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Groupe d'États contre la corruption

COUNCIL OF EUROPE



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FOURTH EVALUATION ROUND

Corruption prevention in respect of members of
parliament, judges and prosecutors

INTERIM COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Ireland](#) was adopted by GRECO at its 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014, following authorisation by Ireland. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. As required by GRECO's Rules of Procedure, the Irish authorities submitted a Situation Report containing information on measures taken to implement the recommendations. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÖÖT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the [Compliance Report](#), adopted by GRECO at its 75th plenary meeting (24 March 2017) and made public on 29 June 2017, it was concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner three (recommendations ii, iv and xi) of the eleven recommendations contained in the Fourth Evaluation Round Report. In the light of these results, GRECO also concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the Head of the Irish delegation to submit a report on progress in implementing the pending recommendations by 31 March 2018. Information was received on 17 April 2018 and on 18 May 2018 and forms the basis for the current Interim Compliance Report.
4. This [Interim Compliance Report](#) assesses the implementation of the eight pending recommendations (i.e. recommendations i, iii, v-x) since the adoption of the Compliance Report, and provides an overall assessment of Ireland's level of compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

5. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
6. GRECO recalls that this recommendation was partly implemented at the time of the adoption of the Compliance Report, as a new public sector normative framework was underway (the Public Sector Standards Bill 2015) which, if adopted, appeared to provide a uniform and consolidated legal framework for members of parliament, on an equal footing with other public officials. GRECO noted that the Bill provided strengthened obligations, similar to those of office holders (ministers), concerning potential as well as actual conflicts of interest in various situations. GRECO noted that the Bill also covered publicly employed staff (e.g. civil servants of Parliament) -

but not the staff employed by the MPs themselves - and so GRECO reiterated its view expressed in the Evaluation Report that this situation may lead to discrepancies and different considerations depending on who is carrying out a particular task i.e. the MP or his/her employee on behalf of the MP. GRECO maintained the position that uniform standards ought to apply to the extent possible in this respect.

7. The authorities of Ireland now report that the Public Sector Standards Bill, which is currently making its way through the Houses of the Oireachtas (Parliament), is to consolidate and update the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, and Part XV of the Local Government Act 2001. The Bill commenced Committee stage in the Dáil in April 2017.
8. The authorities reiterate that the aim of the Bill is, *inter alia*, to establish integrity principles in the public service, including MPs and to enhance the existing framework for identifying, disclosing and managing conflicts of interest, and minimising corruption risks for all public officials. The Bill would significantly strengthen the obligations for MPs in that it provides for them to have the same obligations as Ministers. Among the key reforms in the Bill is the introduction of a Public Sector Standards Commissioner to oversee a reformed complaints and investigations process and to establish a set of integrity principles for all public officials.
9. GRECO takes note of the information provided and concludes again that the Public Sector Standards Bill 2015 remains promising draft legislation. However the Bill remains subject to parliamentary discussion. There has therefore been no substantive change since the adoption of the Compliance Report and the recommendation cannot be considered to have been implemented.
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

11. *GRECO recommended that the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.*
12. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO welcomed the draft legislation underway; the Public Sector Standards Bill 2015, if adopted, would establish a unified declaration regime at both local and national level, extending the obligations to all members of parliament in this respect as well as to cover connected persons.
13. The authorities report that the Public Sector Standards Bill 2015 is still in the parliamentary process. They have also submitted substantial information about the Bill as already noted in the Compliance Report.
14. GRECO takes note of the information provided. It maintains the position that the Public Sector Standards Bill 2015, if adopted, would represent a positive development in respect of income and assets declarations. That said, the Bill is still in the parliamentary process and there has been no substantive change since the compliance report.
15. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

16. *GRECO recommended that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.*
17. GRECO recalls that this recommendation was partly implemented as some training sessions had taken place since the 2016 parliamentary election and that there were plans for more guidance and training in 2017. However, no long term approach to regular and dedicated training has yet been established.
18. The Irish authorities now report that the Standards Commission is in the process of developing a comprehensive communications and outreach strategy to ensure that those subject to the legislation within the Commission's remit are aware of their obligations. Given the fact that responsibility for overseeing the compliance of some elected public officials rests with the Houses of the Oireachtas (Parliament), the Standards Commission intends to liaise with the Oireachtas to ensure a coordinated approach to training initiatives. It is expected that this strategy will be developed with implementation commencing by the end of 2018.
19. GRECO takes note of the information provided and welcomes the authorities' plan to establish dedicated ethics training for MPs on a regular basis. As such training is not yet in place, the recommendation has not been complied with to the extent expected.
20. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

21. *GRECO recommended that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.*
22. It is recalled that this recommendation was not implemented in the Compliance Report. The authorities had indicated that legislation to provide for the establishment of a judicial council was underway; however, GRECO was not made aware of any draft text or details in respect of the establishment of an independent statutory council for the judiciary.
23. The authorities now report that the Judicial Council Bill was published in June 2017 and has been presented in Seanad Éireann (the Senate, upper house of Parliament). The authorities stress that the Senate debate revealed general support for the principles which are enshrined in the Bill, including the proposed establishment of a judicial council and an acknowledgement of the role which it could play in underpinning the independence of the judiciary. At the same time, it would provide a vehicle for addressing matters such as further education and training, as well as matters pertaining to discipline. The Bill is currently awaiting committee stage and work is underway to develop appropriate amendments which can be moved during that stage. The broad thrust of the amendments currently being worked upon aim at introducing additional transparency into the disciplinary process. Consideration is also being given to establishing a register of pecuniary interests for judges. The Government is committed to the enactment of the Bill during the course of 2018.

24. The authorities add that the key objectives of the Bill, in addition to establishing a judicial council, are to provide for the maintenance and promotion of excellence by judges in their judicial functions, high standards of conduct among judges, efficient and effective use of judicial resources, education of judges, respect for judicial independence and public confidence in the judiciary and the administration of justice. The Council is to be made up of all serving members of the judiciary with a governing board consisting of five ex officio members (the Chief Justice and the court presidents) and 6 judges selected by peers.
25. GRECO takes note of the progress reported in respect of establishing a judicial council in Ireland and the functions related thereto, i.e. that draft legislation on the establishment of a judicial council is now in the parliamentary process and publicly available. Although the Bill is still subject to amendments during this process, there would appear to be broad consensus for it and GRECO notes that a future judicial council is to consist of all serving ordinary judges with a governing board consisting of a mix of ex officio chief judge members and other ordinary judges elected by peers. GRECO welcomes this development.
26. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

27. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*
28. GRECO recalls that this recommendation was not implemented in the Compliance Report. It noted that reforms were underway but was not in a position to assess them as they were only presented as Government intentions. GRECO encouraged the authorities to pursue the reform efforts in close consultation with the judiciary.
29. The Government of Ireland now refers to the Judicial Appointments Commission Bill 2017 which arises from a public consultation process on a review of the judicial appointments system in 2014, initiated by the Minister for Justice and Equality. The Government states that it has engaged in in-depth formal consultation with the senior representatives of the judiciary on this draft legislation. Passage of the Bill is progressing and the parliamentary debate has been vigorous, detailed and lengthy. The Bill was published on 30 May 2017 and has completed its passage through Dáil Éireann (the lower house) and is to commence its passage through the Seanad (the upper house). The Bill commits to the introduction of a new judicial appointments commission that will include a non-judicial chairperson, and a majority of lay members with specialist qualifications, who will be independently appointed. In line with the Government Programme, the Bill introduces significant changes to the existing system, such as that a maximum of three names may be recommended to Government for each judicial vacancy (as distinct from the current minimum of seven); and that all judicial appointments are subject to this procedure (as distinct from the current process which only deals with first-time judicial appointments). The new commission will have significant powers and wide functions to prepare selection procedures and an expertly designed framework of skills and attributes, based on essential eligibility matters addressed in the Bill. It will also be properly resourced and staffed.
30. In addition to the information submitted by the Government, GRECO has also received information, directly submitted to it, by the judicial authorities, through the Chief Justice of Ireland, the President of the High Court and Acting President of the Court of Appeal, the President Designate of the Court of Appeal, the President

of the Circuit Court and the President of the District Court concerning Recommendation vii. In their submission they stress that the Judicial Appointments Commission Bill 2017 has not been subject to in-depth consultations with the judiciary (contrary to what is stated by the Government) and that the judiciary has consistently opposed the content of the Bill, the components of which they believe is inconsistent with European standards as reflected in the Council of Europe Recommendation CM/Rec (2010)12.

31. Furthermore, these judiciary representatives submit that the judiciary has made detailed proposals to reform the judicial appointments process in order to develop a merit-based process which is free from interference from governmental and legislative arms. However, the Judicial Appointments Bill, currently before Parliament, contains a commitment to replacing the Chief Justice as chairperson of the appointments body and creating an overall majority of laypersons, including the chairperson, who would be accountable to Parliament. The representatives of the judiciary also refer to the Evaluation Report of GRECO in which the currently existing Judicial Appointments Advisory Board (JAAB) was considered suitable for the selection process.
32. Finally, the judiciary representatives refer to a statement in the European Commission Country Report Ireland 2018 (7.3.2018)¹ in which the envisaged composition of a judicial appointments commission raises concerns regarding the level of participation of the judiciary in that body, referring to the composition proposed which includes an overwhelming majority of lay members, including the chair, accountable to Parliament.
33. GRECO recalls that the current recommendation was, *inter alia*, based upon on-site discussions between its Evaluation Team (GET) and representatives of various interlocutors, including the judiciary, the executive branch, the Bar, the Law Society, the Prosecution Service and representatives of civil society. As reflected in the Evaluation Report, it is noteworthy that the perception of a “politicised” recruitment system was not aimed at the pre-selection procedure carried out by JAAB, but rather at the fact that the JAAB, a body of the judiciary, had to produce a list of candidates (at least seven) without priority and sometimes much longer lists without any order of priority to the government for its final appointment. Consequently, the potential risk of political lobbying and favouritism referred to in the Report, was in the second stage, i.e. once the list of candidates had been established and handed to the government for decision.
34. GRECO takes note of the information provided by the Government as well as by representatives of the judiciary. The Judicial Appointments Commission Bill 2017, which is currently in the parliamentary process, is aimed at reforming the system of judicial appointments, both in substance and in procedure. It would appear that there is no disagreement in Ireland that all appointments of judges should be based on merit, following a pre-selection process and that the selection should lead to a limited number of candidates to be submitted to the executive for a final decision. However, the Government’s proposal goes beyond that as it proposes the establishment of a new commission for the selection process. According to information submitted to GRECO, such a commission is to consist of a strong majority of non-judicial members (10 members), and chaired by a non-judicial member, all accountable to Parliament, and only five² judges. Such a commission would replace the current Judicial Appointments Advisory Board (JAAB), which is made up of a majority of judges and chaired by the Chief Justice.

¹ European Commission, COM(2018) 120 final, page 46

² According to the Government, the Bill was amended on 31 May 2018: the number of judges proposed is now five (instead of three in the initial proposal).

35. GRECO has significant concerns about the composition of an appointments commission as proposed in the Judicial Appointments Bill (as amended on 31 May 2018), which would place judges in a clear minority position in favour of a strong lay representation (including the chairperson), accountable to Parliament. GRECO questions if this move is in line with European standards which, in situations where final judicial appointments are taken by the executive, calls for an independent authority drawn in substantial part from the judiciary to be authorised to make recommendations or opinions prior to such appointments.³ GRECO also recalls its own position, as clearly expressed in the Evaluation Report (para. 132), that the composition of the JAAB (consisting of a majority of judges and chaired by the Chief Justice) was considered suitable for the selection procedure.
36. GRECO takes the view that the Judicial Appointments Bill as far as the composition of the appointments commission is concerned needs to reflect European standards, aiming at securing judicial independence through substantial judicial representation in relation to the overall composition of the proposed commission. The controversial Bill, which has been subject to some amendments in this respect, is still under debate in Parliament, subject to critical media attention, and has been heavily criticised by the judiciary on grounds that GRECO assesses to be reasonable. GRECO urges the authorities to re-consider this matter in order to limit potential risks of improper influence from the executive/political power over the appointment process to the judiciary, or any perception thereof, and to do so in close co-operation with the judicial authorities.
37. GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

38. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*
39. It is recalled that this recommendation was not implemented in the Compliance Report; the authorities reported on the establishment of a Public Service Pay Commission, to provide advice on remuneration policy and to examine pay and pension levels across the public service. GRECO noted that even if this Commission also covers pay levels within the judiciary, it could not be seen as a sufficient mechanism for questions concerning constitutional safeguards of the judiciary, which go well beyond remuneration. Furthermore, GRECO recalled that this recommendation would require a dialogue with judicial representatives.
40. The Government of Ireland maintains its position that the establishment of the Public Service Pay Commission is relevant for this recommendation, in the light of Article 35 of the Constitution, which provides for judicial independence and safeguards in relation to remuneration and that in this context there is no provision to provide separate structural pay determination arrangements for the judiciary.
41. The representatives of the judiciary (see recommendation VII) take issue with this position as this recommendation extends beyond the question of pay determination arrangements to issues which have direct impact on judicial independence, integrity and quality.

³ Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2012, para. 47

42. GRECO takes note of the information provided and maintains its position as stated in the Compliance Report: *"the Public Service Pay Commission deals with general concerns concerning pay levels across the public service. Even if this Commission also covers pay levels within the judiciary, GRECO cannot see how this is a mechanism for questions concerning constitutional safeguards of the judiciary, at least not on its own. GRECO reiterates that this recommendation has strong links to the establishment of a judicial council. Indeed, a judicial council could make a significant impact on maintaining the high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges."* GRECO urges the authorities to re-consider this matter in close co-operation with the judicial authorities.

43. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

44. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*

45. It is recalled that this recommendation was not implemented in the Compliance Report; the authorities had reported that future judicial council legislation would provide for the establishment of a committee empowered to deal with standards of judicial conduct. GRECO noted that the situation was much the same as it was at the time of the adoption of the Evaluation Report.

46. The authorities of Ireland now report that the situation has not changed since the adoption of the Compliance Report, i.e. that the judicial council legislation, when enacted, will provide for the establishment of a judicial conduct committee which, *inter alia*, will be responsible for drafting guidelines concerning judicial conduct.

47. GRECO notes that the situation is largely the same now as it was described in the Compliance Report and concludes that recommendation ix remains not implemented.

Recommendation x.

48. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*

49. It is recalled that this recommendation was not implemented in the Compliance Report as the training for judges had no formal structure and further measures were required to institutionalise training and to provide adequate resources and funding, measures that were foreseen in the Judicial Council Bill.

50. The authorities now repeat that the legislation to establish a judicial council will provide a statutory basis for the Judicial Studies Committee which is to facilitate the continuing education and professional development of judges.

51. GRECO notes again that the situation is largely the same now as it was described in the Compliance Report and concludes that recommendation x remains not implemented.

III. CONCLUSIONS

52. **In view of the foregoing, GRECO concludes that Ireland has still only implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Round Evaluation Report.** Four recommendations have been partly implemented and four recommendations have not been implemented.
53. More specifically, recommendations ii and iv have been dealt with in a satisfactory manner and recommendation xi has been implemented satisfactorily. Recommendations i, iii v and vi have been partly implemented and recommendations vii-x remain not implemented.
54. With respect to members of parliament, GRECO welcomes the Public Sector Standards Bill 2015, which has the potential to provide for a common and uniform legal framework for public officials, including members of parliament. GRECO also welcomes the proposed declaration regime, contained in the 2015 Bill, which aims at extending the obligations upon all members of parliament and at including close or connected persons. However, the process of the 2015 Bill is slow and it has yet to be finalised and adopted by parliament. Progress is also still required in respect of training of MPs on issues such as ethics and conduct in situations of conflicts of interests and corruption prevention.
55. As far as judges are concerned, GRECO notes that some progress has been made since the adoption of the Compliance Report in that the Judicial Council Bill 2017 is now pending before Parliament and appears to be a positive step in the direction of establishing such a council. Contrary to that, GRECO notes that the Judicial Appointments Bill 2017 is subject to much controversy and it appears questionable whether it is in line with European standards aimed at securing judicial independence in respect of appointments and promotion of judges. GRECO urges the authorities to continue their efforts to reform the judiciary, as indicated in the Evaluation Report, and to carry this out in close co-operation with the judiciary.
56. GRECO concludes that the overall low level of compliance with the recommendations remains "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
57. Pursuant to Rule 32 2. (i) of the Rules of Procedure, GRECO requests the Head of the Irish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i, iii and v-x) as soon as possible, but at the latest by 30 June 2019.
58. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructs its President to send a letter – with a Copy to the President of the Statutory Committee – to the Head of Delegation of Ireland, drawing his attention to the need to take determined action with a view to achieving tangible progress as soon as possible.
59. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.