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## **Second Evaluation Round**

### **Evaluation Report on Iceland**

Adopted by GRECO  
at its 19<sup>th</sup> Plenary Meeting  
(Strasbourg, 28 June – 2 July 2004)

## I. INTRODUCTION

1. Iceland was the seventh GRECO member to be examined in the Second Evaluation Round. The GRECO evaluation team (hereafter referred to as the "GET") was composed of Mr Flemming DENKER, Deputy Public Prosecutor for Serious Economic Crime, Denmark, Mr Joe GANGLOFF, Senior Counsel, Office of International Affairs, US Department of Justice, USA, and Mr Antonio VERCHER NOGUERA, Public Prosecutor before the Supreme Court, Spain. This GET, accompanied by a member of the Council of Europe Secretariat, visited Reykjavik from 1 to 5 December 2003. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval II (2003) 10E) as well as copies of relevant legislation.
2. The GET met with officials from the following governmental organisations: The Ministry of Justice, the Director of Public Prosecution, the National Police Commissioner and prosecutors at this Office, Ministry of Commerce, Ministry of Finance (Personnel policy department, Taxation and Legal Affairs Department and the Registry of enterprises which is a department of the Internal Revenue Directorate), the Government Procurement Agency, the Directorate of Tax investigations, the Competition authority, the National Audit Office, the Financial Supervisory Authority and the Parliamentary Ombudsman (Althing). Moreover, the GET met with members of the following non-governmental institutions: the Confederation of State and Municipal Employees, the Association of Academics, the Chamber of Commerce, the Confederation of Employers, the Bar Association, the Association of Certified Public Auditors, the Bankers' and Security Dealers' Association, the Union of Journalists, the Confederation of Labour, the Politics Department of the University of Iceland and the Association of Local Authorities.
3. It is recalled that GRECO agreed, at its 10<sup>th</sup> Plenary meeting (July 2002), that the 2<sup>nd</sup> Evaluation Round would run from 1<sup>st</sup> January 2003 to 30 June 2005 and that, in accordance with Article 10.3 of its Statute, the evaluation procedure would deal with the following themes:
  - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
  - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
  - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.
4. The present report was prepared on the basis of the replies to the questionnaire (and the information provided during the on-site visit). The main objective of the report is to evaluate the effectiveness of measures adopted by the Icelandic authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3 (It should be noted that Iceland had signed but not ratified the Criminal Law Convention on corruption at the time of the evaluation visit<sup>1</sup>, for what reason the scope of the present report is limited to the provisions of the

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<sup>1</sup> Iceland ratified the Criminal Law Convention on Corruption on 11 February 2004. It entered into force with regard to Iceland on 1 June 2004.

Guiding Principles. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Iceland in order to improve its level of compliance with the provisions under consideration.

## **II. THEME I – PROCEEDS OF CORRUPTION**

### **a. Description of the situation**

#### *Confiscation and other deprivation of instrumentalities and proceeds of crime*

5. The general provision of confiscation is contained in Section 69 of the Penal Code (as amended by Act 10/1997). Confiscation is defined in Icelandic legal theory as a penalty related sanction, which does not affect the determination of a penalty in a criminal case.
6. Confiscation with regard to corruption was limited, at the time of the visit by the GET, to offences which are criminalised under Icelandic Law, i.e. — active and passive bribery in the public sector (Penal Code) and bribery in the private sector when it falls under the Competition Act. Trading in influence and bribery in the private sector were not criminalised under the PC and thus not covered. The scope of the criminalisation of corruption was, however, under consideration during the visit of the GET and subsequently enlarged<sup>2</sup>.
7. Objects created through an offence or used for its commission may be confiscated. Objects that are deemed to be intended for a criminal purpose may also in certain cases be confiscated. Furthermore, objects or proceeds of crime to which no party has a lawful claim may be confiscated. The same goes for the value of such objects (“monetary amount corresponding to such proceeds”). If full proof of the value cannot be obtained, the Court may assess the amount thereof. Moreover, gains from proceeds of crime or, objects purchased from such gains may also be confiscated. When calculating the gain, expenditures may be deducted (Section 69 of the Penal Code and case law).
8. Confiscation, which is not mandatory, can only be decided by a Court of Law when that has been requested in the prosecutor’s indictment, according to paragraphs 116 and 117 of the Code of Criminal Procedure (CCP). Moreover, proceeds of crime cannot as a main rule be confiscated without a conviction of the perpetrator. Confiscation is not possible in case the holder of the property has not been implicated in the offence in any manner. Confiscation is not possible if the holder of the property is not implicated in the offence in any manner.
9. The burden of proof in a case of confiscation remains always fully with the prosecutor, according to established case law (“beyond reasonable doubts”). There are no situations where this burden can be reversed or lowered.
10. Subject to statute provisions providing for a different arrangement, the confiscated property shall confer to the State Treasury. A person who has suffered loss by reason of the offence shall however, have priority to the proceeds if compensation cannot be obtained by other means (Section 69 of the penal Code).

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<sup>2</sup> A Government proposal to enlarge the scope of corruption offences in the General Penal Code in order to prepare for the ratification of the Council of Europe Criminal Law Convention on Corruption was pending before Parliament at the time of the visit by the GET. The Icelandic Parliament adopted on 16 December 2003 an Act through which trading in influence and bribery in the private sector were criminalised in the PC.

11. The GET was informed that confiscation in Iceland has in judicial practice been mostly used in offences concerning smuggling and bootlegging. There are no cases of corruption in which confiscation has been used.

Interim measures: freezing and seizure of instrumentalities and proceeds of crime

12. Seizure is provided for in the Code of Criminal Procedure (CCP). Section 78 of the CCP states that any object which may (on reasonable grounds) be of evidential value in criminal proceedings, objects obtained by crime and objects that may be subject to confiscation shall be seized. This includes bank, financial or commercial records. Active and passive bribery in the public sector are criminalised and thus covered. Bribery in the private sector is not generally criminalised; the exception to this is bribery in business activity covered by the Competition Act, for what reason seizure would be possible concerning such bribery as well. Furthermore, trading in influence is not criminalised, see footnote 2.
13. Officials, who are in a position to take lawful measures, such as arresting, investigating a crime, search etc, may seize objects which may have an evidential value, i.e. normally the police or the prosecutor. In addition, the Competition Authority has the powers to seize property during the investigation of a violation of the Competition Act (Section 40).
14. There is no specific regulation in place on the management of property which have been seized, more than that seized property shall be registered and securely stored (Section 81). The Icelandic authorities have emphasised that seizure is a temporary measure (for as long as necessary) which may precede confiscation in which case the confiscation rules on the management of the property apply.
15. The GET was informed that even if seizure is used whenever possible, there are not more than two-three such cases per year.

International co-operation (confiscation and seizure)

16. The applicable legal framework for international co-operation is the same for confiscation as for provisional measures (seizure). When Iceland is the requested State the Act (13/1984) on Extradition of Criminals and Other Assistance in Criminal matters applies. This law provides that the same procedures as those provided for in the Code of Criminal Procedure may apply also with regard to foreign requests in Iceland, Section 22. It is, however, necessary that the criminal offence at stake is also punishable under Icelandic Law, Sections 22 and 23 (dual criminality), and, that the criminal offence is not of certain nature, such as a political one, Section 22, para. 2. The latter condition does not apply to requests from states participating in the Schengen agreement. Requests shall be submitted to the Ministry of Justice, except where there are bilateral agreements providing for direct cooperation between law enforcement authorities. The GET was informed that the procedure works very well between Iceland and the Nordic States and is more complicated with regard to other states.
17. The Act No. 13/1984 on Extradition of Criminal and Other Assistance in Criminal matters came into force following Iceland's ratification of the *European Convention on Mutual Assistance in Criminal Matters* and its additional protocol (ratified on 20 June 1984). The Act was amended in 2000 following Iceland's participation in the Schengen-agreement, giving requests from relevant states more favourable treatment. The act was amended in 2001 following the European Council's decision determining that certain provisions of the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union* constituted developments

of the Schengen acquis in accordance with the Agreement concerning Iceland's association with the implementation of the Schengen acquis. On 19 December 2003 Iceland signed an agreement with the European Union on the application of the remaining provisions of the *Convention on Mutual Assistance in Criminal Matters between European Union Member States*, as well as its additional protocol of 2001. The necessary legal amendments and other measures to implement those provisions were in preparation at the time of the visit of the GET.

18. When Iceland is the requesting State, the legal framework is the Code of Criminal Procedure. Requests are sent to the requested state in accordance with a decision from a prosecutor and/or judge, either directly to the relevant authorities in the requested state (which is the case with regard to the Nordic States) or via the Ministry of Justice and the Ministry of Foreign Affairs, if international agreements so require.

### Money laundering

19. The Money Laundering Act (No. 80/1993) provides the general legal framework of the offence of money laundering. All corruption offences (see paragraph 6 and footnote 2) are predicate offences to money laundering. The term "public official" in the Money Laundering Act includes any person engaged in public administration (state or local authorities). It also applies to particular professions which are granted a public licence for their occupation, such as practising lawyers. Also "foreign public official" has a wide interpretation and covers officials of international public institutions.
20. Icelandic criminal jurisdiction covers any offences committed, in part or in their entirety, in Iceland. An offence is deemed to have been committed where the original act is committed, irrespective of where its effects are manifested. It is not required that an offence is committed in Iceland as regards all its various elements, but these must to a significant degree have a link to Iceland. In addition, an offence is also deemed to have been committed where its consequences are manifested or intended, if the consequences of the act influence its criminality. (Section 7 of the Penal Code).
21. Various institutions and individuals, such as financial institutions, lawyers, accountants, real estate agents, etc are obligated to report on suspicious transactions (STR) according to the Icelandic Money Laundering Act, No. 80/1993. The duty to report transactions of money laundering, is based on the "all crime approach" and covers, *inter alia*, corruption offences.
22. The Economic Crime Division of the National Commissioner of the Police deals with organised crime in various forms, including money laundering. The Division has a staff of four lawyers and 13 police officers, two of which deal *inter alia* with money laundering. The Division has the functions of a financial intelligence unit (FIU) and, accordingly, it receives STR and assesses, on the basis of available evidence, whether the matter will be investigated further. If so, the investigation will be conducted as provided for in the Code of Criminal Procedure.
23. The GET was informed that the Economic Crime Division is processing an increasingly number of STR every year. The annual number of STR sent by financial institutions in recent years were one report in 1994, 11 in 1997, 51 in 1999, 125 in 2001, 189 in 2002 and 203 in 2003.
24. If the institutions charged with control and supervision, such as the Financial Supervision, the Competition Authority, or the tax authorities, become aware of criminal conduct, they shall inform the Economic Crime Division.

**b. Analysis**

25. Confiscation of instrumentalities and proceeds of crime can be used with regard to any offence where such objects exist. With regard to corruption it is possible in cases of active and passive bribery in the public sector. The GET welcomes the information that trading in influence is likely to become a criminal offence in the near future. It noted that confiscation is also possible with regard to corruption in the private sector when it falls under the Competition Act.
26. The GET did not find it unsatisfactory that confiscation is not mandatory as it was informed that there was a developed practice to use confiscation “whenever there was a possibility” to do so.
27. Confiscation of proceeds of crime covers everything that the offender has gained from the offence or objects purchased for such gain. Moreover, value confiscation of proceeds of crime is possible. The GET regarded it as positive that confiscated property, which normally shall confer to the State Treasury, could be used as compensation to a victim of the particular crime in case compensation cannot be obtained through other means.
28. The GET notes that it is not possible to confiscate the proceeds of a crime independently of conviction. It was of the opinion that this may lead to unacceptable situations where the offender is not convicted for formal reasons (not being identified, could not be brought to trial or when criminal proceedings must be discontinued) and, accordingly, may keep unlawfully gained proceeds. Moreover, the GET recognised that it is not possible to confiscate proceeds held by a third party in good faith. Property in the ownership of a third party cannot be confiscated if that party has not been involved in the offence. Furthermore, there is no provision according to which the burden of proof can be reversed or lowered. The GET was of the opinion that this situation may undermine the effectiveness of the fight against corruption, as it makes it extremely difficult to apply confiscation in third party situations. The GET discussed this problem with representatives from the prosecution service and the police, who called for better means to use confiscation in cases where proceeds of crime have been transferred from the offender in order to evade confiscation. The same representatives also expressed a wish that it should be possible to confiscate property – entirely or partly – held by a perpetrator convicted of a particularly serious offence, which could generate a lot of profit, for example corruption offences, unless the offender could prove that the property was legally obtained (reversed burden of proof).
29. The GET was of the opinion that the provisions on confiscation (Section 69 of the Penal Code) in Iceland are adequate for confiscation of instrumentalities and proceeds of crime, provided that the offender has been convicted and is in possession of the objects, however, additional rules were considered necessary in order to make the system effective in cases when these conditions were not met. The problems raised, which to a large extent were confirmed by the Icelandic practitioners, need to be addressed also for preventive reasons. The GET refers in this respect to experience gained in other GRECO member States and **recommends to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime and consider reviewing the burden of evidence necessary in various situations to provide for better possibilities to use confiscation effectively in cases of corruption; in particular with regard to situations where no conviction is possible (*in rem confiscation*) and when the property is held by a third party.**
30. As regards seizure and freezing of proceeds of crime, the GET has the impression, that the Icelandic authorities have the sufficient legal means concerning the very early steps in the criminal proceeding. The GET did not find limitations concerning the powers to use seizure and freezing of instrumentalities and proceeds of crime and the discussions with practitioners did not

suggest any particular problem. The GET was informed of an on-going (at the time of the visit) international money laundering case where the Icelandic law enforcement authorities had “frozen” some 50.000.000 ISK.

31. The GET noted that there is no regulation with regard to the management of seized property, nor with regard to the property that has been confiscated. During the on site discussions it was explained that seizure is very seldom used and that the law enforcement agencies will handle seized property in a way to avoid it from diminishing in value on a case by case basis. The GET observes that a clear legal framework relating to the administrative handling of such property in order to promote transparency, fairness and efficiency could be warranted and Iceland is encouraged to regulate this area in the future.
32. As regards organised crime and money laundering the GET took note of the wide-ranging obligation to report suspicious transactions of money laundering (also in relation to corruption offences) to the FIU in Iceland, which is placed in the Economic Crime Division of the National Police Commissioner. The GET was aware of the significant increase in the number of STR in recent years. Moreover, representatives from the Economic Crime Division stated that they did not have enough staff to be able to use a more pro-active approach and that further staff were needed for handling the increase in reports concerning suspicious transactions. The GET observes that a proactive approach is an important tool in the fight against economic crime and corruption, also for the prevention of such offences. It also recalls that staffing of the Economic Crime Division was dealt with in the First Round Compliance Report on Iceland (Greco RC-I (2003) 9E), under recommendation ii.

### **III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION**

#### **a. Description of the situation**

##### Anti-corruption legal framework

33. Public administration in Iceland consists of the central and municipal level. There are 104 municipalities. The largest (Reykjavik) has a population of 110.000 inhabitants and the smallest only 34. There is no general or particular anti-corruption strategy in Iceland for public administration. However, the Ministry of Justice is contemplating further measures to raise awareness of corruption issues in co-operation with the Ministry of Commerce, which has been responsible for measures against money laundering during the past decade. The authorities have stated that increasing attention shall be given to action against corruption by the Ministry of Commerce and that this should not be limited to public administration.
34. The fundamental principles laid down in legislation which, *inter alia*, aim at providing a sound public administration are to be found in the Administrative Procedure Act (No. 37/1993), which provides for the minimum requirements to be fulfilled by administrative authorities when handling administrative matters, such as competency, the proportionality principle, the equality principle, the right of protest, grounds to be stated for decisions, and the handling of appeals.

##### Transparency

35. The general principles of transparency, which apply to both state and municipal administrations, and to private parties insofar as they have been entrusted with public powers, are contained in the Information Act (No. 50/1996). The Act provides the main rule that authorities are obliged on request to grant public access to all documents unless otherwise stipulated in the law or decided

in accordance with the legal grounds listed for not keeping a document public. The Act indicates how a request shall be done, that authorities shall act speedily (if more than eight days the authority must give reasons for the delay), rights to appeal etc. Furthermore, some rules on transparency are contained in the Administrative Procedures Act, which also is applicable to local authorities, for example, that all administrative decisions have to be communicated to the parties concerned.

36. The GET was informed that the public has access to documents at the actual authorities or in the form of photocopies at cost price. There is also a broad on-line access – free of charge - via Internet to laws, regulations and administrative decisions, etc. The Government maintains a web page ([www.rettarheimild.is](http://www.rettarheimild.is)), which provides various information on public administration, such as new regulations and administrative decisions, composition of state committees, etc. Legislation is accessible on the website of the Parliament ([www.altingi.is](http://www.altingi.is)) and administrative regulations are published on another web page ([www.reglugerd.is](http://www.reglugerd.is)).
37. The decision making process at the governmental level is transparent in that ministries frequently seek opinions from civil society and interest organisations when preparing bills and regulations. Parliament sends, almost without exception, bills to these<sup>3</sup> parties for opinion. Municipal board meetings are as a main rule open to the public (Local Authorities Act, section 16), etc.

#### Control

38. The core principle of Icelandic administrative law is that a decision of a lower administrative authority can be appealed against to a higher administrative authority. This is provided for in the Administrative Procedures Act. The legality of administrative decisions, i.e. the question whether they are based on lawful and pertinent considerations, can also be referred to the courts.
39. In addition to the ordinary appeal system, the Icelandic Constitution provides for the institution of the Parliamentary Ombudsman (Ombudsman of the Althing). Anyone may submit a complaint to the Ombudsman concerning individual administrative decisions (mal administration), which affect the complainant directly. In addition to receiving complaints, the Ombudsman can initiate examination of a matter on his own initiative (*ex officio*). The Ombudsman can also investigate activities and procedures of a particular administrative authority. The Ombudsman cannot alter the decision/conclusion arrived at in a particular case. Instead, an opinion is issued. Such opinions are published. The Ombudsman Institution is easily accessible and it has its own web page.
40. Another independent controlling body, operating under the auspices of Parliament, is the National Audit Office (Act No.86/1997). Its main task is to audit central government accounts in respect of their correctness, however, this audit is also controlling the cost-efficiency and effectiveness in public spending. The National Audit is also entitled to audit accounts of municipalities with regard to funding coming from the central government (approximately 40 per cent of municipalities' budget). The GET was informed that the National Audit, following general instructions from Parliament, selects its own working agenda. It has not yet audited any municipality, which are normally audited by private sector auditors. The Audit has focused on various projects, for example one on "Codes of conduct in public administration", in 2003, see below ""Ethics and codes of ethic/conduct". The National Audit presents its main findings in an Annual Report to Parliament.

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<sup>3</sup> The Parliament sends (almost without exception) bills to the civil society, experts and interest organisations for opinion.

### Recruitment, career, training and preventive measures

41. The Government Employees Act (No.70/1996) sets the legal framework for public employment. One of the aims with the introduction of this Act is to bring the hiring and work conditions closer in line with those prevailing in the private sector. The general conditions for employment in the public sector are set in Section 6 (18 years, majority, sound mind, Icelandic citizenship, suitable education, no criminal record, etc). Recruitment to state administration is based on the principle that all persons fulfilling the general requirements provided by the law are eligible for engagement in a position ("position" system). Vacant posts must be advertised (Article 7). The administrative authority recruiting a person will also follow its own provisions. It examines whether the general requirements and other requirements are fulfilled. The person best suited, as assessed on the basis of material and pertinent, considerations, will be engaged. The recruiting authority will also in this context, when an occasion arises, examine whether an applicant's history is such as to make him or her unworthy of the employment in question. Thus, it is envisaged that applicants are vetted before being engaged.
42. Public officials are divided into two categories, civil servants and regular state employees. While civil servants are reemployed every five years (unless there are reasons not to), the regular employees are employed for an indefinite period of time. A public employee who has committed a criminal offence may be deprived of his/her employment in the public service (by a court). A professional, authorised by the State, may be deprived of the licence to pursue a certain occupation, for example that of a practising lawyer, certified auditor, medical doctor, registered nurse or teacher (Article 6 of the Government Employees Act in conjunction with Section 68 of the Penal Code).
43. The Ministry of Finance organises on a regular basis courses for state employees on matters concerning their duties and administrative procedures. However, state employees are not specifically trained or informed of the principles inherent to public service or the ethics of public service.

### Conflict of interests

44. Rules on conflict of interest, i.e. grounds for disqualification from the decision making process, are listed in the Administrative Procedures Act, Section II. These rules apply both to state and municipal administrations. A civil servant should be disqualified from dealing with a particular case if the case is under review and s/he has previously dealt with it, if the case concerns him/herself, relatives or immediate superiors, or a company for which s/he is a representative, etc. There is a final clause stating that a civil servant should be disqualified if there are circumstances likely to cast doubts about the official's impartiality, which are not negligible. Moreover, a public official may not have a secondary job without permission from the public authority.
45. The Icelandic authorities have stated that there are no general regulations on receiving gifts, nor are there any rules for situations where public officials move into the private sector.
46. Corruption preventive measures, such as rotation of staff or declaration of economic interest and assets are not used.

### Reporting corruption

47. There is no express obligation for public officials to report crimes that they become aware of in the conduct of their functions. A failure to report possibly could constitute a breach of duty pursuant to the Penal Code, Section 141, which provides that "A public servant guilty of gross or repeated negligence or dereliction in the performance of his functions shall be fined or imprisoned for up to one year." The GET was informed during discussions that there is a general principle to report problems to the superior. There is no special protection for public officials who make reports about corruption ("whistle blowers"), except the general provisions contained in the Government Employees Act.

### Ethics and codes of ethics/conduct

48. There is no general code of ethics or conduct for public officials at central or municipal level. The National Audit Office informed the GET that it had (in 2003) carried out a study on codes of conduct in public administration. The survey shows that 15 per cent of Icelandic public bodies has a code of ethics (for example the Police) and that 40 per cent were considering to establish such a code. The National Audit Office had concluded that there was a need for Icelandic public sector officials to follow a specific code of conduct in their work. The National Audit maintained this position during discussions with the GET.
49. The Government Employees Act (Chapter IV, "Duties") deals with the performance of public officials (diligence and care, fairness and impartiality, obligation to obey lawful orders, respecting working hours, confidentiality, an obligation to report secondary work, etc.).
50. The GET was also informed that the Municipality of Reykjavik had in 2001 launched a code of conduct contained, amongst other documents, in a handbook for its employees.

### Disciplinary/criminal procedures

51. The Government Employees Act contains some disciplinary measures (reprimand and termination of work) as well as some procedural rules in case of violations/negligence duties of the Act, for example in Articles 21, 26 and 44. Before a reprimand or other decision is decided by a public agency there is always a procedure of consultation with the public official and the decision is accompanied by reasons.
52. If a public official is suspected of criminal activity, a police investigation will be conducted, and the Code of Criminal Procedure will be applied. Criminal proceedings do not exclude disciplinary proceedings.

#### **b. Analysis**

53. Public administration reforms have been a high priority in Iceland for the last decade. Recent legislation relating to public administration has been designed to facilitate transition to more efficient practices at a time when Iceland is experiencing pronounced emphasis on privatisation of formerly government functions and where interaction between the public and private sectors has increased dramatically, particularly in the context of contracting out for procurement of goods and services. The GET recognised that this development - which is similar in many European states - has particular consequences in Iceland, considering its small population, decentralised wide ranging powers and risks of nepotism.

54. The focus on public administration reform has been on developing structurally sound working relationships, performance driven management and bringing employment and job conditions into line with those prevailing in the private sector. The Government Employees Act, as an example, has this overall objective and spells out in great detail the rights and duties of government employees relating to *inter alia* employment conditions, relationships with superiors and conditions for dismissal. It appeared to the GET, however, that insufficient attention has been focused on the unique responsibilities of public employees as opposed to employees in the private sector.
55. Generally, the GET's review of relevant laws, standards, policies, and practices, as well as discussions with public officials and representatives of civil society, relating to pertinent issues of public administration, established that the systems in place have a high degree of safeguards to ensure integrity and in particular, transparency. The Information Act and the policy on e-governance facilitate appropriate access to public information. Iceland should be commended for that.
56. During the GET's visit, it was clear that public authorities and civil society do not perceive Iceland to be significantly affected by corruption. Cases of corruption and other misconduct are rare, and the GET discovered no evidence of systemic corruption in any area, although there is research<sup>4</sup> suggesting that nepotism, personal contacts and political patronage has a significant impact on local government and, public procurement at the local level was particularly mentioned as an area at risk. The GET observes that the National Audit Office, which has the powers to audit local authorities with regard to funding provided by the State, might wish to focus its attention also to the municipalities in the future.
57. Although Icelandic authorities visited by the GET generally demonstrated commitment to fighting corruption, there was little indication that steps to enhance efforts to prevent and detect corruption are regarded as a priority. For the most part, Icelandic authorities seemed satisfied that existing laws and programs provide adequate safeguards. Moreover, the issue of corruption was generally viewed somewhat narrowly as equated with classic bribery and Icelandic authorities appeared to have devoted little attention to measures designed to prevent corruption, raise public awareness and promote public confidence in this respect.
58. While the GET is of the opinion that many factors in Iceland contribute to resistance to corruption, it is concerned that the complacency of Icelandic officials and representatives of civil society risk that preventive measures might not be seriously considered and implemented until after avoidable vulnerabilities to corruption are exploited. It would therefore be prudent to timely address foreseeable problems that have become manifest in other countries and a proactive approach would better address latent problems.
59. The GET notes that there is no general anti-corruption strategy adopted for public administration. Icelandic authorities expressed confidence that while core values are not systematically stated, they are directly and indirectly known through a variety of legal documents, such as the Government Employees Act and the Administrative Procedures Act. Still, they acknowledged that no specific examples of formal measures for guidance and advice were in place. Nor is there any regular staff training on ethics. Moreover, the GET notes that there was no general ethical code for public administration. Such codes exist to some extent in various public agencies, such as the Police and in the Municipality of Reykjavik, however, the GET learned through interviews that in some instances personnel were not certain whether there was a code of conduct or they were

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<sup>4</sup> Stadbundin stjornmal, 2001, Gunnar Helgi KRISTINSSON, University of Iceland

not aware of the contents, etc. The GET was pleased to learn that the National Audit Office had drawn the attention to the need for public sector employees to follow a specific code of conduct. The GET takes the view that the establishment of a general code of conduct/ethics should be a priority. Such a work would benefit from a general discussion on the ethical values in public administration. **The GET recommends to establish a general code of conduct/ethics, based on an overall strategy against corruption in public administration at all levels and to introduce appropriate training on public ethics on a permanent basis.** The GET refers to the Council of Europe Model Code of Conduct for Public Officials (Rec 2000 (10)).

60. Furthermore, the GET came across some shortcomings relating to conflicts of interest. The GET was repeatedly informed throughout the visit that there are no rules or guidelines concerning gift giving practices, nor with regard to the declaration of public officials interests/assets. Another issue was the situation when a public official move into the private sector where the particular information/knowledge from the former position may be used to the disadvantage of public interest ("pantouflage"), which is not regulated. This area may be of growing interest as the private sector gradually moves into traditional public sector business. **The GET recommends that appropriate rules for situations of conflicts of interest, such as gift giving and when public officials move from the public to the private sector, be considered.**
61. The GET is also concerned that there is no express obligation for public officials to report crimes that they become aware of in the conduct of their functions and that there is no protection provided for those who report ("the whistleblower"). While the facilitation of whistle blowing undoubtedly deters corrupt conduct, experience has shown that it has a strong potential to cause disruption of pertinent institutions, particularly during an initial phase of reform. As the focus of Icelandic reforms has been to improve the ability of managers to effectively accomplish their responsibilities, it appears to the GET that an unintended consequence of this emphasis is that the protection of employees who report possible wrongdoing is inadequate. As an example, pursuant to the Government Employees Act, an employee is obligated to accept changes in his/her job or area of responsibility and civil servants are appointed to a fixed term of five years without a right to reappointment. Moreover, the GET was told that encouragement and protection of whistleblowers present extremely acute challenges in Iceland, where the field of employment is limited. The GET believes that in this environment it is especially important that specific policies and practices be developed to appropriately protect whistleblowers (in good faith) from retaliation. **The GET recommends to introduce clear rules and training for public officials to report unlawful, improper or unethical acts, including corruption in public administration and to enhance the system of protection for those who report such misconduct.**
62. The GET received inconsistent information concerning procedures and practices relating to filling vacancies for government positions. Some of those interviewed perceived the system to be somewhat closed in that vacancy announcements were not well publicised and insiders had an advantage in so far as job qualifications could be drafted to favour certain applicants. On balance, the GET believes that the range of perceptions presented an insufficient basis upon which to recommend specific reforms; however, the GET notes that review of practices might result in modifications, including increased transparency of the recruiting process, which would promote public confidence and encourage qualified applicants to seek government jobs.

#### **IV. THEME III – LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

63. In Icelandic jurisprudence the term “legal person” has been defined as covering any person which is not a natural person (companies, associations, enterprises, institutions and funds). In the absence of particular provisions influencing this definition, it is immaterial whether or not such a legal person is engaged in business or industrial activity. The term has also been defined as any impersonal entity capable of enjoying rights and carrying duties under Icelandic law. A legal person is defined in the Penal Code as “any entity who while not being a natural person is capable of enjoying rights and bearing duties under Icelandic law” (Section 19b).
64. The various forms of companies/legal persons in Iceland are the following: “individual firm” (personally owned companies) are registered at the Districts Commissioners (ISK 40.000). Individual firms are operated under the identity number of the owner and are registered as such in the Register of Enterprises. The liability remains with the physical person. “Partnerships” of two or more partners are also registered (ISK 50.000) at the District Commissioners. The liability of the partners is unlimited.
65. “Private Limited Companies” have to be registered at the Register of Limited Companies (ISK 75.000). Such a company may be registered by a single person. The share capital is at least ISK 500.000 and this form of company has its own legal capacity and its owner limited liability.
66. “The public limited companies” are principally intended for several owners with the intention of registering the company at a stock exchange. The share capital is as a minimum ISK 4.000.000. This form of company demands at least two founders and two shareholders, a manager and three persons on the board of directors. It must be registered at the Register of Limited Companies. This company type has its own legal capacity and the shareholders responsibility is limited to their share capital.
67. While “associations” and “foundations” which are non-profitable (Act No. 19/1998) have to be verified by the Ministry of Justice and may be registered at the Enterprise registry, there is an obligation for foundations engaging in business operations to register.
68. The Act on Investment by Non-Residents in Business Enterprises does not in any way prevent a foreign company from establishing a 100% owned subsidiary in Iceland, except in the fields of fisheries and primary fish processing, and certain additional limited fields.
69. As for citizens of OECD countries who reside in a OECD country other than Iceland, they can, due to a general exemption granted by the Minister of Industry and Commerce, freely form limited companies in Iceland and act as board members and managers (Announcement No. 260/1997 Respecting General Exemption From the Conditions of Residence of the Limited Company Legislation).
70. There are no restrictions provided for in the Icelandic legislation with regard to legal persons to hold interests in other legal persons, nor on the number of accounts a company can hold, etc. On the other hand, the legislation requires that members of the board of directors and managers of public limited companies shall have personal and financial legal competence, be in control of their private financial affairs and for the past three years not have been found guilty of any crime in connection with business operations.

## Registration

71. The Registry of Enterprises is provided for by Act No. 17/2003. The Director of the Internal Revenue is in charge of the Registry of Enterprises and issues National Registry numbers to legal persons. The Registry of Enterprises is organised under the Ministry of Finance. The GET was informed during the interviews with officials of the Registry that they check whether a physical person is registered in the National Registry; concerning other information, they only make sure that all information required is provided. Nothing is done to verify the correctness of that information.
72. The data to be registered in the Registry of Enterprises include a legal person's name, National Registry number, office address or headquarters, legal form, date of establishment, and names, residences and identity numbers of the natural persons representing the entity. Public institutions and public and private entities and the wider public have full access to all documents in the Registry of Enterprises and general information on every company is accessible via Internet.

## Liability of legal persons

73. The Icelandic Penal Code provides for a general rule on criminal liability of legal persons (Chapter II A, Section 19 b1). Section 19 stipulates that "A legal person may be ordered to pay a fine if this is provided for by statute". This liability applies to any entity which is capable of enjoying rights and bearing duties under Icelandic law, including joint stock companies, private limited liability companies, companies with mixed liability of owners, European Interest Groupings, partnership companies, co-operative societies, associations, independent foundations, administrative authorities, institutions and municipal authorities (Section 19b).
74. Section 19 c1 of the Penal Code prescribes that unless otherwise provided for in special legislation, a legal person can only be made criminally liable if its officer, employee or other physical person acting on its behalf committed a criminal and unlawful act in the course of its business and that penalties may be imposed on the legal person even if the identity of that physical person has not been established. Moreover, administrative authorities may be criminally liable for unlawful and criminal acts committed in the course of an operation deemed comparable to the operations of private entities (for example the State owned Telecom or TV).
75. With regard to corruption the Act on Criminal Liability of Legal Persons concerning Bribery (144/1998)<sup>5</sup> has to be applied and in respect of bribery of a public official it reads: "*A legal person may be fined if its employee or staff member has, in order to secure or maintain business or other improper gain for the benefit of the legal person, given, promised or offered a public servant a gift or other advantage in order to induce the public servant to take a measure or to refrain from taking a measure within the sphere of his or her public duties. This shall also apply to such acts committed with respect to foreign public servants or officials acting for international institutions*". The GET was informed that no legal person has been prosecuted for this offence and that there is no criminal responsibility for any other corruption offence.

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<sup>5</sup> Act No 144/1998 on the Criminal Liability of Legal Persons concerning Bribery was amended at the same time as the Penal Code (on 16 December 2003) in the process of ratifying the Criminal Law Convention. Following the changes made, a legal person can be made criminally liable for the following offences: Active bribery in the public sector, private sector bribery and money laundering. The Act refers to the three sections of the penal code dealing with these offences, that is, section 109 (active bribery), section 264.a (private sector bribery) and section 264 (money laundering).

76. Criminal liability of a legal person is normally depending on the responsibility of a physical person working for the legal person. That is the general rule in the Penal Code and it applies when the special legislation is silent on this issue. However, it is often provided in legislation that a legal person can be made criminally liable regardless of the conduct of those working for the legal person. Lack of supervision or control can only be punishable if it is a result of criminal negligence. The court must evaluate whether the person holding a leading position neglected his or her duties of supervision and control in a criminal and punishable manner. A causal link must also exist, i.e. a person holding a leading position can not be held responsible for the acts of a subordinate that have no relation to the legal person's operations.
77. The benefit of an offence need not be effectively realised in order to provide for liability according to the general principle of Sections 19.a – 19.c of the Penal Code. These provisions are, however, not intended to alter any particular conditions for criminal liability of legal persons set in other laws, for example, that criminal liability is depending upon the legal person having profited from the offence.
78. Criminal liability of a legal person does not exclude proceedings against the physical person for the same offence. As to the criminal procedure, it is most likely that the liability of a legal person would be determined in the same proceedings as that of the individual responsible for the offence. This is the main rule according to Section 23 (2) of the Code of Criminal Procedure, which states that if more than one person is involved in the same criminal act, they shall be tried in the same case, if feasible.
79. The penal sanction for legal persons is a fine. The legislation does not set any limits for the fine. There is a registry concerning legal persons convicted of a criminal offence, which is accessible to the judicial authorities and to the legal persons concerned.
80. According to statistics provided by the Police, there were three or four cases yearly in 1999 and 2002 and most of them concerned tax fraud or illegal fishing. In 2003, there was an increase in the adjudication of legal persons to 14 cases, a majority of which concerning the Fishery Act, Tax and custom fraud, etc.

#### Tax deductibility and fiscal authorities

81. Deductibility is prohibited as regards "facilitation" payments, bribes and other similar expenses, according to the Tax Act (Section 50), which states: "... cost because of payments, gifts or other that is deemed as unlawful...". The Penal Code (Section 109, bribery) has the expression: "...gift or other advantage...". There is a slight difference between the phrasing of Section 50 of the Tax Act and § 109 of the Penal Code, but the meaning is principally the same. Section 50 also contains the word "payments", where in fact it is reiterated that deduction from income is independent from the type of delivery. The difference is not as marked in the original language, because a translation to English of the word corresponding to "advantage" can also be "gain".
82. As mentioned above, the chief authority in Iceland combating money laundering is the office of the National Commissioner of Police, Economic Crime Department. The office receives notification from banks and other institutions in cases of suspected money laundering. When dealing with such matters, police authorities may request information from the tax authorities. These shall furnish such information if requested in relation to specified persons. The National Commissioner of Police may furthermore request unlimited access to the electronic files of the tax authorities, where information from tax returns as well as information on withholding taxes is stored. Such requests for unlimited access to the electronic data have been denied, most

recently in the year 2000. The tax authorities do preliminary investigations and if they suspect bribery in relation to an investigation of tax fraud or in the course of routine control of tax returns, they notify the National Commissioner of Police and send their report.

83. District Commissioners of Taxes and the Commissioner of Customs in Reykjavik have access to information and tax records as necessary for collection purposes. They have no access to the original tax records and cannot evaluate singular features, but only conclusive figures.

Account offences etc.

84. There is an obligation for all legal persons in Iceland to keep accounting books and records. According to the Accounting Act, No. 145/1994, Section 20, all accounting books, accounting records and documents, as well as letters, facsimile sheets and telegrams or their duplicates, including documents kept by computer, microfilm or by any other comparable method, shall be kept in a secure and safe manner for at least seven years from the closure of each relevant accounting year. Persons using cash registers are however not obligated to safe keep interior register printouts for more than three years, provided the accounts have been fully closed and the annual accounts signed. An annual account shall always be kept for 25 years.
85. The Icelandic Authorities have stated that according to the Accounting Act, Section 37, the falsification of accounts or accounting documents, the creation of documents without real substance etc, as well as the destruction of such documents "shall always be viewed as a major violation of law", which, according to the Penal Code may be subject to fines or to imprisonment up to six years. The legal entity may also be fined and, in addition, deprived of its right to operate, in case the violation was committed for its benefit.

Role of accountants, auditors and legal professions

86. Professionals, such as accountants, auditors and practising lawyers are according to the Act on Measures to Counteract Money laundering (No. 80/1993) obliged to report suspicions of offences to the Economic Crime Division of the National Police Commissioner concerning (a) payment instruments in money markets (cheques, bills or other comparable payment instruments, etc.); (b) foreign currency; (c) futures and options; (d) exchange rate linked bonds and debt instruments bearing interest, (e) securities and (f) reception of financial assets in connection with the development of equity capital of undertakings or in connection with purchase, take-over or merger of business undertakings.

**b. Analysis**

87. The notion of legal persons is well defined in Iceland. There is a variety of different legal persons provided for in legislation. All of them are subject to registration. It is also foreseen that foreign physical and legal persons may establish legal persons in Iceland (some limits, c.f. fishery) or may join Icelandic companies. The GET was pleased that the registered data of the Registry of Enterprises, contains names and addresses of the persons behind the legal persons (founders, board members managing director) and that such information is public and accessible at cost price. Moreover, basic information is available on the Internet, free of charge. The same rules on transparency (the Information Act) prevail in this regard as in any public administration.
88. It is in this respect important that the information is correct and reliable. This is particularly significant with regard to the prevention of legal persons being used to shield inappropriate activities, such as corruption. The GET is of the opinion that there is a need to control that

submitted information to a public registry of legal persons corresponds to the reality. The GET was surprised to learn that the Icelandic Registry of Enterprises registers companies, without knowing to what extent the submitted information is correct (except for information on whether a person is registered in the National Registry). Officials of the Registry confirmed that if only all formal requirements are met (all data provided), the company will be registered. No checks with other authorities or registers, such as the population registry, criminal records, etc. are carried out. The GET was told that the information is normally provided by accountants or practising lawyers, however, the GET had the impression that these mainly focus on the requirement that the necessary capital of the legal person has been paid to its account and that they do not check the correctness of all details submitted. The GET noted in this respect the need to control, for example, the rule, contained in the Act on Public Limited Companies (Article 66) which states that board members may not during the immediate past three years have been convicted for certain economic crimes. **The GET therefore recommends to strengthen the controlling functions of the Registry of Enterprises with regard to pertinent information on legal persons in the registration process.**

89. Icelandic legislation has provided corporate liability for active bribery of a public official since 1998. This was, at the time of the visit by the GET, the only form of corruption that a legal person could be criminally liable for. Since the visit by the GET, legislation has changed, see footnote 5. Corporate liability for money laundering is covered by the law.
90. Legal persons are subject to a fine if they are convicted. The law does not set any limits and in the absence of legal persons having been convicted for corruption offences it was not possible for the GET to judge the effectiveness of such sanctions.
91. Moreover, the GET is of the opinion that another appropriate measure would be to hinder physical persons convicted for certain business related offences from carrying out business through legal persons. It was informed that the possibility of introducing bans on business activity had been discussed in Iceland in the early 1990's without any result. The GET takes the view that such a measure with regard to persons in leading positions of legal persons could be a useful tool to prevent legal persons from shielding criminal activities, including corruption. Such bans should figure in the criminal record. **The GET recommends to consider the possibility of establishing bans on business activities for physical persons, following conviction for serious offences, such as corruption.**
92. Tax deductibility for "facilitation payments", and bribes are prohibited in law. The Icelandic tax legislation and the tax authorities are involved to some extent in the detection and in particular the reporting of various offences. The tax authorities carry out their own investigations and notify the Economic Crime Department of the National Commissioner of crime they come across. Even if the police do not have unlimited access to tax files they may request such information in particular cases from the tax authorities. The GET observes that a close co-operation between the fiscal authorities and the police is an advantage in detecting crime, such as corruption and money laundering.
93. The GET notes that violations of the accounting obligations are satisfactorily dealt with in the Icelandic legislation (the Accounting Act and the Penal Code) and that the sanctions provided are adequate.

## V. CONCLUSIONS

94. Iceland remains a country with a record of an extremely low level of domestic corruption and, accordingly, Icelandic officials in all fields lack practical experience from dealing with the fight against corruption. At the same time Iceland has a long-standing tradition of international business and is sensitive to risks of connected crime. There is a legal framework in place which deals with most aspects of proceeds of corruption and corruption in corporate activities, with only minor legal shortcomings. The public administration is transparent and information is easy to access. Reforms of public administration in recent years has to a large extent focused on bringing public administration conditions closer to those of the private sector, and a low priority has been given to anti-corruption measures, such as the development of public sector ethics and conflicts of interest.
95. In view of the above, GRECO addresses the following recommendations to Iceland:
- i. **to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime and consider reviewing the burden of evidence necessary in various situations to provide for better possibilities to use confiscation effectively in cases of corruption; in particular with regard to situations where no conviction is possible (*in rem confiscation*) and when the property is held by a third party (paragraph 29);**
  - ii. **to establish a general code of conduct/ethics, based on an overall strategy against corruption in public administration at all levels and to introduce appropriate training on public ethics on a permanent basis (paragraph 59);**
  - iii. **that appropriate rules for situations of conflicts of interest, such as gift giving and when public officials move from the public to the private sector, be considered (paragraph 60);**
  - iv. **to introduce clear rules and training for public officials to report unlawful, improper or unethical acts, including corruption in public administration and to enhance the system of protection for those who report such misconduct (paragraph 61);**
  - v. **to strengthen the controlling functions of the Registry of Enterprises with regard to pertinent information on legal persons in the registration process (paragraph 88);**
  - vi. **to consider the possibility of establishing bans on business activities for physical persons, following conviction for serious offences, such as corruption (paragraph 91).**
96. Moreover, GRECO invited the authorities of Iceland to take account of the observations made by the experts in the analytical part of this report.
97. Finally, in conformity with Article 30.2 of the Rules of Procedure, GRECO invited the authorities of Iceland to present a report on the implementation of the above-mentioned recommendations before 31 December 2005.