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Third Evaluation Round

Compliance Report on Iceland

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 46th Plenary Meeting
(Strasbourg, 22-26 March 2010)

I. INTRODUCTION

1. The present Compliance Report assesses the measures taken by the authorities of Iceland to implement the 15 recommendations issued in the Third Round Evaluation Report on Iceland (see paragraph 2), covering two distinct themes, namely:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of party funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
2. The Third Round Evaluation Report was adopted at GRECO's 37th Plenary Meeting (4 April 2008) and made public on 16 April 2008, following authorisation by Iceland (Greco Eval III Rep (2007) 7E [Theme I](#) / [Theme II](#)).
3. As required by GRECO's Rules of Procedure, the Icelandic authorities submitted a Situation Report on measures taken to implement the recommendations. This report was received on 2 February 2010 and served as a basis for the Compliance Report.
4. GRECO selected Croatia and Sweden to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Marin MRČELA, Supreme Court Justice, Croatia, and Mr Olof NYMAN, Legal Adviser, Ministry of Justice, Sweden. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The compliance report assesses the implementation of each individual recommendation contained in the evaluation report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will within a given deadline be assessed on the basis of a further situation report to be submitted by the authorities after the adoption of the present compliance report (cf. paragraph 30).

II. ANALYSIS

Theme I: Incriminations

6. It was recalled that GRECO in its evaluation report addressed 6 recommendations to Iceland in respect of Theme I. Compliance with these recommendations is dealt with below.

Recommendations i, ii and iii.

7. *GRECO recommended to ensure that Members of Parliament are covered by the provisions on bribery and trading in influence of the Penal Code. (recommendation i)*

to ensure that members of a foreign public assembly exercising administrative powers are covered by the provisions on bribery and trading in influence of the Penal Code. (recommendation ii)

to ensure that foreign arbitrators and jurors are covered by the provisions on bribery of the Penal Code and to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible. (recommendation iii)

8. The authorities of Iceland explain that the Ministry of Justice and Human Rights has requested its Permanent Committee on Criminal Law to give an opinion on whether the full implementation of recommendations i – iii would require amendments to the Penal Code. The Committee has reported that in order to provide for bribery offences and trading in influence in respect of members of Parliament (recommendation i), members of a foreign public assembly (recommendation ii) and foreign arbitrators and jurors (recommendation iii) in accordance with the requirements of the Criminal Law Convention on Corruption (ETS 173) and its Protocol (ETS 191), the definitions contained in the Penal Code of the categories of persons need to be amended. The authorities add that work on the amendments of the Penal Code is currently in progress; draft legislation is expected to be submitted to Parliament during the second half of 2010. Subject to the adoption of these legal amendments, the Protocol to the Criminal Law Convention will be ratified, as required in recommendation iii.
9. GRECO takes note of the information provided. Some progress appears to be underway, however, no proposals for amendments to the Penal Code have yet been elaborated.
10. GRECO concludes that recommendations i, ii and iii have not been implemented.

Recommendation iv.

11. *GRECO recommended to clarify in an appropriate manner what should be considered “due” and/or “undue” gift/other advantage for all forms of bribery offences.*
12. The authorities of Iceland stress that recommendation iv has been carefully considered by the Ministry of Justice and Human Rights, which takes the view that it would be important to establish certain norms or criteria allowing to identify due and/or undue gifts or advantages in relation to bribery offences. However, since this definition must also be subject to case by case interpretations, it is important not to limit the application of the provisions too much. The Ministry therefore considers it appropriate to issue guidelines in the form of codes of ethics rather than strictly binding norms. As a consequence, the Government is planning to adopt a code of ethics for the public administration. To this end, a special committee appointed by the Prime Minister, following consultation with various experts and parties concerned, has prepared a draft based on recommendations of the Council of Europe and the OECD. The draft, which, *inter alia*, contains provisions that government employees should not accept gifts exceeding a moderate value and that gifts received in an official capacity belong to the ministry or agency, has been circulated among administration personnel for their comments and the Committee has not yet presented a final text. Furthermore, the Prime Minister’s Office has introduced a bill providing for the supervision of the effectiveness of the code (once adopted), by a special coordination committee. The bill, which proposes amendments to the Government Employees Act, No 70/1996, has been submitted to Parliament.
13. GRECO takes note of the information provided and welcomes the plans referred to above to establish a code of ethics for public administration. However, the Icelandic authorities have not provided any detailed information as to the concrete content of the code. Consequently, it is not

possible at this stage to assess to what extent such a code will clarify the concept of due or undue advantages for all forms of bribery as required in the recommendation.

14. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

15. *GRECO recommended (i) to increase the penalties for bribery offences in the private sector and (ii) to consider increasing the penalties for active bribery in the public sector.*
16. The authorities of Iceland report that the Ministry of Justice and Human Rights, having consulted its Permanent Committee on Criminal Law, is of the opinion that the current penalties for bribery offences in the private as well as in the public sector are in conformity with other similar offences of the Penal Code as well as with the penalties provided for such offences in countries with a similar legal tradition. Moreover, the general debate in Iceland would not reflect the view that such offences merit more severe sanctions than the current ones contained in the Penal Code. For these reasons the Icelandic authorities do not consider it necessary to increase the penalties for the offences listed in recommendation v.¹
17. GRECO notes with regret that the position taken by the authorities does not comply with the first part of the recommendation. GRECO would like to stress in this respect that the current sanctions for private sector bribery in Iceland appear weaker in comparison with those available under the criminal law of other GRECO member states, including other Nordic States. GRECO can only conclude in respect of this part of the recommendation that it has not been implemented and would encourage the Icelandic authorities to review their position concerning sanctions for private sector bribery. Regarding the second part of the recommendation, GRECO notes that the matter has been subject to consideration as required by this recommendation; however, no legal changes are foreseen. Nevertheless, in accordance with GRECO's standing practice, this part of the recommendation must be assessed as implemented.
18. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

19. *GRECO recommended that the law enforcement authorities receive specialised training on the content of the existing incriminations of corruption offences, so that they become better prepared to detect, investigate and prosecute instances of corruption.*
20. The authorities of Iceland indicate that a special unit, *the Economic Crime Department*, of the National Commissioner of the Police handles investigations and prosecutions of economic crime and is also responsible for investigating corruption cases. The Unit, headed by a prosecutor, has been strengthened and is staffed currently with eight investigators and four lawyers. This arrangement was made to enhance the specialisation of the Unit. Furthermore, some of the staff are increasingly involved in the international cooperation against corruption and receive training at international seminars. The Government, which considers it important that the people working within the Economic Crime Department receive specific training on combating corruption, is planning to introduce such training, however, this intention has not yet been fully implemented.

¹ The authorities have signaled during the adoption of this report that this position may be reconsidered.

21. GRECO takes note of the initiatives reported which are aimed at enhancing the level of specialisation concerning the investigation of corruption offences in Iceland. It does not appear, however, that any specialised training has been provided to law enforcement authorities as intended by the recommendation.
22. GRECO concludes that recommendation vi has not been implemented.

Theme II: Transparency of Party Funding

23. It was recalled that GRECO in its evaluation report addressed 9 recommendations to Iceland in respect of Theme II.

Recommendations i - ix.

24. *GRECO recommended to introduce regulations ensuring an appropriate level of transparency of the campaign finances of presidential candidates. (recommendation i)*

to consider establishing, for purposes of reporting the identity of contributors who are natural persons, a separate threshold level that is below the ceiling on the value of donations that parties/candidates are entitled to receive but is still of some significance. (recommendation ii)

to (i) introduce clear provisions determining when an individual becomes a candidate for purposes of the start of the requirement to maintain records for a financial report; (ii) define the end of the reporting period for the first report to be filed after the primary; and (iii) require any candidate who reports a positive or negative balance in a campaign account to continue to report on a regular basis until the excess is disposed of or the debt has been retired. (recommendation iii)

to explore ways of sharing campaign finance information with the public prior to the election (e.g. through interim reports). (recommendation iv)

to (i) define the contents of the summarised financial reports of political parties'/candidates' accounts (including required information on income received and expenses incurred) as soon as possible and (ii) publicise the summaries in a timely manner. (recommendation v)

to (i) establish clear rules ensuring the necessary independence of auditors called upon to audit the accounts of political parties and candidates; and (ii) establish procedures for auditors of such accounts, consistent with accepted international auditing standards, on when, how and to whom to report suspicions of significant/substantial infringements of existing legislation on political funding which they may come across in the course of their work. (recommendation vi)

that the National Audit Office be vested with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates. (recommendation vii)

that the reporting fields of tax forms be changed to separate political donations from contributions to non-profit entities (such as charities or religious associations). (recommendation viii)

to review the sanctions available for the infringement of rules concerning the funding of political parties and election candidates and to ensure that these sanctions are effective, proportionate and dissuasive. (recommendation ix)

25. The authorities of Iceland report in respect of recommendation viii that the tax return forms for 2010 have been changed by the Internal Revenue Directorate in order to separate political donations from contributions to non-profit entities. The authorities stress that the Government is fully committed to carefully consider GRECO's other recommendations, but that the implementation of them would require amendments to the current legislation. In order to prepare for the drafting of such legislation, the Prime Minister of Iceland on 15 May 2009 appointed a Committee to review the current Law on Financing of Political Parties and to propose amendments in light of GRECO's recommendations. According to the set timetable, the Committee was due to conclude its work before the end of September 2009. However, the work of the Committee has been delayed and it is now expected that it will come up with results in February or March 2010. The Committee intends to present its conclusions to the Prime Minister in the form of a legislative bill which, subject to the approval of the Government, will be submitted to Parliament during its spring session in 2010. The authorities state that it might be possible that new legislation will be adopted by Parliament already in May 2010. The Government commits itself to inform GRECO as soon as the work relating to the implementation of the recommendations moves forward.
26. GRECO takes note of the explanations provided. It welcomes that recommendation viii has been complied with. Moreover, it would appear that a reflection process has started, which might eventually help implementing the eight remaining recommendations relating to Theme II. However, the action taken so far does not indicate more than a timid beginning; nothing concrete has been substantiated in respect of the pending recommendations and no draft texts have yet been issued which would allow to make any provisional assessment on the direction taken by the authorities.

III. CONCLUSIONS

27. **In view of the above, GRECO concludes that Iceland has implemented satisfactorily or dealt with in a satisfactory manner only one of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations, recommendation v has been partly implemented and recommendations i – iv and vi have not been implemented. With respect to Theme II – Transparency of Party Funding, recommendation viii has been implemented satisfactorily and recommendations i – vii and ix have not been implemented.
28. The information provided by the Icelandic authorities clearly indicates that the process of implementation of all but one recommendations issued in the Third Round Evaluation Report under both Theme I and Theme II is still in its initial stages. The almost complete lack of any concrete results is not only salient in respect of recommendations whose implementation would require legislative changes and amendments according to the authorities. It is also striking that very little substantial progress has been achieved in respect of the few recommendations that would not necessarily require changing the law. As a consequence, only one of the recommendations could be considered fully complied with and only one of them could be categorised as partly implemented. Having said that, GRECO takes note of the declared intention of the Icelandic authorities to carefully deal with each of the pending recommendations. GRECO urges the authorities to do their utmost in this respect, including by reconsidering its stated position regarding recommendation v(i) under Theme I.

29. In view of the above, GRECO therefore concludes that the current very low level of compliance with the recommendations is “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Icelandic delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i - vi regarding Theme I and recommendations i – vii and ix, regarding Theme II) as soon as possible, however – at the latest – by 30 September 2010, pursuant to paragraph 2(i) of that Rule.
30. GRECO invites the authorities of Iceland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.