



Strasbourg, 19 February 2009

Public
Greco RC-II (2006) 10E
Addendum

Second Evaluation Round

Addendum to the Compliance Report on Iceland

Adopted by GRECO
at its 41st Plenary Meeting
(Strasbourg, 16-19 February 2009)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Iceland at its 19th Plenary Meeting (2 July 2004). This report Greco Eval II Rep (2003) 7E, which contains 6 recommendations addressed to Iceland, was made public on 19 August 2004.
2. Iceland submitted the Situation Report required under the GRECO compliance procedure on 31 December 2005. On the basis of this report, and after a plenary debate, GRECO adopted the Second Round Compliance Report (RC-Report) on Iceland at its 30th Plenary Meeting (13 October 2006). This last report was made public on 18 October 2006. The Compliance Report (Greco RC-II (2006) 10E) concluded that recommendation iv had been implemented satisfactorily, recommendation vi had been dealt with in a satisfactory manner, recommendations ii and iii had been partly implemented and recommendations i and v had not been implemented; GRECO requested additional information on their implementation. This information was provided on 9 October 2008 and 27 November 2008, respectively.
3. The purpose of this Addendum to the Second Round Compliance Report is, in accordance with Rule 31, paragraph 9.1 of GRECO's Rules of Procedure, to appraise the implementation of recommendations i, ii, iii and v in the light of the additional information referred to in paragraph 2.

II. ANALYSIS

Recommendation i.

4. *GRECO recommended 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.*
5. GRECO recalls that it concluded in the RC-report that the recommendation was not implemented since the issues it raised were still to be considered by the Government.
6. The Icelandic authorities now indicate that the Minister of Justice has proposed a number of amendments to the relevant rules on confiscation contained in the General Penal Code No. 19/1940. The draft amendments specifically provide for confiscation of the illicit proceeds held by a third party. Likewise, confiscation *in rem* is possible in certain circumstances (e.g. perpetrator not being identified). In addition, the draft amendments provide for the reversal of the burden of proof for the purpose of confiscation of property: in those cases where a person is convicted of a particularly serious offence (punishable with at least 6 years' imprisonment) or where the offence results in substantial gain, the burden is on the offender, as well as his/her spouse/partner and any legal person where the offender or his/her family holds a personal interest, to demonstrate that the assets were obtained lawfully. The draft amendments are to undergo consultation in Parliament.
7. GRECO takes note of the proposed amendments to the General Penal Code aimed at enlarging the scope of the provisions on confiscation, including by enabling confiscation in certain situations where no conviction is possible and when the property is held by a third party. GRECO also notes that the draft amendments allow for a certain reversal of the burden of proof in specific cases.

However, pending adoption of the draft amendments, GRECO cannot conclude that, at present, the scope of confiscation has been effectively enlarged, as recommended.

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

Recommendation ii.

9. *GRECO recommended 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.*
10. GRECO recalls that, in the RC-report, ongoing progress was noted in respect to recommendation ii. In particular, the authorities had reported on the issuing of a Circular of the Ministry of Finance in 2006 containing the general considerations and values that public officials were expected to observe in the execution of their work; this document was considered to have a non-exhaustive character and was aimed at prompting internal debate eventually leading to further developments in this field. In this context, GRECO concluded that, since further measures were expected to be introduced, including the development of specific guidelines targeted at different sectors of activity and the provision of training on public ethics, recommendation ii was partly implemented.
11. The Icelandic authorities report that a policy statement of the Government¹ has fixed, as one of its objectives, the development of deontological rules for ministers, members of Parliament (Althingi) and public officials (both civil servants and public employees). The Althingi is currently drafting the corresponding ethical provisions for parliamentarians. No information is available as to how the Government (Office of the Prime Minister) intends to meet its objective concerning the issuing of ethical rules with respect to ministers and public officials. In the meantime, certain training activities on ethical matters in the public sector have taken place following an agreement concluded between the Ministry of Finance and the Continuing Education Programme of the University of Iceland (e.g. courses held during the spring 2007 covering *inter alia* the deontological provisions included in the Circular of the Ministry of Finance).
12. GRECO takes note of the reported plans to further develop deontological principles of public officials; it would have appreciated specific details on how such plans were to be implemented in practice and the relevant deadlines for doing so. GRECO notes that some training courses, which addressed *inter alia* deontological principles in public administration, were held in 2007; however, these occasional sessions cannot be considered as meeting the requirements of recommendation ii. In this connection, GRECO encourages the authorities to ensure that the envisaged development of deontological rules (and their underlying principles) is coupled with the corresponding training on an ongoing basis.
13. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii.

14. *GRECO recommended 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.*

¹ Policy statement of the Government released on 23 May 2007.

15. In its RC-report, GRECO welcomed the introduction of guidelines regarding gifts. However, it noted that nothing had been done with respect to conflicts of interest arising from public officials moving from the public to the private sector (pantouflage). Consequently, GRECO assessed recommendation iii as partly implemented.
16. The Icelandic authorities state that the Ministry of Finance has not yet examined the issue of pantouflage since it is awaiting additional action from the Government concerning its reported intention to develop further the ethical rules for ministers, parliamentarians and civil servants (see paragraph 11). Pending such action, it is stressed that some guidance concerning conflicts of interest is already contained in the 2006 Circular of the Ministry of Finance on public ethics, as well as in Chapter XIV of the General Penal Code concerning offences against public administration.
17. GRECO notes that no progress has been reported with respect to the situation assessed in its Compliance Report. In this context, GRECO did not deem the general provisions contained in the 2006 Circular of the Ministry of Finance and the General Penal Code as sufficient to conform with recommendation iii. Consequently, GRECO urges the authorities to examine, in a prompt and thorough manner, how to deal with situations where public officials move to the private sector, in order to avoid instances of conflicting interests.
18. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

19. *GRECO recommended to strengthen the controlling functions of the Registry of Enterprises with regard to pertinent information on legal persons in the registration process.*
20. GRECO recalls that it assessed recommendation v as non-implemented, since the authorities were still considering how to approach the matter in both legal theory and practice.
21. The Icelandic authorities now report that the controlling functions of the Registry of Enterprises are being strengthened in order to set up a standard protocol to verify the criminal records, prior to registration, of board members of companies who have been convicted of certain economic crimes, including corruption. In particular, an agreement has been signed between the Registry of Enterprises and the Directorate of Tax Investigations (which is responsible for keeping track of economic crime); these two bodies are currently coordinating the technical/logistic arrangements which will facilitate direct computerised data exchange.
22. GRECO welcomes the progress reported in this area to strengthen the controlling functions of the Registry of Enterprises through a cross-check mechanism of information on criminal records of persons in leading positions of legal entities, prior to registration. GRECO is confident that the full operability of such a mechanism will constitute a useful tool to prevent legal persons from shielding criminal activities, including corruption. For this reason, GRECO can only encourage the authorities to pursue their efforts in this area, so that the last technical arrangements are promptly accomplished with a view to rendering the system fully operative in practice.
23. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

III. CONCLUSION

24. In addition to the conclusions contained in the Second Round Compliance Report on Iceland and in view of the above, GRECO concludes that recommendation v has been dealt with in a satisfactory manner; recommendations i, ii and iii are partly implemented. With the adoption of this Addendum to the Second Round Compliance Report, GRECO concludes that out of the six recommendations issued to Iceland, only half of them have now been implemented or dealt with in a satisfactory manner. GRECO regrets that no real progress has been made, since the adoption of the RC-report, with respect to the development of a general code of conduct/ethics for public officials (recommendation ii) and of conflict of interest rules, including when public officials move to the private sector (recommendation iii); more determined action in this field remains necessary. Moreover, it is unfortunate that, despite the promising steps taken to enlarge the scope of confiscation (recommendation i), effective adoption of the proposed amendments to the General Penal Code is still pending; the authorities are urged to pursue vigorously this legislative project.
25. The adoption of this Addendum to the Compliance Report concludes the Second Evaluation Round compliance procedure concerning Iceland. The authorities of Iceland may, however, wish to inform GRECO of further developments with regard to the implementation of recommendations i, ii and iii.
26. Finally, GRECO invites the Icelandic authorities to authorise, as soon as possible, the publication of the Addendum, to translate it into the national language and to make the translation public.