



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 1 December 2023
Publication: 30 January 2024

Public
GrecoRC4(2023)18

FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT IRELAND

Adopted by GRECO at its 95th Plenary Meeting
(Strasbourg, 27 November – 1 December 2023)

FOURTH
EVALUATION
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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. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. In the [Compliance Report](#), which was adopted by GRECO at its 75th Plenary Meeting (20-24 March 2017) and made public on 29 June 2017, following authorisation by Ireland, it was 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, following authorisation by Ireland. 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.
5. The [Second Compliance Report](#) was adopted by GRECO at its 90th Plenary Meeting (25 March 2022) and made public on 13 July 2022, following authorisation by Ireland. Ireland was requested to submit additional information regarding the implementation of the outstanding recommendations. This information was received on 31 March 2023 and 26 April 2023 and served as a basis for this Addendum.
6. The current [Addendum to the Second Compliance Report](#) evaluates the progress made in implementing the pending recommendations since the Second Compliance Report (i.e. recommendations i, iii, vii, viii, ix and x) and provides an overall appraisal of the level of compliance with these recommendations.
7. GRECO selected Estonia and the United Kingdom to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Ms Kätlin-Chris KRUUSMAA on behalf of Estonia (with respect to parliamentary assemblies), and Mr David MEYER on behalf of the United Kingdom (with respect to judicial institutions). They were assisted by GRECO's Secretariat in drawing up this Addendum to the Second Compliance Report.

II. ANALYSIS

8. GRECO, in its Evaluation Report, had addressed 11 recommendations to Ireland. In the Second Compliance Report, GRECO concluded that recommendations ii, iv, v, vi and xi had been implemented satisfactorily or dealt with in a satisfactory manner; recommendations ix and x had been partly implemented; recommendations i, iii, vii and viii had not been implemented. Compliance with the six pending recommendations is examined below.

Recommendation i

9. *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.*
10. GRECO assessed this recommendation as not implemented in the Second Compliance Report. As a result of the lapsing of the 2015 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. The completion of the new initiative by the Irish Government to reform the existing ethics statutory framework was delayed and at the time of the adoption of the Second Compliance Report, had not yet been in preparation.
11. The authorities now indicate that Ireland’s Programme for Government, which was agreed in 2020, contains a commitment to “reform and consolidate the Ethics in Public Office legislation”. The Minister for Public Expenditure, NDP Delivery and Reform, who is responsible for this reform, has asked his department to start by undertaking a review of the legislation in advance of bringing new proposals for reform back to the Government. This was completed and a report was submitted to the Government in December 2022. The report was approved and published, and the Government agreed to the preparation of draft legislation to reform the regime. Informed by the outcome of the review, the Department of Public Expenditure NDP Delivery and Reform is now preparing a general scheme for legislative reform, using the lapsed 2015 Public Sector Standards Bill as the point of departure. The intention is to bring a general scheme to Government for approval to publish by the end of 2023/Q1 2024. This legislative proposal will provide for a uniform and consolidated values-based normative framework covering *inter alia* the ethical conduct of members of parliament – including their staff as appropriate – and addressing various situations of conflicts of interest (gifts and other advantages, accessory activities, and post-employment situations etc.).
12. GRECO takes note of this information and the progress made. In particular, that concrete steps have been taken in reviewing the ethics in public office legislation before bringing new reform proposals to the Government; that a general scheme is being prepared for legislative reform (taking the lapsed 2015 Public Sector Standards Bill as a point of departure), which should be brought to the Government for approval by the end of 2023/Q1 2024.
13. GRECO therefore concludes that recommendation i has been partly implemented.

Recommendation iii

14. *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.*
15. GRECO assessed this recommendation as not implemented in the Second Compliance Report. Following the lapse of the Public Sector Standards Bill (consequent on the

dissolution of the legislature in advance of the 2020 General Election (see recommendation i, above), the Government decided that a review of the existing statutory framework for ethics would be undertaken in advance of it bringing forward fresh proposals for legislative reform.

16. The authorities now indicate that these proposals by way of the Public Sector Standards Bill (in the form of a general scheme of legislation to be brought to Government for approval by end of 2023/first quarter 2024) will notably seek to extend disclosure obligations in respect of ministers, senior advisors and officials who will be obliged, *inter alia*, to disclose significant liabilities above €50,000, and of members of parliament, who will be obliged to disclose the interests of a spouse, civil partner or child that has a material interest in the subject matter of their functions or decisions.
17. GRECO takes note of this information and developments. It encourages the authorities to continue with this reform.
18. Consequently, GRECO concludes that recommendation iii has been partly implemented.

Corruption prevention in respect of judges

Recommendation vii

19. *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.*
20. GRECO assessed this recommendation as not implemented in the Second Compliance Report. In December 2020, the Irish Government had approved the General Scheme of the Judicial Appointments Commission Bill, under which the Judicial Appointments Commission (hereinafter, "the Commission") was to replace the Judicial Appointments Advisory Board (JAAB). The Bill did not address GRECO's concern about the lack of a merit-based selection procedure for candidate judges, which would lead to a targeted shortlist of only the very best candidates, ranked in order of priority.
21. The authorities now indicate that the Judicial Appointments Commission Bill of 2022 (hereinafter, "the Bill"), published on 8 April 2022, intends to address this recommendation, once enacted. It has completed its passage through both Houses of the *Oireachtas* on 4 October 2023. A number of amendments have been made to the Bill since Ireland last provided GRECO with updates, notably it has reduced the Government's discretion in the matter of appointments. The Bill now provides for three unranked recommendations for each vacancy and an additional two recommendations for each second and subsequent vacancy. The Commission may also recommend fewer than the stipulated numbers. The Bill had previously only required that the Government first had regard to a person who had been recommended, without establishing a legal obligation on the Government to appoint that candidate. The Bill has since been amended to limit the Government to appointing a recommended person or persons. On 11 October 2023, the President of Ireland has taken the decision to convene a meeting of the Council of State to consider whether the Bill should be referred to the Supreme Court to decide on its constitutionality (Article 26 of the Constitution). On 13 October 2023, the President has referred aspects of the Bill to the Supreme Court, which has 60 days to determine its constitutionality.
22. GRECO takes note and accepts that progress has been made with respect to this recommendation, as the amended Bill is intended to reduce the Government's discretion in the matter of appointments by providing for three unranked

recommendations for each vacancy and an additional two recommendations for each second and subsequent vacancy. It also takes note that the Commission may recommend fewer than the stipulated number of candidates and that the Bill has been amended to limit the Government to appointing a recommended person or persons. However, the candidates are still not ranked in order of priority and aspects of the final Bill are currently before the Supreme Court awaiting a decision on their constitutionality.

23. GRECO therefore concludes that recommendation vii has been partly implemented.

Recommendation viii

24. *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.*
25. GRECO assessed this recommendation as not implemented in the Second Compliance Report. It 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, plans concerning the judiciary and salaries etc. The overall situation had changed with the establishment of the Judicial Council. Although the Judicial Council Act of 2019 does not provide for a framework allowing the examination of judicial employment conditions, it aimed to promote judicial excellence, to maintain high standards of judges including their independence, impartiality and integrity and propriety. In addition, a Judicial Planning Working Group was established in 2021, however it had not yet reported on the outcome of its activities.
26. The authorities now indicate that the report of the Judicial Planning Working Group was completed in December 2022 and published by the Government in February 2023. When agreeing to publish the report, the Government also agreed to its first recommendation, which was to appoint an additional 24 judges in 2023. As of 20 November 2023, 22 of those 24 additional judges have been appointed. The remaining two have been nominated by Government but have yet to take up their positions. There are plans to increase judicial numbers even further in the years up to 2028. This represents a significant investment by the Irish Government in the judiciary with a view to providing timely access to justice. While the headlines generated by the report mostly refer to judicial numbers, the report is much broader and contains 54 recommendations which will significantly improve the situation of judges in the Irish courts system.
27. To this effect, the authorities indicate that Chapter 4 of the Report relates to the effective use and management of judicial resources and calls for a comprehensive and strategic approach to human resources management for the judiciary. The first recommendation notes the lack of explicit terms and conditions applying to judges and states that appropriate terms and conditions should be developed in line with public service norms. The Department of Justice has established a High-Level Steering Group to monitor the implementation of the report. The judiciary are participating in the Steering Group as observers, given their independence from Government. The judiciary intend to lead the work on the development of a new Human Resources Management System with support from the Courts Service and the Department of Justice. The key bodies referred to in the report have each developed implementation plans focusing initially on the short-medium term recommendations. Four separate implementation plans are to be submitted to Government in December 2023 from: (1) the Judiciary, (2) the Courts Service, (3) the Judicial Council, and (4) the Department

of Justice. In relation to the pay-related issues for the judiciary, the Department of Justice has had talks with the Department of Public Expenditure, National Development Plan Delivery and Reform. The latter Department has recently published a Review of Senior Public Service Recruitment and Pay Determination processes. This Review was established by the Government in March 2022 to review, *inter alia*, the pay determination processes for the most senior public service posts. The Review has recognised that, since the financial crisis in 2008, an inconsistent approach to the process of pay determination for senior public service positions has evolved. The Review recommends the re-establishment of the Review Body on Higher Remuneration, which existed prior to the financial crisis. The published Review recommends the inclusion of the judiciary within the scope of the Review Body on Higher Remuneration. The Department of Justice is currently exploring how the judiciary might be accommodated within that framework.

28. GRECO takes note of this information and welcomes the progress made with respect to this recommendation, notably that the report of the Judicial Planning Working Group was completed in December 2022 and points to the shortcomings that still need to be addressed. It also notes the progress made with the establishment of a High-Level Steering Group looking into the implementation of the report, and, relating to remuneration, recommending the re-establishment of the Review Body on Higher Remuneration possibly including the judiciary within its scope. However, many questions still remain open, such as whether this body will be re-established and if so, how it will deal with the judiciary (if it were to be included within its scope), and what other solutions would be applied to the judiciary if this body were not to deal with it.
29. Consequently, GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix

30. *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.*
31. GRECO assessed this recommendation as partly implemented in the Second Compliance Report. It welcomed the adoption of the new Guidelines for the Judiciary on Conduct and Ethics and their association to a complaints' mechanism, which could lead to actions in case of misconduct. However, the Guidelines had yet to enter into force, and the modalities were being put into place to enable their application in practice.
32. The authorities now indicate that following adoption by the Judicial Council of Guidelines for the Judiciary on Conduct and Ethics, the provisions of the Judicial Council Act 2019 concerning judicial conduct and ethics were brought into operation by Ministerial Order from 3 October 2022. Complaints about the conduct of a judge that is alleged to constitute judicial misconduct, and which come within the scope of the Act will be addressed under the new procedures. The Guidelines¹ have regard to the Bangalore Principles of Judicial Conduct and address: independence, impartiality (including recusal), integrity, propriety, competence and diligence and equality. These Guidelines should be seen in the wider context of the Judicial Council's remit to promote excellence in the exercise by judges of their judicial functions; high standards of conduct among judges; the effective and efficient use of resources made available

¹<https://judicialcouncil.ie/assets/uploads/documents/Guidelines%20for%20Judicial%20Conduct%20and%20Ethics.pdf>

to judges for the purposes of the exercise of their functions; continuing education of judges; respect for the independence of the judiciary; and public confidence in the judiciary and the administration of justice.

33. The authorities also explain that the Judicial Studies Committee conducts regular workshops on judicial conduct and ethics and has delivered over 20 such workshops since 2021. Central to these interactive workshops are the Guidelines for the Judiciary on Conduct and Ethics and the Bangalore Principles. Having regard to the principle of separation of powers and to the independence of the judiciary, and as specified in the Judicial Council Act 2019, the Judicial Council and the Judicial Conduct Committee are independent in the exercise of their functions. The accountability mechanism referred to in the recommendation is the complaints mechanism (Chapter 3 of the Act) and the Annual report of the Judicial Conduct Committee (Section 87 of the Act).
34. The authorities finally point out that the Association of Judges in Ireland created the function of confidential counselling, which is in existence and operating since June 2022, prior to the commencement of the judicial conduct regime in October 2022. It consists of a panel of 20 retired judges available to every judge in Ireland on a confidential basis to advise on matters concerning conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.).
35. GRECO takes note of this information. The Guidelines for the Judiciary on Conduct and Ethics have now entered into force and are coupled with a complaints mechanism concerning the conduct of a judge that is alleged to constitute judicial misconduct. Further, there is confidential counselling in place in respect of conflicts of interest and other integrity related matters, available to every judge in Ireland.
36. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x

37. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
38. GRECO assessed this recommendation as partly implemented in the Second Compliance Report. It welcomed that induction and in-service training of judges had been initiated as a permanent structure and that an experienced judge had been appointed to the Judicial Studies Committee, in charge of the training. However, the training had been put in place only recently and the level of attendance appeared to be low, and it was therefore slightly premature to assess it as "institutionalised". GRECO encouraged the authorities to consider further efforts to ensure that the training was attended by many more judges, whether it was for induction or in-service training.
39. The authorities now indicate that the key points are that induction training of judges has become embedded and has been expanded. There is also an increased and ongoing availability of in-service courses. The availability of judicial training on an ongoing (rather than *ad hoc*) basis has become a feature. A key element is that the judicial conferences have a greater focus on judicial training, which ensures three in-service training days for every judge, in addition to the range of offerings referred to by the Director of the Judicial Studies Committee (a High Court Judge charged with delivery of judicial training). A shift to a culture whereby in-service training is now an expectation of judges has emerged. This is facilitated by a range of scheduled training courses, built on a strategic approach and a training needs analysis. In addition, domestic training is also supplemented by continued attendance at training outside

Ireland, and particularly at European Judicial Training Network (EJTN) level. In line with best practice internationally, and with an eye to preserving judicial independence, training is delivered to judges by judges. Therefore, the importance of training judges as trainers is a key feature. The Director is now supported by an adult training specialist, recruited in 2022 at a senior grade in the civil service. The training function has been and is for 2023 fully funded from the Judicial Council's budget. For instance, the Judicial Studies Committee now conducts regular workshops on judicial conduct and ethics and has delivered over 20 such workshops since 2021. Central to these interactive workshops are the Guidelines for the Judiciary on Conduct and Ethics and the Bangalore Principles.

40. GRECO takes note of this information from the authorities. It welcomes that induction training has now become embedded and that judicial training has become an on-going process and is not just organised on an *ad hoc* basis.
41. GRECO concludes that recommendation x has been implemented satisfactorily.

III. CONCLUSIONS

42. In view of the foregoing, GRECO concludes that Ireland has now implemented satisfactorily or dealt with in a satisfactory manner seven out of the eleven recommendations contained in the Fourth Round Evaluation Report. Of the pending recommendations, all four have been partly implemented.

43. More specifically, recommendations ii, iv, v, vi, x, ix and xi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, iii, vii and viii have been partly implemented.
44. As regards members of parliament, progress has been made since the adoption of the previous compliance report, notably concrete steps have been taken in reviewing the ethics and public office legislation before bringing new proposals for reform to the Government. A general scheme is also being prepared for legislative reform, based on the lapsed 2015 Public Sector Standards Bill, with the intention of bringing it to the Government for approval by the end of 2023/Q1 2024. The authorities are encouraged to continue their efforts to introduce a new ethics statutory framework and to enhance the existing regime on asset declarations, as required by the pending recommendations.
45. As for judges, a Bill is underway to reduce the Government's discretion in the matter of judicial appointments. Progress has also been noted with respect to the establishment of an appropriate structure dealing with questions concerning constitutional safeguards of the judiciary in connection with employment conditions in order to maintain high levels of judicial integrity and professional quality in the future. A report has been drafted including targeted recommendations for improvement, which are yet to be implemented. The Guidelines for the Judiciary on Conduct and Ethics have entered into force. They are associated to an accountability mechanism, and there is a system of confidential counselling in place, as recommended by GRECO. Progress has also been made with respect to induction and in-service training for judges, which has been institutionalised, becoming an on-going process and is not just organised on an *ad hoc* basis.
46. Since four (out of eleven) recommendations are yet to be implemented, GRECO in accordance with Rule 31 rev, paragraph 9 of its Rules of Procedure, asks the Head of the delegation of Ireland to submit additional information on the implementation of recommendations i, iii, vii and viii by 31 December 2024.

47. Finally, GRECO invites the Irish authorities to authorise, as soon as possible, the publication of the report and to make it public.