisions applying for prosecution depending on the decision of the Minister of Justice, shall remain in force. Hence the Minister of Justice gives the Prosecutor General instructions to conduct investigation and approves prosecution and appeal". These special provisions concern acts of treason, violations of the State's constitution and its highest authorities, offences against foreign Heads of State and offences under certain international conventions that provide for international jurisdiction. In these particular cases, an order by the Minister of Justice is required for prosecuting . Otherwise the Prosecutor General is not subject to instructions from the Minister of Justice regarding the handling of individual cases, and the GET has not received any information suggesting that the Minister of Justice is unduly interfering in the work of the prosecution. However, there is an

organisational and hierarchical link between the Prosecutor General, who is responsible for the prosecution of corruption, and the Minister of Justice. Therefore, GRECO observes that continued vigilance against improper interference by the Executive in the prosecution of corruption is required.

66. The GET has taken note of the system for prosecution under Sections 111, 112 and 113 of the Act on Criminal Procedure. The GET noted that, in addition to the other possibilities for not prosecuting under section 113 (see para. 17 above), it is possible not to prosecute "in special cases when prosecution is not deemed dictated by the public interest". All decisions not to prosecute can be appealed to the General Prosecutor and then to the Minister of Justice. A decision not to prosecute in the public interest would be automatically referred to the Prosecutor General. Also a complaint against such a decision can be lodged with the Ombudsman. Naturally prosecutors are subject to disciplinary measures if they abuse their position.
67. The GET notes that conflict of interest rules are in place for persons involved in the investigation, prosecution and adjudication of criminal cases, that is, for prosecutors, police officers, judges and other public servants or committee members.

b2. Sources of information

68. Special investigative means can be important tools to investigate corruption. The Act on Criminal Procedure determines the methods that can be used and under which conditions. These are that there is reason to assume that information of high significance for the investigation of a case can be obtained by the means in question and that the offence may result in a sentence of eight years in prison, or that important public or private interests demand that the measure is taken. Currently active bribery is punished with up to three years' imprisonment and passive bribery with up to six years' imprisonment. It should also be noted that the penalty provided for money laundering offences is up to four years. These methods can therefore only be applied if it can be shown that an important public or private interest demands so. GRECO observed that it is necessary to ensure that the special investigative means can be used in the investigation of serious corruption cases either under existing law or, if this is not possible, by enacting new legislation.
69. The GET notes that bank secrecy does not constitute an obstacle to investigations into corruption cases.
70. Many countries have included into their legislation an obligation for public officials to report offences known to them, including corruption. This is not the case in Iceland. There is no legal obligation to report suspected corruption, not even for police officers, although a failure to report such a matter could be considered a breach of duty. The GET recommended the introduction of legal provisions ensuring that information on corruption offences or suspicions thereof that was received by public officials in the exercise of their duties will be reported to the investigating authorities.

b3. Other institutions involved in the fight against corruption

71. The GET was impressed by the number and quality of institutions which play or could play an important role in ensuring transparency and in the prevention and disclosure of corruption. These include the Ombudsman of the Althing, the Competition Authority, the National Audit Office and the Financial Supervisory Authority. Furthermore the Confederation of Icelandic

Employers, the Chamber of Commerce and the media should be mentioned. The GET recommended that the potential which these institutions offer be more fully exploited.

72. The Ombudsman of the Althing can contribute to the disclosure of specific corruption cases by launching an investigation following a complaint, by notifying the relevant authorities in cases of a breach of duty or an offence or by causing a person to be summoned before a district judge to give evidence. He can furthermore contribute to the closing of gaps in legislation and procedures thus reducing risks and opportunities for corruption.
73. The Competition Authority has far-reaching competencies concerning economic and financial offences. Part of its role is to enforce the prohibition of bribery in the private sector. The GET observes that it is desirable that additional training should take place— preferably in cooperation with the police – to enhance the investigative capacities of the Authority.
74. The National Audit Office plays an important watchdog function not only with regard to the waste of public finances but also with regard to the detection and prevention of corruption. However, its control functions are limited with regard to local government. The Office is permitted to carry out performance audits of projects and functions carried out by local government and private firms financed by the Central Government. In general, however, local government is not audited by the National Audit Office. The same is true for the Procurement Agency. The GET observed that the system could be improved by having independent procurement supervision for local government as a safeguard against the vulnerability to corruption.
75. The Financial Supervisory Authority has the duty to notify the police or the prosecution should it come across money laundering or other offences (actual examples are cases of insider trading). It can thus contribute to disclosing corruption and to securing evidence. The Authority furthermore can have an impact on the prevention of corruption in that it can make recommendations or give instructions to financial institutions to remove bad practice or change procedures. The GET encouraged the Authority to pursue its efforts to formulate conflict of interest rules.
76. Non-governmental institutions, who could make important contributions to the prevention and control of corruption, include the Confederation of Icelandic Employers which comprises some 2800 businesses and could be a powerful platform against corruption. Similarly the Icelandic Chamber of Commerce could assist in promoting awareness and initiating pro-active measures against corruption. The GET had the impression that journalists were highly suspicious of corruption in particular with regard to the lack of transparency and accountability in the financing of politicians and political parties. The media obviously play a crucial role in shaping public opinion.

c. Immunities

77. The GET is of the view that the immunities and related procedures for certain officials in Iceland do not constitute an unacceptable obstacle to the country's capacity to effectively prosecute corruption.

IV. CONCLUSIONS

78. Iceland is one of the countries least affected by corruption in Europe. Although there are no specialised anti-corruption units in place, a range of institutions exercises functions which contribute to the prevention and control of corruption. These include the Prosecution, the Police

(in particular its Unit for economic and environmental crime), the Ombudsman, the Competition Authority, the National Audit Office, the Financial Supervisory Authority, and the Government Procurement Agency, as well as non-governmental organisations and the media. In addition to specific legislation on bribery, regulations on the access of the public to information and – to some extent – on conflicts of interest further contribute to the control and prevention of corruption. Law enforcement agencies and other control bodies have access to financial and banking information. Immunities do not constitute an obstacle to criminal investigations (GPC 6) The low level of corruption appears to confirm that this system is functioning properly.

79. While corruption is not considered an actual problem it is considered a potential and future risk. Accession to relevant international instruments is one response to this risk. The Icelandic authorities are aware of the need for further prevention measures. The challenge is to avoid complacency, to take a pro-active stance, to close gaps, to exploit the potential inherent in existing institutions (GPC 3) and to enhance specialisation (GPC 7). In this light, GRECO addresses the following recommendations to Iceland:
- i) that a pro-active anti-corruption policy with the necessary resources be elaborated within which the inherent potential of , inter alia, the following institutions to prevent and control corruption would be more fully exploited: the Ombudsman of the Althing, the Competition Authority, the National Audit Office, the Financial Supervisory Authority, the Chamber of Commerce, the Confederation of Icelandic Employers, the media and others;
 - ii) that the Unit for economic and environmental crime of the National Commissioner of Police be provided with necessary training to pursue a more pro-active approach to the prevention, investigation and prosecution of corruption. The Unit could thus become a better specialised law enforcement organ dealing with corruption cases;
 - iii) the introduction of legal provisions ensuring that information on corruption offences or suspicions thereof that was received by public officials in the exercise of their duties will be reported to the investigating authorities.
80. Moreover, GRECO invites the authorities of Iceland to take account of the observations made by the experts in the analytical part of this report.
81. Finally in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of Iceland to present a report on the implementation of the above-mentioned recommendations before 31 December 2002.

APPENDIX I

List of Persons met by the GRECO Evaluation Team (GET)

Ministry of Justice	Benedikt BOGASON, Director of Legal Affairs Björg THORARENSEN, Director of Police and Judicial Affairs
Public Prosecution	Bogi NILSSON, Director of Public Prosecutions Ragnheidur HARDARDOTTIR, Prosecutor
Ministry of Commerce	Tryggvi AXELSSON, Head of Division, Financial Markets, Consumer and Legal Affairs
National Commissioner Police	Jón SNORRASON, Prosecutor Arnar JENSSON, Chief Superintendent Helgi MAGNÚS GUNNARSSON, Police Attorney Högni EINARSSON
National Audit Office	Sigurdur PORDARSON, National Auditor Larus ÖGMUNDSSON, Manager Albert ÓLAFSSON, Manager Grétar GUDJÓNSSON, Audit Supervisor
Althing/Parliament	Vilhjalmur EGILSSON, Independence Party, Chairman of Committee on Economy and Finance
Ombudsman of the Althing	Tryggvi GUNNARSSON
Competition Authority	Gunnar THORSTEINSSON, Deputy Director General
Icelandic Press Association	Olafur STEPHENSEN, Deputy Editor, Morgunbladid Hjalmar JONSSON, Chairman Thor JÓNSSON, Vice Chairman Lúdvík GEIRSSON, Managing Director
Government Procurement Agency	Jon ASBJÖRNSSON, Division Manager Gudmundur GUDMUNDSSON
Confederation of Icelandic Employers	Hrafnhildur STEFANSDOTTIR, Attorney
Financial Supervisory Agency	Páll GUNNAR PALSSON, Director General Ragnar HAFLIDASON, Deputy Director General Runar GUDMUNSSON, Insurance Markets Hannes J. HAFSTEIN, Credit Markets
Icelandic Chamber of Commerce	Birgir ARMANNSSON, Deputy Managing Director

APPENDIX II

Provisions of the Icelandic Penal Code

Section 109 of the General Penal Code (Act No. 19/1940), as amended by Act No. 147/1998, provides as follows:

“Whoever gives, promises or offers a public official a gift or other advantage in order to induce him to take an action or to refrain from an action related to his official duty, shall be imprisoned for up to three years, or, in case of mitigating circumstances, fined.

The same penalty shall be ordered if such a measure is resorted to with respect to a foreign public official or an official of a public international organisation in order to obtain or retain business or other improper advantage in the conduct of international business.”

Section 128 of the General Penal Code provides as follows:

“A public official who requests, receives or reserves for himself or others, in connection with the performance of his duty, a gift or other advantage to which he is not entitled, shall be imprisoned for up to 6 years, or, in case of mitigating circumstances, fined.”