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Second Evaluation Round

Compliance Report on Ireland

Adopted by GRECO
at its 36th Plenary Meeting
(Strasbourg, 11-15 February 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Ireland at its 26th Plenary Meeting (5-9 December 2005). This report (Greco Eval II Rep (2005) 9E) was made public by GRECO, following authorisation by the authorities of Ireland, on 28 February 2006.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Ireland submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 31 July 2007.
3. GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Portugal and the Slovak Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr. Jorge MENEZES FALCÃO, Head of delegation to GRECO on behalf of Portugal and Mr Daniel GABČO, Head of delegation to GRECO on behalf of the Slovak Republic. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Ireland to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its evaluation report addressed six recommendations to Ireland. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended to reconsider the system of fees for requests for access to official information according to the Freedom of Information Act as well as with regard to the available review and appeal procedures in this respect.*
7. The authorities of Ireland recall that there are two types of charges applicable to requests for information according to the Freedom of Information Act, namely charges directly linked to costs of the public institution for its actual work with the particular request, such as searching, retrieval and copying of documents and the so called "up-front fees" which apply to requests irrespective of the work required. Whereas the work related charges were introduced already at the adoption of the Freedom of Information Act in 1997, the "up-front fees" were only introduced in 2003.
8. The authorities state that the amendment in 2003 of the Freedom of Information Act introducing the system of "up-front fees" requires a requester to pay a €15 fee in respect of requests concerning non-personal information. Moreover, a request for a review of a negative decision concerning such information would cost €75 and an appeal to the Information Commissioner €150. All three "up-front fees" may be reduced to respectively €10, €25 and €50 in respect of medical card holders (low or non-income earners). The authorities further explain that the "up-front fee" system was introduced following the recommendation by a High Level Group of Government Departmental Secretaries General with the task of reviewing the operation of the Freedom of Information Act in 2002. In general, the fees were designed to encourage a greater appreciation of the cost for administering the Freedom of Information Act by public bodies while ensuring that people continue to have access to information. Moreover, the fees are seen to provide protection against misuse of the Freedom of Information Act and the authorities refer to

examples of such usage prior to the introduction of the “up-front fees” which resulted in considerable costs and disruption. The authorities stress that the fees are not used for personal information requested and claim that they are not a deterrent to a “responsible” use of the Freedom of Information Act for non-personal information. The authorities conclude that, following new consideration of this matter within the Government in 2007, there are no further plans for a review of the pertinent regulations of the Freedom of Information Act as amended in 2003..

9. GRECO recalls that the present recommendation is formulated in a general way in order to leave it to the Irish authorities how to reform the system of different fees. However, the analysis preceding the recommendation¹, makes it clear that the reason leading to the recommendation was the “flat-fee element”, which was introduced in 2003. Consequently, leaving aside the fee system directly relating to the actual costs for retrieving information and those for photo copying etc – which exist in several other GRECO member States as well - GRECO is only concerned about the more recent part of the system relating to the “up-front fees”.
10. GRECO has constantly held that transparency of public administration is of the utmost importance for the prevention of corruption. With the adoption of the Freedom of Information Act and the connected modernisation process of public administration the Irish authorities provided for a more transparent administration and these moves were accordingly considered important by GRECO, as indicated in the Evaluation Report². However, the introduction of “up-front fees” in 2003 goes in the opposite direction. It follows from the information submitted by the Irish authorities – at the time of the evaluation as well as in their recent Situation Report - that a main reason for the introduction of the “up-front fees” was to prevent requests and appeals which were considered abusive or “irresponsible”³. In this respect GRECO has taken note of recent Annual Reports of the Information Commissioner in Ireland⁴, according to which the total number of requests for non-personal information significantly decreased since the introduction of the “up-front-fees”; from 18 443 requests in 2003 to 11 804 in 2006. This negative trend starts at the same time as the introduction of the “up-front-fees”, and the Commissioner stated in the 2005 Annual Report that a return to the levels of 2003 could not be envisaged “without the issue of up-front fees being reviewed and changes made”⁵. GRECO has also taken note of a document issued by the Information Commissioner in March 2007⁶, in which it is, *inter alia*, stated that the Commissioner’s Office, which has responsibility for keeping the Freedom of Information Act under review, was not consulted in advance of the 2003 amendments. The same document contains recommendations by the Commissioner that fees for internal review and appeals to the Information Commissioner should be brought into line with other jurisdictions which either do not charge or have a nominal fee and; that such fees be refunded in the event of a successful appeal of a public body’s decision.
11. In the light of the above, it appears that the introduction of the current “up-front fees” has had a significant impact on the number of requests and that this matter is subject to strong controversies in Ireland. GRECO therefore maintains its previous conclusion that the current fee system could be a deterrent to the public, the media and others to seek information. Nothing new has been reported that changes this conclusion. However, the recommendation only requires the Irish authorities to *reconsider* the system of fees and the authorities have shown that this matter

¹ Paragraph 78 of the Second Round Evaluation Report on Ireland (Greco Eval II Rep (2005)9E

² Paragraphs 78 and 116 of the Evaluation Report

³ Paragraph 46 of the Evaluation Report

⁴ Office of the Information Commissioner, Annual reports 2003-2006, available on www.oic.ie

⁵ Office of the Information Commissioner, Annual report 2005, page 9

⁶ Suggested amendments to improve the operation of the Freedom of Information Acts, 1997 and 2003, published by the Office of the Information Commissioner, March 2007, available on www.oic.ie

has been subject to some re-examination. Nevertheless, GRECO very much regrets that the authorities have not come to a conclusion to abolish the “up front fees” and that it appears that the opinion of the Information Commissioner – who is responsible for keeping the Freedom of Information Act under review – has not been adhered to. GRECO concludes that the recommendation, as it was formulated, has been complied with.

12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

13. *GRECO recommended to introduce clear rules/guidelines and training for public officials to report instances of corruption, or suspicions thereof, which they come across in their duty and, to establish adequate protection for public officials who report instances of corruption (whistleblowers).*
14. The authorities of Ireland report that a high level Working group of senior officials from a range of relevant Departments has been established to ensure progress in respect of recommendations made by the OECD (Phase II report) and the Department of Finance has asked that the current GRECO recommendation be examined in conjunction with the OECD recommendations by the Working group. Moreover, the Working Group has set up a sub group on awareness raising to develop appropriate training and awareness of foreign bribery offences within the public administration. The work of the group, which has met twice, is also relevant for the implementation of recommendation ii, which is the responsibility of the Ministry of Finance, also represented in the group. Results are expected within 12 months.
15. Furthermore, the authorities state that there is nothing in law that prevents a public official from reporting suspected corruption directly to a superior officer, to the Standards in Public Office Commission or to the Police. However, there is neither a legal obligation nor any ethical guidelines encouraging an official to report perceived instances of corruption. Following the current recommendation, the Department of Finance examined the possibilities of introducing mandatory reporting; however, it was considered to be such a major change in the present policy that the Department made no proposals in this respect.
16. The authorities recognise the need for training. However, training for the purpose of the present recommendation will be considered in a wider perspective of training for public officials on ethical matters and has not yet been developed. See also Recommendation iii.
17. The authorities also report that the Government has decided (7 March 2006) to address the issue of whistleblowing on a sector basis rather than in a generalised way and has instructed ministries which had legislation in preparation to include, where appropriate, whistleblowing provisions in their draft Bills. The Government refers to the Safety, Health and Welfare at Work Act where whistleblowing provisions have been included. Whistleblower protection provisions have been included for the police (including civilian employees) in 2007 in a “whistleblower charter”, which, *inter alia*, provides that those who report an allegation of corruption or malpractice within the police in good faith must not be subjected to disciplinary action for doing so. Whistleblower provisions have also been included in the Consumer Protection Act 2007 and in the Health Act 2007. Moreover, the Department of Foreign Affairs has made a submission to the Department of Justice, Equality and Law Reform suggesting the inclusion of whistleblowing protection for the Prevention of Corruption (Amendment) Bill, currently being prepared to give effect to the Convention on Combating Bribery of Foreign Public Officials in International Business

Transactions, in order to comply with a recommendation issued by the OECD Working Group on Bribery. However, because of the manner in which the offence of corruption is framed under Irish legislation such protection would necessarily be extended to persons reporting a much broader range of corruption offences and not just foreign bribery offences. It is expected that the Bill will be published before the end of April 2008 and this provision will be given further examination by the Government, the legislature and interested parties.

18. GRECO takes note of the information provided. It is pleased to learn that the Irish authorities appear to be in an early process of implementing the recommendation. Moreover, GRECO welcomes the holistic approach apparently adopted in respect of the recommendation, in particular, that similar concerns raised by various international bodies are being dealt with in a co-ordinated manner.
19. As follows from the information provided, Ireland has not complied with the part of the recommendation relating to the introduction of clear rules/guidelines and training for public officials to report corruption, or suspicions thereof. GRECO would like to stress that the recommendation calls for "rules/guidelines" which does not necessarily imply legally binding rules. In respect of the establishment of adequate whistleblower protection for public officials the efforts made are more advanced and some promising achievements have been reported.
20. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

21. *GRECO recommended to establish regular training for all public officials concerned with regard to the principles of the Civil Service Code of Standards and Behaviour (central government) and the Code of Conduct for Employees (local government) as well as with regard to other relevant codes of conduct of the public administration.*
22. The authorities of Ireland report that copies of the Civil Service Code of Standards and Behaviour (central government) were issued, in September 2004, to all civil servants who were requested to acknowledge in writing that the contents of the Code had been read and noted. Subsequently, following the above recommendation from GRECO, the Department of Finance informed each Government department and office to ensure that the Code be provided to all new members of staff on their appointment, that new staff sign a statement to the effect that they have received a copy of the Code, read and noted its content. The matters raised in the Code are included in all induction courses given by training officers to new appointees to the Civil Service. The authorities are satisfied that these requirements are being met and that a copy of the Code is included in an "Introduction Pack", which is provided to all new appointees. Furthermore, the Civil Service Training and Development Centre (CSTDC), in collaboration with a Working group made up of members from a number of Government Departments (see also Recommendation ii), is in the process of producing an Induction Manual for new entrants to the Civil Service. This Manual complements the induction training. The content of the Manual will provide an A-Z list of issues that are common to all Government Departments, the objective being to provide a user friendly manual to all staff joining the Civil Service. The Working group has taken the recommendation of GRECO on board and the principles of the Code will underpin the structure of the Manual. This initiative is expected to become available to all Departments in 2008.
23. Moreover, the Department of Finance, in liaison with the Central Training Unit, is preparing for the provision of a course on the Code to personnel and training officers in all Government

Departments and Offices, in order to establish a resource centre in each Department or Agency on the contents of the Code. Individual civil servants who have specific questions on the Code will be encouraged to seek advice and clarification from their training officers or their human resources unit and may obtain assistance from their supervisors. The CSTDC has also commenced work on the production of a new training and development programme for the Clerical Officer grade. The objective is to have a top quality development programme available to Departments for the Clerical Officer grade. It is hoped that the new training and development programme will be piloted under the aegis of the CSTDC in 2008. However, the programme is still at the design stage and will have to go through a number of processes to quality assure it before going live. At present there is a session entitled "Working in the Civil Service Context" based on the principles of the Code.

24. Moreover, the authorities have added that the CSTDC, has agreed that all new training initiatives developed by the CSTDC for all public officials, at central as well as local level, shall include modules of training in relation to their respective codes of conduct (including anti-corruption aspects) and that such training should be regular and combined with awareness raising.
25. GRECO takes note of the information provided, which indicates that Ireland has embarked on a comprehensive modernisation process to establish regular ethics training in the public service at central as well as local level. GRECO hopes that these projects will materialise as soon as possible and looks forward to further information.
26. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

27. *GRECO recommended to establish centralised systems for collecting statistics on the use of disciplinary proceedings and sanctions covering central as well as local administrations.*
28. The authorities of Ireland report that the Civil Service Regulation (Amendment Act) 2005 is a key part of the public service modernisation programme that aims to improve human resource practice in the Civil Service and strengthen the mechanisms for accountability and performance. To ensure a more effective Civil Service in the public interest, the Government decided to enact this new legislation to ensure that Ministers, Secretaries General, Heads of Offices and managers are given the necessary authority to manage staff directly and in particular to manage performance more effectively. The Act came into force in July 2006. The Civil Service Disciplinary Code, revised in accordance with the Act, replaces the Disciplinary Code issued in 1992. The new procedures in relation to discipline apply to all new disciplinary cases beginning after July 2006, regardless of when the alleged offence occurred. Details of how the revised system will operate are set out in Circular 14/2006. The new Act establishes a Civil Service Disciplinary Code Appeal Board and it is provided that the Board shall produce an annual report which will set out the number of cases which have been heard and summarise the main recommendations made. The Board will make any comments which it considers appropriate on the conduct of cases; however, the board will not identify individuals or the details of any particular case in the report.
29. GRECO takes note of the information provided. It understands that the Civil Service Disciplinary Code Appeal Board will be the kind of centralised body that would be in a position to collect statistics on disciplinary measures taken in Irish public administration. Such information, which should not disclose an individual's identity, will be a useful tool in policy and management matters in the public administration.

30. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

31. *GRECO recommended to consider strengthening the material checking function of the Company Registration Office (CRO) with regard to the accuracy of information submitted in the registration process, in particular, with regard to the identity of persons behind a legal person.*
32. The authorities of Ireland report that this recommendation has been considered by the Department of Enterprise, Trade and Employment against the Company Law framework currently in operation in Ireland. The filing of documents in the Companies Registration Office (CRO) operates on the basis that information furnished must comply with the requirements of the Companies Acts in respect of registration and that the Registrar cannot register a company's memorandum and articles of association unless satisfied that all requirements of the Companies Acts, in respect of registration, including incidental matters, have been complied with. Any document filed by a company is subjected to a series of checks by the CRO. The purpose of these checks is to ensure firstly, that the document is internally consistent i.e. it does not contain any conflicting statements and that it has been prepared correctly in accordance with the relevant requirements of the Companies Acts; secondly, that the information provided is consistent with any other documents filed previously in respect of the same company; and thirdly, to ensure that the data is suitable to be filed electronically for public inspection. Once accepted and registered, all information disclosed to the CRO under the Companies Acts is open to public inspection. Anyone who believes that false or misleading information has been filed by or on behalf of a company or other entity may make a complaint to the Office of the Director of Corporate Enforcement (ODCE) and the Director has extensive powers to investigate and prosecute suspected offences in this area. In relation to the identification of persons behind a legal person, the Director of the ODCE has legal powers under Sections 14 and 15 of the Companies Act 1990 (as amended) to investigate the ownership of shares in or debentures of a company. These provisions were used successfully on a number of occasions in the 1990s, although the Director has not found it necessary to employ these powers in the last five years. Strengthening the material checking function of the Companies Registration Office, whether with regard to the identity of persons behind a legal person or otherwise, would involve a significant change in the current companies registration and enforcement system, which is already based on a certain amount of pre and post-registration checking by the CRO and the ODCE. Ireland considers that its current registration and enforcement system is working well and that it has achieved a considerable degree of efficiency.
33. GRECO takes note of the information provided which is identical to the elements already contained in the Evaluation report. GRECO accepts that the Irish authorities have considered this recommendation but have come to the conclusion that the efficiency of the present system is more of a priority than to complement the current formal checking before registration with a material control of information, as that could imply a more bureaucratic, costly and lengthy registration procedure, in particular as there is in place a *post-factum* investigation procedure available through the ODCE. GRECO maintains its position that it is of crucial importance that information contained in a company registry is correct and reliable, in particular in respect of prevention of legal persons being used to shield criminal activities. It also believes that the material checking of, for example, the existence of company officials would be possible without much of a bureaucratic procedure, through, e.g. the requirement of certified identity papers.

However, GRECO accepts that the present recommendation was drafted in a way to give Ireland an impetus for reflection rather than to require a specific outcome.

34. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

35. *GRECO recommended to consider increasing the penal sanctions for account offences in order to ensure that the available sanctions are effective, proportionate and dissuasive.*
36. The authorities of Ireland report that it is accepted that the current penalties for account offences should be increased. As part of its work on behalf of the Government in developing a Companies Consolidation and Reform Bill, the Company Law Review Group has considered the level of penalty applicable for account offences. In the recently published draft General Scheme of a Bill, a four-fold categorisation of company law offences is envisaged. Depending on the nature of the relevant circumstances, accounts offences are graded either category 1 or 2 which attract higher penalties than the less serious offences graded category 3 or 4. The Review Group has proposed and the Government has approved the general scheme of the Consolidation and Reform Bill and the Minister has announced that he hopes to be in a position to publish the formal Bill by the end of 2008 according to which Category 1 accounts offences on summary conviction would be subject to a fine of €5,000 or imprisonment for a term not exceeding 12 months or both the fine and the imprisonment, or on indictment, a fine of €500,000 or imprisonment for a term not exceeding ten years or both the fine and imprisonment. Category 2 account offences would be subject to on summary conviction, a fine of €5,000 or imprisonment for a term not exceeding 12 months or both the fine and imprisonment, or on conviction on indictment, a fine of €50,000 or imprisonment for a term not exceeding five years or both the fine and imprisonment.
37. GRECO takes note of the information provided and is pleased that this recommendation has been considered in depth and that promising amendments to the current law are under preparation. The proposed penalties represent substantial increases in comparison to the existing levels of financial penalties, particularly for the more serious accounts offences. The Irish authorities might wish to keep GRECO informed on the anticipated adoption of the proposed changes.
38. GRECO concludes that recommendation vi has been implemented satisfactorily.

III. CONCLUSIONS

39. **In view of the above, GRECO concludes that Ireland has implemented satisfactorily, or dealt with in a satisfactory manner, two thirds of the recommendations contained in the Second Round Evaluation Report.** Recommendations i, iv and vi have been implemented satisfactorily and recommendation v has been dealt with in a satisfactory manner. Recommendations ii and iii have been partly implemented.
40. Ireland appears to be in a reform process of its public administration and inter-departmental working groups have been established to direct the reforms. These will cover some of GRECO's recommendations but apparently also recommendations issued by the OECD Working Group on Bribery. Consequently, the authorities are aiming at a holistic and co-ordinated approach which is to be welcomed. However, in the meantime, the recommendations concerning reporting of suspected corruption, ethics training and whistleblower protection have not yet been fully

complied with. GRECO is pleased to note that statistics on disciplinary sanctions in public administration is to be provided and that the sanctions for account offences are being adjusted to an appropriate level.

41. GRECO invites the Head of the Irish delegation to submit additional information regarding the implementation of recommendations ii and iii by 31 August 2009.
42. GRECO invites the authorities of Ireland to authorise, as soon as possible, the publication of this report.