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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

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

### SECOND INTERIM COMPLIANCE REPORT IRELAND

Adopted by GRECO at its 85th Plenary Meeting  
(Strasbourg, 21-25 September 2020)

## **I. INTRODUCTION**

1. The [Fourth Evaluation Round Report on Ireland](#) was adopted by GRECO at its 65<sup>th</sup> 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. In the [Compliance Report](#), adopted by GRECO at its 75<sup>th</sup> plenary meeting (20-24 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 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) (concerning members found not to be in compliance with the recommendations contained in the evaluation report) and asked the Head of Delegation of Ireland to provide a report on the progress in implementing the pending recommendations.
3. In the [Interim Compliance Report](#), adopted by GRECO at its 80<sup>th</sup> plenary meeting (18-22 June 2018) and made public on 5 July 2018, it was concluded that Ireland had still only implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Evaluation Report. Four recommendations had been partly implemented and four recommendations had not been implemented. In light of these results, GRECO also concluded that the overall low level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. In accordance with Article 32, paragraph 2, sub-paragraph (ii.a), GRECO had drawn the Head of the Irish delegation's attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving further progress as soon as possible.
4. In addition, in accordance with Rule 31 para. 8.2, as revised, of its Rules of Procedure, GRECO asked the Head of the Irish delegation to submit, by 30 September 2019, additional information on the action taken to implement the eight pending recommendations. This information was received on 24 September 2019 (and updated on 25 February and 16 September 2020) and forms the basis of this Second Interim Compliance Report.
5. This [Second Interim Compliance Report](#) assesses the implementation of the eight pending recommendations (i.e. recommendations i, iii, v-x) since the adoption of the previous Interim Report and provides an overall assessment of Ireland's level of compliance with these recommendations.
6. 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 this Second Interim Compliance Report.

## II. **ANALYSIS**

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

7. *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.*
8. GRECO recalls that this recommendation remained partly implemented at the time of the adoption of the Interim Compliance Report. Earlier it had already been reported that the adoption of a new public sector normative framework (the Public Sector Standards Bill 2015) was underway 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 and actual conflicts of interest in various situations. GRECO also noted that the Bill 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. At the time of adoption of the Interim Compliance Report, the Public Sector Standards Bills had not been adopted yet. GRECO concluded that the Public Sector Standards Bill remained promising draft legislation, but as there had not been any substantive change since the adoption of the Compliance Report, the recommendation could not be considered to have been implemented.
9. The authorities now report that the Public Sector Standards Bill, which would have consolidated and updated the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, and Part XV of the Local Government Act 2001, was not yet passed by the *Oireachtas* (Parliament) upon the dissolution of the *Dáil Éireann* (the house of representatives) in January 2020 (ahead of the general election of 8 February 2020) and therefore lapsed. A new government was formed in June 2020, which in its governmental programme committed to “reform and consolidate the Ethics in Public Office legislation”. The lapsed Public Sector Standards Bill will however not be reinstated, but a review of Ireland’s ethics legislation will be carried out by the first quarter of 2021, to inform the drafting of a new consolidated Ethics Bill.<sup>1</sup>
10. GRECO takes note of the information provided. While it welcomes the commitment of the new government to reform the existing ethics framework for members of parliament, given that with the lapsing of the Public Sector Standards Bill the work on this has to start from scratch, it can no longer conclude that this recommendation has been partly implemented.
11. GRECO concludes that recommendation i has not been implemented

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<sup>1</sup> This review is expected to include *inter alia* a reassessment of the Public Sector Standards Bill and reviews of the recommendations of the relevant Tribunals, recommendations of the Standards in Public Office Commission, international best practices and the existing ethics legislative framework, as well as consultations with stakeholders.

### **Recommendation iii.**

12. *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.*
13. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. Earlier, in the Compliance Report, GRECO had already welcomed the draft legislation underway (in the form of the abovementioned Public Sector Standards Bill 2015), which – if adopted as foreseen – would establish a unified declaration regime at both local and national level, extending the obligations to all members of parliament in this respect and covering connected persons as well. As the Bill was still in the parliamentary process at the time of the Interim Compliance Report, GRECO could only conclude that the recommendation remained partly implemented.
14. The authorities refer to the information provided under recommendation i above: The Public Sector Standards Bill will not be reinstated, but a new consolidated Ethics Bill will be drafted. As part of the review process currently underway to inform the drafting of this new Ethics Bill, this recommendation (and international good practices in this area) will be further considered.
15. GRECO takes note of the information provided. Given that the work relating to the implementation of this recommendation has restarted and is at an early stage, it can no longer conclude that this recommendation has been partly implemented.
16. GRECO concludes that recommendation iii has not been implemented.

### **Recommendation v.**

17. *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.*
18. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. In the Compliance Report, some training sessions were reported to have taken place since the 2016 parliamentary elections. However, no long-term approach to provide regular and dedicated training had been established. In the Interim Compliance Report, it was reported that the Standards in Public Office Commission was in the process of developing a comprehensive communications and outreach strategy on which it intended to liaise with the Houses of the *Oireachtas* (Parliament). GRECO welcomed the plan to establish dedicated ethics training for MPs on a regular basis but as the training was not yet in place, the recommendation had not been complied with to the extent expected.
19. The authorities now report that the Standards in Public Office Commission (which has oversight responsibility for the application of the Ethics Act to office holders and members of the civil and public service) has put in place a broad-ranging communications and outreach strategy, including training and information tools targeted at individuals within the Commission's remit. For members of parliament

who are not office holders<sup>2</sup> the statutory responsibility for training however lies with the Houses of the *Oireachtas* (Parliament). Following discussions with the Houses of the *Oireachtas* (Parliament), the Standards in Public Office Commission has included a basic module on ethics in the training it provides on electoral matters and the regulation of lobbying to members of the *Oireachtas* (Parliament) and their staff. Following the February 2020 elections, an induction training session of one hour was provided to all new members of the *Oireachtas* (Parliament), in March 2020, which was attended by approximately 20 members of parliament (out of a total of 220). Follow-up materials (i.e. links to relevant legislation, forms and guidance materials etc.) were circulated to the *Oireachtas* training unit for transmission to all members of parliament, following the training session. The next training session is planned for October/November 2020, with further session taking place annually thereafter.

20. In addition, the communications and outreach strategy of the Standards in Public Office Commission foresees annual presentations to MPs, an annual advisory drop-in clinic, the circulation of guidance materials and relevant forms and tailored guidance on the Commission's website (which was launched in July 2019). The annual presentation and drop-in advisory clinic were most recently held in October 2019.
21. The authorities furthermore state that once the new ethics legislation will be passed by the *Oireachtas*, the regulatory body responsible (whether this is the Standards in Public Office Commission or a new Public Sector Standards Commissioner) will seek to develop a comprehensive stakeholder outreach and training programme.
22. GRECO takes note of the information provided. It appreciates the efforts of the Standards in Public Office Commission to provide a basic module on ethics for MPs (even if this is strictly speaking not the responsibility of this Commission), as part of its outreach activities on the Ethics Act and Electoral Act. Even if attendance by members of parliament has been rather low so far, GRECO accepts that regular training on ethics has been established, as required by the recommendation. It trusts that the basis of this training will be aligned with the new ethics legislation, once adopted, and be further improved upon at that stage, where needed.
23. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

#### *Corruption prevention in respect of judges*

##### **Recommendation vi.**

24. *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.*
25. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. The authorities had reported on the discussions of the Judicial Council Bill in the *Seanad Éireann* (the Senate, the upper house of the Parliament). This Bill envisaged the establishment of a judicial council, comprising all serving members of the judiciary with a governing board consisting five *ex officio* members (the Chief Justice and court presidents) and six judges selected by their peers. The key objectives of the Bill further include 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

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<sup>2</sup> As outlined in paragraph 18 of the Fourth Round Evaluation Report, office holders are members of parliament who at the same time are members of the government or hold certain other high-level offices. As such office holders include the Prime Minister, deputy prime minister, minister of the government or ministers of state, the attorney general and chairman or deputy chairman of *Dáil Éireann* or *Seanad Éireann* (either house of parliament).

public confidence in the judiciary and the administration of justice. At the time of the Interim Compliance Report, further amendments to the Bill were being worked on with the aim of introducing further transparency of the disciplinary process. The Bill was expected to be enacted in the course of 2018.

26. The authorities now report that the Judicial Council Bill was enacted in July 2019 and the Council itself was established on 17 December 2019. The primary functions of the Council, which comprises all members of the judiciary, includes promoting and maintaining “excellence in the exercise by judges of their judicial functions and high standards of conduct among judges”. The Board of the Council is responsible for carrying out the functions of the Council on a day-to-day basis.<sup>3</sup> The Judicial Council Act furthermore provides for the setting up of a Personal Injuries Guidelines Committee, a Sentencing Guidelines Committee, a Judicial Studies Committee (which will have a role in facilitating the continuing education and training of judges), and a Judicial Conduct Committee (which will consider complaints in relation to judicial misconduct, prepare draft guidelines concerning judicial conduct and ethics for adoption by the Council and provide advice and recommendations to individual judges on judicial conduct and ethics) as well as Judicial Support Committees in each of the five jurisdictions to advise and assist the Council regarding matters of relevance to that jurisdiction. The Judicial Council has been allocated a budget of EUR 1.5 million for the period 2019-2020. An interim secretary was appointed by the Chief Justice in September 2019, with further staffing arrangements of the Council currently being finalised.
27. GRECO welcomes the entry into force of the Judicial Council Act, the subsequent establishment of the Judicial Council and the resources made available to it.
28. GRECO concludes that recommendation vi has been satisfactorily implemented.

#### **Recommendation vii.**

29. *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.*
30. GRECO recalls that this recommendation was not implemented in the Interim Compliance Report. GRECO took note of the information provided by the government on the Judicial Appointments Commission Bill 2017, which had completed its passage through the *Dáil Éireann* (the lower house) before going the *Seanad* (the upper house). The Bill would introduce a new judicial appointments commission comprising a non-judicial chairperson and a majority of lay members with specialist qualifications, who would be independently appointed. Further changes to be introduced by the Judicial Appointments Commission Bill were that a maximum of three names would be recommended to the Government for each judicial vacancy (instead of a minimum of seven, as it was before) and that all judicial appointments (and not just first-time judicial appointments) would be subject to the procedure. GRECO also took note of the information submitted by the judicial authorities themselves (through the Chief Justice of Ireland, the President of the High Court and Acting President of the Court of Appeal, President Designate of the Court of Appeal, the President of the Circuit Court and the President of the District Court) stressing the lack of in-depth consultations with the judiciary on the Judicial Appointments Commission Bill, the opposition of the judiciary to the content of the Bill and the inconsistency of this Bill with European standards (such as those reflected in Council

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<sup>3</sup> The Board comprises the Chief Justice and the Presidents of each court jurisdiction (as *ex officio* members), one judge elected by and from each of the five court jurisdictions, as well as one additional judge co-opted by the Board.

of Europe Recommendation Rec(2010)12, *inter alia* as there would be an overall majority of laypersons in the Commission, including the chairperson, who would be accountable to Parliament.

31. In the Interim Compliance Report, GRECO also emphasised that the criticism it expressed in the Evaluation Report was not aimed at the pre-selection carried out by the Judicial Appointments Advisory Board (JAAB), a body it considered to be suitable for the selection process. Rather it criticised the procedure of putting forward a non-prioritised list of at least seven candidates for the government to decide upon. Against this background, GRECO questioned whether the composition of an appointments commission as proposed in the Judicial Appointments Bill, placing judges in a clear minority position in favour of a strong lay representation (including the chairperson) accountable to Parliament, was in line with European standards. It therefore urged 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.
32. The authorities now report that the Judicial Appointments Commission Bill was not yet passed by the *Oireachtas* (Parliament) upon the dissolution of the *Dáil Eireann* (the house of representatives) in January 2020. Approximately 60 amendments remained to be approved by the *Dáil* at that point in time and the Bill therefore lapsed. The new government has included, in its Programme for Government (as adopted in June 2020), a commitment to enact legislation to reform judicial appointments before the end of 2020. It has also committed to engaging with stakeholders to ensure that this legislation enjoys broad support. The Minister of Justice is currently reviewing the relevant reforms with a view to bringing forward proposals for new legislation at the earliest opportunity.
33. GRECO takes note of the information provided on the lapsing of the Judicial Appointments Bill. It welcomes the intention of the new government to elaborate new proposals and to engage with stakeholders on the issue of judicial appointments. In this context, GRECO calls upon the new government to take up this issue in a manner that does justice to the concerns underlying this recommendation (regarding the influence of the executive over this process). As the process of selecting, recruiting, promoting and transferring judges remains as described in the Evaluation Report, GRECO can only conclude that this recommendation has not been complied with.
34. GRECO concludes that recommendation vii remains not implemented.

#### **Recommendation viii.**

35. *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.*
36. It is recalled that this recommendation was not implemented in the Interim Compliance Report. The authorities had earlier 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. This position was maintained in the Interim Compliance Report, referring to Article 35 of the Constitution, which provides for judicial independence and safeguards in relation to remuneration and maintaining in this context there is no provision to provide separate structural pay determination arrangements for the judiciary. Representatives of the judiciary however pointed out that this recommendation

extends beyond the question of pay determination arrangements to issues, which have direct impact on judicial independence, integrity and quality. In the Interim Compliance Report, GRECO maintained its previous position 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. It also recalled that this recommendation had strong links to the establishment of a judicial council, which could have a significant impact on maintaining high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges.

37. The authorities now report that examination of judicial employment conditions is not specifically provided for under the Judicial Council Act (which, as noted under recommendation vi, entered into force in July 2019). The authorities maintain their position that judicial pay in Ireland is dealt with within the parameters of the current public service pay policy. In this context, there is no provision to provide separate structural or institutional pay determination arrangements for the judiciary. It is reiterated that the independence of the judiciary is guaranteed by Article 35 of the Irish Constitution, which also contains strong safeguards in relation to judicial remuneration and removal from office.
38. In the absence of any new information, GRECO cannot conclude that this recommendation has been complied with.
39. GRECO concludes that recommendation viii has not been implemented.

#### **Recommendation ix.**

40. *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.*
41. It is recalled that this recommendation was not implemented in the Interim Compliance Report. Earlier the authorities had reported that the Judicial Council Bill, when enacted, would provide for the establishment of a Judicial Conduct Committee, which would *inter alia* be responsible for drafting guidelines concerning judicial conduct. This situation had not changed at the time of the adoption of the Interim Compliance Report.
42. The authorities of Ireland now report, as also reported under recommendation vi, that the Judicial Council was established on 17 December 2019. In turn, the Judicial Council set up a Judicial Conduct Committee on 30 June 2020, which met for the first time on 28 July 2020. This Committee has started the preparation of codes of conduct, for their future adoption by the Council. It is furthermore envisaged that judges will be accountable for alleged breaches of the codes to the Judicial Conduct Committee, with a possibility for complaints to be made. The legislation provides that the system will be operational by 30 June 2021, but it is likely that this will happen well before this date.
43. GRECO takes note of the information provided. It welcomes the setting up of a Judicial Conduct Committee and that the work on developing codes of conduct for judges started so swiftly following the establishment of this Committee. However, this work is still at an early stage and GRECO therefore cannot conclude that this recommendation has been implemented, not even partly.
44. GRECO concludes that recommendation ix remains not implemented.



#### **Recommendation x.**

45. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
46. It is recalled that this recommendation was not implemented in the Interim Compliance Report. Further measures were required to institutionalise training and to provide adequate resources and funding. These measures were foreseen in the Judicial Council Bill, which would provide a statutory basis for the Judicial Studies Committee.
47. The authorities now report, as indicated before, that following the adoption of the Judicial Council Act 2019 (which for the first time gives judicial training a statutory basis), a Judicial Studies Committee was set up on 10 February 2020. This Committee has been tasked with facilitating the continuing education and training of judges. A High Court Judge with vast experience in legal education has been recruited to oversee this process. A training needs analysis is currently underway and a training programme is being developed. Induction training will be included as a priority in the training strategy. It is expected that the first training under this new regime will be rolled out in the next few months.
48. GRECO takes note of the information. It welcomes the establishment of the Judicial Studies Committee at the Judicial Council and the steps towards the elaboration of a training programme taken so far, which should lead to more structured and institutionalised induction and in-service training for judges. Pending the finalisation of this process and further information on the actual training conducted and resources made available, GRECO cannot conclude that this recommendation has been complied with.
49. GRECO concludes that recommendation x remains not implemented.

### **III. CONCLUSIONS**

50. **In view of the foregoing, GRECO concludes that Ireland has now implemented satisfactorily or dealt with in a satisfactory manner five of the eleven recommendations contained in the Fourth Round Evaluation Report.** Six recommendations have not been implemented.
51. More specifically, recommendations ii, iv and v have been dealt with in a satisfactory manner and recommendations vi and xi have been implemented satisfactorily. Recommendations i, iii, vii-x remain not implemented.
52. As regards members of parliament, some progress has been reported in respect of the training to be provided on ethics, conduct in situations of conflicts of interests and corruption prevention (recommendation v), in that the Standards in Public Office Commission has included a module on ethics in its training on obligations under the Electoral Act 1997, to members of the *Oireachtas* (Parliament) and their staff. GRECO trusts that this will be further improved upon following the enactment of the new ethics legislation in the future. The implementation of the two other pending recommendations on the establishment of a uniform and consolidated legal framework for ethical conduct of members of parliament (recommendation i) and improvements of the asset declaration regime (recommendation iii) has however taken a step back, due to the lapsing of the Public Sector Standards Bill 2015. While GRECO welcomes the commitment of the new government to undertake reforms in this area, as evident from the Programme for Government, given that this work is

now again at an early stage, it can only conclude that these recommendations have not been implemented, not even partly.

53. As regards judges, welcome progress has been reported with the establishment of the Judicial Council in December 2019, following the entry into force of the Judicial Council Act in July 2019 (recommendation vi). This Judicial Council Act has also provided a statutory basis for judicial training, with some initial steps taken towards the institutionalisation of induction and in-service training programmes for judges (recommendation x). It is expected that this will soon be followed by the elaboration of a code of conduct (recommendation ix).
54. Finally, the controversial Judicial Appointments Bill, which has a bearing on the selection, recruitment and promotion of judges (recommendation vii), had not been adopted before the dissolution of the *Dáil Éireann* (the house of representatives) in January 2020 and has now lapsed. Given that the compatibility of elements of this Bill (in particular as regards the composition of the Judicial Appointments Commission) with European standards remained questionable, GRECO does not regret that this Bill is no longer being pursued and that instead new proposals are being elaborated. In this context, GRECO wishes to reiterate its appeal to the Irish authorities to reform the selection, recruitment and promotion processes in respect of judges in a manner that does justice to the concerns outlined in the Evaluation Report and to do so in close co-operation with the judiciary.
55. GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
56. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of Delegation of Ireland to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii, vii, viii, ix and x) by 30 September 2021.
57. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.