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Third Evaluation Round

Second Compliance Report on Ireland

"Incriminations (ETS 173 and 191, GPC 2)"

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"Transparency of Party Funding"

Adopted by GRECO
at its 62nd Plenary Meeting
(Strasbourg, 2-6 December 2013)

I. INTRODUCTION

1. The Second Compliance Report assesses further measures taken, by the authorities of Ireland since the adoption of the Compliance Report in respect of the recommendations issued by GRECO in its Third Round Evaluation Report on Ireland. It is recalled that the Third Evaluation Round covers 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 45th Plenary Meeting (4 December 2009) and made public on 25 January 2010, following authorisation by Ireland (Greco Eval III Rep (2009) 4E [Theme I](#) / [Theme II](#)). The subsequent Compliance Report was adopted at GRECO's 53rd Plenary meeting (9 December 2011) and made public on 28 March 2012, following authorisation by Ireland ([Greco RC-III \(2011\) 10E](#)).
3. As required by GRECO's Rules of Procedure, the Irish authorities submitted their Second Situation Report with additional information regarding action taken to implement the recommendations that were partly implemented or not implemented, according to the Compliance Report. This report, which was received on 9 July 2013, served as a basis for the Second Compliance Report.
4. GRECO selected Latvia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the Second Compliance Report were Ms Lizzie CHECKLEY, Head of International Relations, Law Rights and International Division, Ministry of Justice (United Kingdom) and Ms Inese TERINKA, Senior Specialist, Legal and Human Resources Division, Corruption Prevention and Combating Bureau (Latvia). They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its Evaluation Report addressed 3 recommendations to Ireland in respect of Theme I. Recommendations i and iii were considered satisfactorily implemented. Recommendation ii was not implemented.
Recommendation ii.
6. *GRECO recommended to clarify the law by establishing an autonomous offence of trading in influence in line with Article 12 of the Criminal Law Convention on Corruption (ETS 173).*
7. GRECO recalls that in the RC-report, while acknowledging the steps taken by Ireland to undertake reform of the anti-corruption legislative framework with a view to enhancing its consistency and clarity, GRECO urged the authorities to provide for an autonomous offence of

trading in influence. Since no steps had been taken at the time in this regard – although the authorities were reconsidering their position – recommendation ii was assessed as not implemented.

8. The authorities of Ireland now report that, since the publication of the RC-Report, the key development in the area of corruption incrimination has been the approval and publication by the Government of the General Scheme of the Criminal Justice (Corruption) Bill in June 2012. The General Scheme was prepared in part, as a result of a commitment by Government to “enact a new consolidated and reformed anti-corruption law to punish white collar crime and end the impunity from consequences for corporate behaviour that threatens the economy” and was evidence of a renewed commitment to tackle white collar crime. It was published on the Department of Justice and Equality website for public consultation¹. It was also submitted to the relevant parliamentary committee for its pre-legislative consideration. Parliamentary Counsel is currently drafting the formal Bill based on the General Scheme. When drafted, the Bill will formally come before Parliament for debate and possible amendment, as appropriate, prior to enactment. It is expected that the Bill will formally come before Parliament very late in 2013 or early in 2014.
9. By way of background, the authorities stress that the General Scheme provides for a consolidated corruption statute to replace and reform the seven separate Prevention of Corruption Acts from 1889 to 2010. However, the authorities highlight that the General Scheme is not simply a consolidation of the old provisions; it reportedly aims to clarify and strengthen the main corruption offences, to provide greater clarity regarding trading in influence offences, and to provide for the specific liability of companies for the corrupt acts of their officers and employees. It also provides additional penalties for corruption. To ensure that public officials who breach the public’s trust through corruption are no longer able to abuse their positions, it provides for courts to remove such officials from office and to bar them from holding office in the future. In the context of GRECO’s Third Evaluation Round, the General Scheme makes renewed provision for the main requirements of a number of international agreements relating to corruption to which Ireland is a party, including the Criminal Law Convention on Corruption. Key recommendations of the Tribunal of Inquiry into Certain Planning matters and Payments (Mahon Tribunal) have been taken into account in the General Scheme². These include recommendations concerning the extension of certain presumptions of corrupt acts to family members of public officials and the incrimination of making payments while being reckless to the fact that the recipient of the payment intends to use some or all of those payments to pay bribes.
10. With particular reference to trading in influence, the General Scheme provides for its criminalisation as a separate offence. In particular, criminal liability applies when a person, directly or indirectly, by himself or herself or with another person, corruptly offers, gives, attempts or agrees to give any gift, consideration or advantage in order to induce another person to exert an improper influence over the acts or omissions of an Irish public official or a foreign public official (active trading in influence). Likewise, any person who directly or indirectly, by himself or herself or with another person, corruptly accepts or obtains or corruptly agrees to accept or attempts to obtain for himself or herself, or for any other person, any gift, consideration or advantage on account of any person promising, attempting or asserting the ability, to improperly influence an Irish public official or a foreign public official to do any act or make any omission in relation to his or her office, employment, position or business is guilty of an offence (passive trading in influence). It is immaterial whether or not the alleged ability to exert an improper influence existed, whether or not the influence is, or is attempted to be, exerted or whether or not

¹ <http://www.justice.ie/en/JELR/Pages/WP12000178>

² www.planningtribunal.ie

the supposed influence leads to the intended result. Furthermore, it is immaterial whether or not the intended or actual recipient of the gift, consideration or advantage is the person whom it is intended to induce to exert influence.

11. The authorities also refer to the existing provisions of Section 2 of the Prevention of Corruption (Amendment) Act 2001 which contain a very comprehensive corruption offence, encompassing corruption of or by a third party, with a view to influencing the conduct of the relevant party. Also relevant is section 8 of that Act creating the offence of “corruption in office”, criminalising acts of, or omissions by, domestic public officials, done with the intention of corruptly obtaining a gift or advantage for the official or any other person. Also of relevance to the wider question of seeking to improperly influence public officials is the commitment in the Programme for Government to introduce rules on lobbying and a statutory register of lobbyists. Further details on this, including the text of the General Scheme the Regulation of Lobbying Bill 2013, are available at <http://per.gov.ie/regulationof-lobbyists/>.
12. Finally, the authorities wish to reiterate the steps taken since the adoption of GRECO’s Third Round Evaluation Report to set in place a comprehensive legal framework to tackle white collar crime in its different angles. In particular, the Criminal Justice Act 2011 provides for new procedures to facilitate police access to essential information and documentation to assist in investigations, including a new offence of withholding information which could prevent the commission of white collar crime or assist the police in an investigation into white collar crime. It is targeted at specified serious white collar crime offences including money laundering, fraud and corruption. The authorities also recall that the Prevention of Corruption (Amendment) Act 2010 strengthened legislation relating to the prevention of corruption by, *inter alia*, substantially extending jurisdiction in relation to corruption occurring outside the State and by providing protection for whistleblowers reporting suspected corruption offences whether in Ireland or abroad.
13. GRECO welcomes the multifaceted initiatives undertaken by the Irish authorities to provide for greater consistency, clarity and effectiveness in its anticorruption legislative framework. These all constitute positive and valuable efforts for which Ireland must be commended. GRECO also values the fact that the authorities have made provision in the General Scheme of the Criminal Justice (Corruption) Bill for an autonomous offence of trading in influence, as per recommendation ii. Until the anticipated legislation is effectively adopted, this recommendation cannot, however, be considered as fully met. The authorities may wish to keep GRECO abreast of future developments in this respect.
14. Pending adoption of the Criminal Justice (Corruption) Act, GRECO concludes that recommendation ii has been partly implemented.

Theme II: Transparency of Party Funding

15. It is recalled that GRECO in its Evaluation Report addressed 7 recommendations to Ireland in respect of Theme II. Recommendations iii and iv were dealt with in a satisfactory manner. Recommendations i, ii, v and vi were considered as partly implemented. Recommendation vii was not implemented.
16. The Electoral (Amendment) (Political Funding) Act 2012 was enacted on 28 July 2012. It takes on board the concerns identified by the Tribunal of Enquiry which investigated irregularities associated with development planning in Ireland (known as the Mahon Tribunal). It introduces a

number of additional requirements and restrictions on the acceptance of political donations. These provisions, which came into effect on 1 January 2013, apply to members of, and candidates seeking election to, the Dáil, Seanad, European Parliament and local authorities; to political parties, third parties and candidates at a presidential election. They include, *inter alia*, the following:

- a reduction in the maximum donation that can be accepted by an individual elected representative or candidate from 2 539.48 EUR to 1 000 EUR and by a political party, accounting unit or third party from 6 348.69 EUR to 2 500 EUR;
- the introduction of a ban on the acceptance of a corporate donation in excess of 200 EUR from a corporate donor unless the donor has registered with the Standards in Public Office Commission and a statement is furnished to the recipient confirming that the donation has been approved by the members, shareholders or trustees of the corporate donor concerned;
- a reduction in the maximum amount that can be accepted as an anonymous donation from 126.97 EUR to 100 EUR. The same reduction applies to the threshold for opening a political donations account;
- a ban on the acceptance of any cash donation over 200 EUR, and
- where a donation is given through an intermediary, the identity of the person on whose behalf the donation is made will have to be provided to the recipient. It will be an offence to fail to provide this information;
- the consideration that membership fees constitute donations. This change was necessary in order to eliminate the scope for membership fees to be used as means to circumvent the new restrictions on corporate donors and donations.

17. The Electoral (Amendment) (Political Funding) Act 2012 also introduces new accounting and auditing requirements (see also paragraph 26), as well as enhanced transparency measures (e.g. information on local units, reduction in the thresholds at which donations must be reported, information included in the statement of donations).

18. The Standards in Public Office Commission (SIPO) published a series of new Guidelines in January 2013 dealing mainly with the changes introduced by the Electoral (Amendment) (Political Funding) Act 2012. All of the revised Guidelines are available on the Commission's website (<http://www.sipo.gov.ie/en/Guidelines/>).

Recommendation i.

19. *GRECO recommended that (i) legislation be consolidated in a comprehensive, clear and up-to-date manner within the electoral code; and (ii) adequate training be provided thereafter for those who are subject to legal obligations in this area, so that they can better understand their rights and duties.*

20. GRECO acknowledged the efforts displayed by SIPO to provide guidance and support to political parties so that they understand their legal obligations concerning political finances. However, GRECO encouraged the authorities to consolidate the applicable rules in the area to improve their accessibility and effectiveness.

21. The authorities of Ireland indicate that the Programme for Government foresees the establishment of an Electoral Commission. Consolidation of electoral law would be progressed in this context, but in the meantime, there are arrangements in place to keep political actors and

their agents abreast of their legal obligations in respect of rules on election spending and donations. As a matter of fact, all electoral legislation is readily available, with cross references/links to amendments, on the electronic Irish Statute Book (EISB), www.irishstatutebook.ie, which is published by the Office of the Attorney General. The authorities further explain that the advisory and oversight role of SIPO continues to be key in ensuring the accessibility and effectiveness of party funding rules. For example, following adoption of the Electoral (Amendment) (Political Funding) Act 2012, SIPO issued guidance on its new provisions with concrete details on how they should be understood and applied in practice. Likewise, SIPO is currently working on how to put in place a robust accounting and auditing system for political party finances (see paragraph 27). Training and support are also provided for local election candidates by local authorities; moreover, following the enactment of the Electoral (Amendment) (Political Funding) Act 2012, the Department of the Environment, Community and Local Government prepared revised and consolidated guidelines on the political funding obligations for local authorities and those required to comply with the legislation. In advance of the next local elections due in 2014, the Department anticipates the organisation of additional briefing and training sessions for local authorities.

22. GRECO notes the arrangements in place to address the core aim of the recommendation, i.e. that those who are subject to legal obligations concerning political finances during election campaigns are well aware of the applicable requirements. Although no consolidation of the rules has yet taken place, GRECO acknowledges the arrangements developed to provide support and guidance to political actors in order to keep them abreast of their legal obligations in this domain. GRECO takes note of the intention of the authorities to consolidate rules in the future; the authorities may wish to keep GRECO informed of new developments in this respect.
23. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

24. *GRECO recommended (i) to introduce a legal requirement for political parties to keep proper books and accounts and to have them independently audited; and (ii) to ensure that income, expenditure, assets and debts are accounted for in a comprehensive manner following a uniform format; and (iii) to see to it that the annual accounts are made public in a way which provides for easy and timely access by the public.*
25. GRECO recalls that, in the RC-Report, it considered that the General Scheme of the Electoral (Amendment) (Political Funding) Bill 2011 addressed all the concerns raised by recommendation ii. However, pending adoption of the aforementioned legislation, the recommendation was assessed as partly implemented.
26. The authorities of Ireland report that the Electoral (Amendment) (Political Funding) Act 2012 was adopted on 28 July 2012. It provides for the preparation by all registered political parties of independently audited financial accounts. This is to include an income and expenditure account. These accounts will be audited within six months of the end of the financial year and submitted to the Standards in Public Office Commission. They will then be published. Where accounts are not prepared, the Commission will be empowered to appoint an auditor to undertake this task and to recoup the cost from the political party concerned. Parties that do not comply with these new requirements face the risk of having their State funding withdrawn. In addition, if it is considered that there is a serious matter with the accounts (e.g. non-submission of accounts or an auditor's report, submission of accounts not prepared in the required format or not submitted within the

required timeframe), the Standards in Public Office Commission is empowered to make a report to the Chairperson of Parliament.

27. The Electoral (Amendment) (Political Funding) Act 2012 requires the Commission to prepare and publish guidelines for the purpose of providing practical guidance to political parties with respect to keeping proper books of account and preparing an annual statement of accounts and auditor's report. The Commission published draft Guidelines and engaged in a public consultation exercise which ended on 14 September 2013. The Commission is considering the seven representations made and is then required to submit the draft Guidelines to the Minister for his consent to publication. The first political party accounts required to be audited pursuant to the Act will be in respect of the first financial year which commences after the guidelines are published. For this reason the Commission expects to have published final guidelines before 31 December 2013.
28. GRECO welcomes that the Electoral (Amendment) (Political Funding) Act 2012 contains specific provisions addressing all concerns raised by recommendation ii, notably with respect to accounting and auditing requirements and with a view to improving access to information on party finances by enhancing the comparability and timeliness of financial reports. GRECO is pleased to note that legislative measures are being coupled with guidance on its implementation and positively values the proactive approach that the SIPO has played, and continues to play, in guaranteeing that party funding rules are applied in practice.
29. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation v.

30. *GRECO recommended to seek ways to consolidate the accounts (of political parties) so as to include local branches as well as other entities related directly or indirectly to political parties or under their control.*
31. GRECO considered that the measures reported at the time of the RC-Report fell short of the action required by recommendation v and assessed this recommendation as partly implemented.
32. The authorities of Ireland explain that a specific requirement was inserted in the Electoral (Amendment) (Political Funding) Act to provide for the publication of information on the local branches of all registered political parties, including details on the name and address of the corresponding local unit and the responsible person(s) of the unit. This information is to be updated annually and any changes published thereafter. The authorities also foresee that the Guidelines currently being drafted by SIPO (see paragraph 27) will clarify accounting requirements for their units.
33. Regarding third parties, the authorities reiterate that the donation thresholds, restrictions and registration requirements imposed on political parties also apply to third parties. The Government intends to enact legislation to provide for the disclosure of expenditure and donations on referendum campaigns.
34. GRECO takes note of the measures in place and planned to strengthen the transparency and openness of political finances. That said, with particular reference to the action required by recommendation v, GRECO considers that more could still be done. GRECO again recalls the concerns expressed in the Third Evaluation Round Report (paragraph 107) as to the lack of an obligation on third parties to publicly disclose donations and expenditure, as well as with respect

to a certain practice of local branches not to disclose, although legally required to do so, the donations they receive. GRECO is of the firm view that full transparency of party accounts necessarily requires the disclosure of financial information concerning the entities that come within the party's sphere of activity; this can only facilitate greater transparency for citizens in knowing from what sources political parties receive their income and in what way they spend their money.

35. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

36. *GRECO recommended to better harmonise the monitoring of political funding at local level, in particular, (i) by reinforcing its independence and the control performed, as necessary; and (ii) by considering the advisability of entrusting the Standards in Public Office Commission (or yet-to-be created Electoral Commission) with an additional oversight role in this field.*
37. GRECO urged, in the RC-Report, the Irish authorities to pay further attention to the issue of monitoring of political finances at local level and assessed recommendation vi as partly implemented.
38. The authorities of Ireland indicate that given the number of candidates involved, the local nature of campaigns and scale of administration involved, there are decisive advantages to having the local election spending and donations regime administered at local level. Administration at local level, with local authorities as the point of contact for the submission of returns, reportedly allows for the system to function more efficiently and effectively than would otherwise be the case were these arrangements operated centrally. The local administration of spending and donations requirements allows for direct oversight by officials who are in the best position to undertake a critical and informed examination of spending and donation returns, and assess if a breach has occurred. This function is carried out in accordance with legislation, in an independent, impartial and vigilant manner by public officials in local administration. Crucially for candidates, there is a local point of contact to assist and advise them on their duties in respect of compliance with the relevant legal obligations. For the purpose of scrutiny, the legal requirement to make the statements available for inspection locally is important in facilitating access to these documents by local citizens and the local media. To improve transparency, local election spending and donations are published in the annual reports of each local authority which are available on line. Finally, the Department of the Environment, Community and Local Government provides support to local authorities in the performance of their duties under the legislation; this overall horizontal approach is designed to achieve uniformity in the application of the regulatory requirements. Within the context of the establishment of an Independent Electoral Commission, the issue of some form of horizontal oversight role of local election spending and donations regulations is to be considered further.
39. GRECO notes that, after having paid due consideration to the system in place and the possibilities for its improvement, the authorities have taken the decision that this is the model that best suits Ireland and have developed different arrangements to ensure that party funding rules are rigorously monitored and applied at local level as requested in recommendation vi (e.g. through the provision of technical support and guidance to local authorities and those required to comply with the legislation, the publicity requirements regarding local election spending and donations).

40. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

Recommendation vii.

41. *GRECO recommended (i) to ensure that all violations of political funding rules are coupled with effective, proportionate and dissuasive sanctions; and (ii) to consider providing the monitoring body/ies in this area (i.e. the Standards in Public Office Commission, local managers, yet-to-be created Electoral Commission, as applicable) with greater investigative and sanctioning powers in respect of less serious violations of the political financing rules.*
42. GRECO recalls that this recommendation was assessed as not implemented since GRECO considered that it was important that all legal requirements were coupled with effective sanctions, including a more flexible and graduated approach when dealing with less serious violations of the law. The authorities specifically acknowledged that they were yet to deal with recommendation vii as they implemented the Programme for Government and enacted the Electoral Commission Bill.
43. The authorities of Ireland now stress that the new measures included in the Electoral (Amendment) (Political Funding) Act 2012 are coupled with effective, proportionate and dissuasive sanctions. Furthermore, matters related to the sanctions available for breaches of political funding rules were considered by the Government following recommendations made by the Mahon Tribunal in 2012. The Tribunal report recommended that there should be administrative sanctions for breaches of political funding regulations and that sanctions should be applied for failing to open a donations account, making a prohibited donation and deliberately circumventing the requirements set down in the political finance acts. The Government agreed that these are to be examined in the context of the forthcoming Electoral (Amendment) (Referendum Spending and Miscellaneous Provisions) Bill; provision for publication of this Bill in 2014 is included on the Government Legislation Programme. The matter of the sanctions that apply to offences under electoral law, and the oversight responsibilities and investigative powers to be assigned to an Electoral Commission, will be considered further in the context of the development of specific proposals to implement the Programme for Government commitments in these areas.
44. GRECO takes note of the progress reported since the adoption of the RC-Report, the weaknesses identified as a result of the irregularities that have emerged in the past with respect to political finances and the intention of the authorities to pursue the matter in order to ensure that breaches of party funding rules are coupled with effective sanctions, both on paper and in practice.
45. Given that this is all work in progress, GRECO concludes that recommendation vii has been partly implemented.

III. CONCLUSIONS

46. **In view of the conclusions contained in the Third Round Compliance Report and in light of the analysis contained in the present report, GRECO concludes that Ireland has implemented satisfactorily or dealt with in a satisfactory manner in total seven of the ten recommendations contained in the Third Round Evaluation Report. Moreover, of the remaining recommendations three have been partly implemented.** With respect to Theme I – Incriminations, recommendations i and iii have been implemented satisfactorily; recommendation ii remains partly implemented. Regarding Theme II – Transparency of Party Funding,

recommendation ii has been implemented satisfactorily, recommendations i, iii, iv and vi have been dealt with in a satisfactory manner; recommendations v and vii remain partly implemented.

47. Ireland has engaged in a reform process, in both topics under review in the Third Evaluation Round, by which virtually all concerns raised by GRECO have been taken on board. GRECO particularly welcomes the multifaceted initiatives undertaken by the Irish authorities to provide for greater consistency, clarity and effectiveness of its anticorruption legislative framework. Key provisions refer to whistleblower protection, the extension of extraterritorial jurisdiction for corruption offences, new procedures to facilitate police access to essential information and documentation to assist in investigation, additional penalties for corruption offences, including bans from public office, etc. GRECO is pleased to note that there are some further adjustments under way, to provide *inter alia* for a separate offence of trading in influence, in line with the Criminal Law Convention on Corruption. GRECO also positively values the efforts displayed to enhance transparency of party funding (in particular with respect to corporate donations), to better identify financing sources, and to strengthen financial discipline of political parties through more stringent accounting and auditing obligations. Ireland has also opted for tightening donation thresholds and reporting requirements. GRECO believes that there is still room for improving transparency in the accounts of local branches and third parties. It also encourages the authorities to strengthen the sanctioning regime for breaches of party funding rules.
48. The adoption of the Second Compliance Report terminates the Third Round compliance procedure in respect of Ireland.
49. GRECO invites the authorities of Ireland 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.