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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 COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 90th Plenary Meeting
(Strasbourg, 21-25 March 2022)

FOURTH
EVALUATION
ROUND

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. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. The [Compliance Report](#) was adopted by GRECO at its 75th plenary meeting (20-24 March 2017) and made public on 29 June 2017. GRECO concluded that Ireland had only implemented satisfactorily or dealt with in a satisfactory manner three of the 11 recommendations and three partly and considered the compliance level as "globally unsatisfactory" and decided to apply its "non-compliance procedure".
3. The [Interim Compliance Report](#) was adopted at the 80th plenary meeting of GRECO (18-22 June 2018) and made public on 5 July 2018. Some minor improvements were recognised, but the level of compliance remained "globally unsatisfactory".
4. In the [Second Interim Compliance Report](#), adopted by GRECO at its 85th plenary meeting (25 September 2020) and published on 18 November 2020, GRECO concluded that five of the 11 recommendations had been implemented satisfactorily or dealt with in a satisfactory manner. Consequently, the level of compliance with the recommendations at that stage was no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure, and GRECO discontinued its "non-compliance procedure" under Rule 32. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO asked the Head of the Delegation of Ireland to provide a report on the measures taken to implement the pending recommendations. That report, submitted on 1 October 2021, and further information provided subsequently, form the basis of the current report.
5. This [Second Compliance Report](#) assesses progress in implementing the outstanding recommendations since the Second *Interim Compliance Report* (recommendations i, iii, vii, viii, ix and x) and provides an overall appraisal of the level of Ireland's 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 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 was not implemented in the Second *Interim Compliance Report*. GRECO noted that, with the lapsing of the Public Sector Standards Bill and the formation of a new Irish government in June 2020, the work to reform and review Ireland's ethics statutory framework had to be restarted.

9. The authorities now indicate that the review of the statutory framework, covering the existing ethics legislative framework, recommendations of relevant tribunals of inquiry, recommendations made by the Standards in Public Office Commission, current EU/international best practice, and the views submitted in the course of a public consultation is scheduled to be completed in the second quarter of 2022, and on that basis, the proposals for legislative reform will be brought to the Government in the course of 2022. The proposed bill will be subsequently introduced before the Oireachtas (Irish Parliament).
10. GRECO takes note of the intention of the Irish Government to reform the existing ethics statutory framework. That said, the completion of this initiative appears to be delayed, as according to the previous *interim* compliance report, this review was expected to be completed in the first quarter of 2021. The relevant Bill, based on the review findings, is not even in preparation yet. Overall, no tangible progress has been demonstrated in relation to the implementation of this recommendation. GRECO encourages the authorities to step up their efforts in order to meet the requirements of this recommendation with no further delay. At present, the situation appears to be similar to the one at the time of the adoption of the Second *Interim* Compliance Report.
11. GRECO concludes that recommendation i remains not implemented.

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. It is recalled that this recommendation was not implemented in the Second *Interim* Compliance Report. Following the lapse of the Public Sector Standards Bill (see paragraph 8 above), the review of the existing ethics statutory framework had to start from scratch.
14. The authorities now report that this recommendation will be addressed in the framework of the reform and consolidation of the ethics in public office legislation (paragraph 9 above). The review of the of the statutory framework, expected to be completed in the second quarter of 2022, also envisages to reflect the international best practice in this respect and to enhance asset declaration obligations on members of parliament by including information on assets, liabilities and interests of close or connected persons.
15. GRECO takes note of the information provided by the authorities and observes that no tangible steps have been taken so far towards the implementation of this recommendation. Consequently, GRECO concludes that recommendation iii remains not implemented.

Corruption prevention in respect of judges

Recommendation vii.

16. *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.*

17. GRECO recalls that this recommendation was not implemented in the Second *Interim Compliance Report*, as the Judicial Appointments Bill had lapsed, and thus no modifications had been made to the process for selecting, recruiting, promoting and transferring of judges. GRECO took note of the new Government's intention to elaborate proposals and engage with stakeholders on judicial appointments, but this was insufficient to assert any tangible progress.
18. The authorities now inform that in December 2020 the Government approved the General Scheme of the Judicial Appointments Commission Bill, which is expected to be published in March 2022. Under the new Bill, the Judicial Appointments Commission (JAC) is to replace the Judicial Appointments Advisory Board (JAAB). It is planned that the JAC will be headed by the Chief Justice and include a further two judge nominees of the Judicial Council (one practising solicitor and one practising barrister), one court President, the Attorney General, as well as four lay members¹, thus providing for an equal number of lay persons and judges on the JAC, each member having one vote. According to the Bill, the Minister is to receive five unranked recommendations for each vacancy; eight recommendations for two vacancies; and eleven recommendations for three vacancies. The Bill requires that the Government first has regard to a person who has been recommended, without establishing a legal obligation on the Government to appoint that candidate. Finally, the Bill also stipulates that all persons wishing to be considered for appointment to judicial office, including serving judges, should apply to the JAC.
19. GRECO takes note of the information provided by the authorities. It notes that the envisaged composition of the JAC, which is to replace the JAAB according to the Bill, would have an equal number of representatives of the judiciary and lay persons. Although this goes in the right direction compared to previous proposals, according to which lay members were to be in a majority, GRECO maintains its position, expressed in previous reports, that the JAAB, consisting of a majority of judges, has a suitable composition in conformity with the requirement enshrined in the Council of Europe Committee of Ministers' Recommendation CM/REC(2010)12², which provides that, in situations where final judicial appointments are taken by the executive, an independent authority, drawn in substantial part from the judiciary, should be authorised to make recommendations or opinions prior to such appointments. Further, GRECO remains concerned that under the proposed Bill, the Government, before its decision on appointment, would still receive a non-prioritised list of candidates, without any ranking among the candidates put forward, which could lead to politicised decisions. In this regard, GRECO reiterates the importance of a merit-based selection procedure leading to a targeted shortlist of only the very best candidates, ranked in order of priority. It is hoped that these concerns are duly addressed in the Judicial Appointments Commission Bill, currently in preparation.
20. In view of the foregoing and the fact that the Judicial Appointments Commission Bill is at a very early stage, GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

21. *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.*

¹ One nominated by the Irish Human Rights and Equality Commission, and the other three be recruited by the Public Appointments Service for appointment by the Minister for Justice

² [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities.](#)

22. GRECO recalls that this recommendation was not implemented in the Second *Interim Compliance Report*. Following the revocation of the constitutional protection against the reduction of the judges' salaries, allowing a series of cuts in their pay and pension as part of the response to the financial crisis, no mechanism had been put in place for examining questions concerning constitutional safeguards of the judiciary. In addition, GRECO stressed the importance of establishing a judicial council, or other forms of associations on behalf of judges, as an important link between the judiciary and the executive branch.
23. The authorities now refer to the functions of the Judicial Council pursuant to Section 7 of the Judicial Council Act 2019, which include promoting and maintaining "excellence in the exercise by judges of their judicial functions and high standards of conduct among judges having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts". In addition, the authorities indicate that restoration of certain deductions of pay of public servants, including the judiciary, is envisaged under a statutory roadmap under the Public Service Pay and Pensions Act of 2017.
24. Further, reference is made to the Judicial Planning Working Group, set up in April 2021, which aims to "make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice." The Group is chaired by the former Secretary General of the Department of Education and Skills, and comprises representatives of the Department of Justice, Department of Public Expenditure and Reform, the Prime Minister's Office (An Taoiseach), the Courts Service and the Office of the Attorney General. Two judicial observers were added to the Group in October 2021. The Group is expected to provide its activity report within 12 months of its establishment.
25. GRECO takes note of the information provided by the authorities. It recalls that this recommendation was issued at a time when there was no judicial council in Ireland or other forms of associations on behalf of judges, which made them fragile vis-à-vis government administrative policies and plans concerning the judiciary, salaries etc. The overall situation has changed in this respect with the establishment of the Judicial Council. That said, the Judicial Council Act of 2019 does not provide for a framework allowing the examination of judicial employment conditions, but aims to promote judicial excellence, to maintain high standards of judges including their independence, impartiality and integrity and propriety. To this comes the Judicial Planning Working Group³ established in 2021, which is yet to report on the outcome of its activities.
26. GRECO concludes that recommendation viii remains not implemented.

³ According to its terms of reference, the Working Group is tasked to consider the number and type of judges required to ensure efficient administration of justice; the impact of population growth on judicial resource requirements; the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice; to evaluate the estimated impact of the Covid-19 pandemic on court caseload in the short, medium, and long term and strategies for reducing waiting times to significantly improve on pre-Covid levels; to examine experiences of other jurisdictions and obtain information on judicial practices and case management systems; to consider the costs associated with recruiting additional judges, including salaries, allowances, judicial support staff and chambers; to review forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers including; to make recommendations for developing judicial skills in areas such as white collar crime; to make recommendations on issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice; and to consider the implications of Brexit on the courts in regard to judicial resources and potential increased workload.

Recommendation ix.

27. *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.*
28. It is recalled that this recommendation was not implemented in the Second *Interim* Compliance Report. While the setting up of a Judicial Conduct Committee at the Judicial Council and the commencement of work on developing codes had been welcomed, this process was only at the very initial stage.
29. The authorities now report that at its meeting on 4 February 2022, the Judicial Council unanimously adopted Guidelines for the Judiciary on Conduct and Ethics, which are to enter into effect from June 2022 so as to allow time for putting in place the necessary resources and modalities for their practical implementation. These Guidelines aim at promoting core principles of judicial independence, impartiality, integrity, equality, propriety, competence and diligence. They reflect the standards to be applied by judges when managing the ethical and conduct issues and raise awareness among the public of the role of the judiciary and professional standards. The guidelines are also said to enable complaints regarding alleged breaches by judges, who will be accountable for misconduct to the Judicial Conduct Committee. The authorities indicate that, according to legislation, the system should be operational by 28 June 2022.
30. GRECO notes with satisfaction that the new Guidelines for the Judiciary on Conduct and Ethics have been adopted and they are associated with a complaints mechanism, which could lead to actions in case of misconduct. However, the Guidelines have yet to enter into force, and the modalities are currently being put in place to enable their application in practice. Until the completion of these remaining steps, GRECO cannot consider this recommendation as implemented more than partly.
31. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

32. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
33. GRECO recalls that this recommendation was not implemented in the Second *Interim* Compliance Report. GRECO had welcomed the establishment of the Judicial Studies Committee at the Judicial Council and the steps taken towards the elaboration of a training programme; however, the process had not been finalised at the time and information about the actual training conducted and resources allocated to it had not been made available.
34. The authorities now report that, following the recruitment of a High Court Judge with a considerable legal education experience to chair the Judicial Studies Committee, an induction training programme has been put in place. All judges appointed since July 2020 are said to have received induction training, along with some 30 other judges. In-service training has also commenced. However, the authorities indicate that owing to the backlog of cases in the courts and the limited number of judges available, the attendance of in-service training so far proves difficult for many of the serving judges.

35. GRECO notes with satisfaction that induction and in-service training of judges has been initiated as a permanent structure and that an experienced judge has been appointed to the Judicial Studies Committee, in charge of the training. That said, the training has been put in place only recently and the level of attendance appears rather low; as such it is slightly premature to assess it as "institutionalised". GRECO encourages the authorities to consider further efforts to ensure that the training is attended by many more judges, whether it is for induction or in-service training.
36. GRECO concludes that recommendation x has been partly implemented.

III. CONCLUSIONS

37. 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. Of the remaining recommendations, two have been partly implemented and four remain not implemented.

38. More specifically, recommendations ii, iv, v, vi and xi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations ix and x have been partly implemented and recommendations i, iii, vii and viii remain not implemented.
39. As regards members of parliament, while the Government's commitment to implement the recommendations and continue with reforms of the existing ethics statutory framework is noted, no tangible progress has been made since the adoption of the previous compliance report. The authorities are encouraged to step up their efforts to introduce a new ethics statutory framework as required by the outstanding recommendations.
40. As far as judges are concerned, the envisaged replacement of the Judicial Appointments Advisory Board (JAAB) by a Judicial Appointments Commission (JAC), as per the Judicial Appointments Commission Bill, remains questionable, as the composition of the JAAB, which includes a majority of judges, is considered more suitable for judicial appointments than the JAC, which would have an equal number of representatives of the judiciary and lay persons. The fact that under the proposed Bill, the Government would still receive a non-prioritised list of unranked candidates is also a concern, as the risk of politicised decisions remains. Induction and in-service training for judges has been institutionalised to some extent, and the guidelines on conduct and ethics have been adopted. Lastly, while the establishment of the Judicial Council has been an important development, more should be done to ensure constitutional safeguards of the judiciary.
41. In view of the fact that further progress is required to implement outstanding recommendations, GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, asks the Head of delegation of Ireland to submit additional information on the implementation of pending recommendations, namely recommendations i, iii, vii, viii ix and x by 31 March 2023 at the latest.
42. Finally, GRECO invites the Irish authorities to authorise, as soon as possible, the publication of the report and to make it public.