



Groupe d'Etats contre la corruption
Group of States against corruption

DIRECTORATE GENERAL OF HUMAN RIGHTS AND LEGAL AFFAIRS
DIRECTORATE OF MONITORING



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Interim Report

Third Evaluation Round

Interim **Compliance Report** **on Iceland**

“Incriminations (ETS 173 and 191, GPC 2)”

“Transparency of Party Funding”

Adopted by GRECO
at its 49th Plenary Meeting
(Strasbourg, 29 November – 3 December 2010)

I. INTRODUCTION

1. The Third Round Evaluation Report on Iceland was adopted at GRECO's 37th Plenary Meeting (4 April 2008) and made public on 16 April 2008, following authorisation by Iceland (Greco Eval III Rep (2007) 7E [Theme I](#) / [Theme II](#)).
2. As required by GRECO's Rules of Procedure, the Icelandic authorities submitted a Situation Report on measures taken to implement the recommendations. GRECO selected Croatia and Sweden to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Marin MRČELA, Supreme Court Justice, Croatia, and Mr Olof NYMAN, Legal Adviser, Ministry of Justice, Sweden. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the Compliance Report, which was adopted by GRECO at its 46th Plenary Meeting (Strasbourg, 22-26 March 2010), it was concluded that Iceland had implemented satisfactorily or dealt with in a satisfactory manner only one of the fifteen recommendations contained in the Third Round Evaluation Report. In view of this result, GRECO categorised the current very low level of compliance with the recommendations as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report and asked the Head of the Icelandic delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i - vi regarding Theme I and recommendations i – vii and ix, regarding Theme II) by 30 September 2010, pursuant to paragraph 2(i) of that Rule.
4. The current Interim Compliance Report assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs an overall appraisal of the level of Iceland's compliance with these recommendations.

II. ANALYSIS

Theme I: Incriminations

5. It is recalled that GRECO in its evaluation report addressed 6 recommendations to Iceland in respect of Theme I. One of these – recommendation v – was assessed as partly implemented in the Compliance Report; the remaining recommendations were considered as not implemented.

Recommendations i, ii and iii.

6. *GRECO recommended:*

- to ensure that Members of Parliament are covered by the provisions on bribery and trading in influence of the Penal Code (recommendation i);

- to ensure that members of a foreign public assembly exercising administrative powers are covered by the provisions on bribery and trading in influence of the Penal Code (recommendation ii);

- to ensure that foreign arbitrators and jurors are covered by the provisions on bribery of the Penal Code and to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) as soon as possible (recommendation iii).

7. GRECO recalls that in the Compliance Report, the above recommendations were found not to be implemented. A reflexion process aiming at amending some provisions in the Penal Code had started; however, no draft legislation had been elaborated.
8. The authorities of Iceland have now submitted detailed information in respect of planned amendments to articles 109 and 128 of the Penal Code, indicating that the categories of persons referred to in the recommendations have been covered by the draft legislation. However, no Bill has yet been submitted to Parliament because further amendments to the Penal Code, following a recent evaluation by the OECD, are still to be incorporated into the Bill which is due for submission to Parliament towards the end of 2010.
9. GRECO takes note of the information provided. It welcomes the fact that the authorities have prepared draft legislation with the potential to meet the requirements of the recommendations and encourages the authorities to proceed to a swift adoption of the new legislation as well as to ratify the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).
10. GRECO concludes that recommendations i, ii and iii have been partly implemented.

Recommendation iv.

11. *GRECO recommended to clarify in an appropriate manner what should be considered “due” and/or “undue” gift/other advantage for all forms of bribery offences.*
12. GRECO recalls that according to the Compliance Report, the authorities stressed that recommendation iv had been carefully considered and that it was deemed important to establish certain norms or criteria to identify due and/or undue gifts or advantages in relation to bribery offences. However, since this definition must also be subject to case by case interpretations, it was considered important not to limit the margin of appreciation too much. It was therefore decided to issue guidelines in the form of codes of ethics rather than strictly binding norms. As a consequence, a draft code of ethics, based on the recommendations of the Council of Europe and the OECD, had been prepared. The draft, *inter alia*, prohibits government employees from accepting gifts exceeding a moderate value and states that gifts received in an official capacity belong to the public authority in question. The draft had been circulated among administration personnel for comments but a final text had at the time not been approved. GRECO concluded that the recommendation had not been implemented as the Icelandic authorities had not provided sufficient information as to the content of the code in order to assess if it would clarify the concept of due or undue advantages for various forms of bribery, as required by the recommendation.
13. The authorities of Iceland now add to the above information that, in June 2010, Parliament passed an Act (No 86/2010) which amended the Act on the Government Offices of Iceland, the Act on the Althing Ombudsman and the Government Employees Act. These amendments provide the legal basis for codes of ethics: the Prime Minister is to approve such codes of ethics for the Government offices and the Minister of Finance is to approve such guidelines for other public officials. Their implementation would be supervised by the Althing Ombudsman. The authorities explained that the actual codes of ethics for government offices and public officials have not been approved yet.
14. GRECO takes note of the information provided. It notes that a legal framework for the adoption of codes of ethics and their supervision has been put in place through the new legislation. However, as was already stated in the Compliance Report, the Icelandic authorities have not provided

sufficiently detailed information as to the concrete content of the code/s to make it possible to assess to what extent such a code would clarify the concept of due or undue advantages for all forms of bribery, as required in the recommendation.

15. GRECO concludes that recommendation iv remains not implemented.

Recommendation v.

16. *GRECO recommended (i) to increase the penalties for bribery offences in the private sector and (ii) to consider increasing the penalties for active bribery in the public sector.*
17. The Compliance Report found that this recommendation had been partly implemented although the authorities, following due consideration, had no intention of increasing the penalties in accordance with the recommendation – as the second part of the recommendation only required “consideration”. The Compliance Report also stressed that the current sanctions for private sector bribery in Iceland “*appear weaker in comparison with those available under the criminal law of other GRECO member states, including other Nordic States*”.
18. The authorities of Iceland now report that the Ministry of Justice and Human Rights, has again mandated its Permanent Committee on Criminal Law to review its previous opinion in the light of comparative studies, in particular, concerning the pertinent sanctions available in the Nordic States.
19. GRECO welcomes the fact that the Icelandic authorities will reconsider their position, ideally addressing both parts of the recommendation.
20. GRECO concludes that recommendation v remains partly implemented.

Recommendation vi.

21. *GRECO recommended that the law enforcement authorities receive specialised training on the content of the existing incriminations of corruption offences, so that they become better prepared to detect, investigate and prosecute instances of corruption.*
22. GRECO noted in the Compliance Report that the Icelandic authorities had provided no specialised training as intended in the recommendation, which, consequently, was considered not implemented.
23. The authorities of Iceland indicate that a training seminar is to be held by the National Police College in cooperation with the Office of the Special Prosecutor in 2010/2011 on the investigation of corruption offences.
24. GRECO takes note of the new information provided, indicating that one training session has been planned. No other information has been provided concerning the organisation of specialised training in the future. GRECO encourages the authorities to establish such training at regular intervals, in accordance with the recommendation.
25. GRECO concludes that recommendation vi has not been implemented.

Theme II: Transparency of Party Funding

26. It is recalled that GRECO in the Evaluation report addressed 9 recommendations to Iceland in respect of Theme II. One of these - Recommendation viii - was assessed as implemented satisfactorily in the Compliance Report; the remaining recommendations, which were considered as not implemented, are dealt with below.

Recommendation i.

27. *GRECO recommended to introduce regulations ensuring an appropriate level of transparency of the campaign finances of presidential candidates.*
28. The authorities of Iceland report that on 9 September 2010, a law was adopted by the Althingi (Parliament) concerning amendments to the Act on the Finances and Reporting Requirements of Political Organisations and Candidates (162/2006). The amendments have been published in the Official Gazette, as Act 121/2010. The Act introduces the stipulation that statutory provisions on permissible donations from legal entities and individuals to parliamentary candidates as well as provisions on information disclosure to the Icelandic National Audit Office (NAO) and to the public, also apply to donations to presidential candidates. The law stipulates that the total election campaign expenses incurred by a candidate for election to the Presidency of Iceland may not surpass a certain threshold, linking that ceiling to the number of voters, as is the case for candidates in local elections (a certain sum for every individual in the voters' registry), a total amount of approximately ISK 35 million (EUR 224 023).
29. GRECO welcomes the progress reported. It notes that the lacuna identified in the Evaluation report, ie that elections for the office of President of the Republic were not subject to any transparency rules similar to those concerning Parliamentary elections has been remedied through the Act No. 121/2010 amending the Act on the Finances and Reporting Requirements of Political Organisations and Candidates (162/2006).
30. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

31. *GRECO recommended to consider establishing, for purposes of reporting the identity of contributors who are natural persons, a separate threshold level that is below the ceiling on the value of donations that parties/candidates are entitled to receive but is still of some significance.*
32. The authorities of Iceland submit that, in order to comply with the current recommendation, the caps on donations have been increased and a new threshold level above which donors' identity must be revealed has been established in law. With the adoption of Act 121/2010 amending the Act 162/2006, the maximum contribution from an individual or legal entity has been increased from ISK 300,000.00 (EUR 1 920) to ISK 400,000.00 (EUR 2 560) (which *de facto* represents a value slightly less than the previous one at the adoption of the law in 2006). Furthermore, the new Act stipulates that the so-called "confidentiality threshold", which only applies in respect of natural persons, is to be based on a contribution amounting to half of the permissible maximum that can be donated, ie 200,000 ISK (EUR 1 280). Moreover, all contributions from legal entities are to be made public according to the amended Act No. 162/2006.

33. GRECO takes note of the information, which indicates that the lack of transparency addressed in this recommendation has been duly dealt with by the Icelandic authorities, in accordance with the recommendation.
34. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

35. *GRECO recommended to (i) introduce clear provisions determining when an individual becomes a candidate for purposes of the start of the requirement to maintain records for a financial report; (ii) define the end of the reporting period for the first report to be filed after the primary; and (iii) require any candidate who reports a positive or negative balance in a campaign account to continue to report on a regular basis until the excess is disposed of or the debt has been retired.*
36. The authorities of Iceland state that in respect of the first part of the recommendation, the Act 162/2006, as amended by law 121/2010, provides that in primary elections, the reporting period is to be determined by the date when these elections are advertised by the political organisation in question, unless the campaign of the candidate concerned began earlier. In case of presidential elections, the reporting period is to begin at the point when the candidacy is submitted to the Ministry of Justice, unless the candidate's election campaign started earlier. The reporting period ends at the moment when the accounts are submitted to the National Audit Office (NAO) as provided for in Article 11. In respect of the second part of the recommendation, no legal changes have occurred as the Government is of the opinion that Act No. 162/2006 clearly states that the "first report" is to include all contributions and all expenses incurred as a result of the campaign. Concerning the third part of the recommendation, the same Act has been amended to comprise statutory rules stating that in case accounts relating to election campaigns show a positive or negative balance, the candidate is to submit new accounts to the NAO each year, until the surplus has been allocated or the debt reimbursed.
37. GRECO notes that parts (i) and (iii) have been implemented as recommended and accepts that the Icelandic authorities have come to the conclusion that part (ii) of this recommendation is sufficiently dealt with in the legislation and that no legal amendments are necessary in this respect.
38. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

39. *GRECO recommended to explore ways of sharing campaign finance information with the public prior to the election (e.g. through interim reports).*
40. The authorities of Iceland stress that they have concluded not to establish any obligatory finance reporting prior to elections as they see difficulties in ensuring that interim reports give an accurate view; for example to prevent political organisations and individual candidates from trying to improve their image by choosing to solicit contributions after the election. Furthermore, the authorities assume that the new provisions on maximum contributions from legal entities and individuals actually prevent the need for such rules.

41. GRECO takes note of the information provided. The authorities have thoroughly considered possible ways to deal with this recommendation, but decided not to introduce any measures in this regard.
42. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

43. *GRECO recommended to (i) define the contents of the summarised financial reports of political parties/candidates' accounts (including required information on income received and expenses incurred) as soon as possible and (ii) publicise the summaries in a timely manner.*
44. The authorities of Iceland report that the National Audit Office (NAO), in consultation with political parties, in mid 2008 decided on a format for the summaries of political accounts, which is available on the website of the NAO. Furthermore, summaries of the political organisations' consolidated accounts for 2007 and 2008 have been published on the website of the NAO and the summaries of the consolidated accounts for the operational year 2009 are expected to be published towards the end of 2010. The NAO has also prepared and published on its website a financial reporting form for candidates; the relevant provisions were implemented following the 2009 Parliamentary elections, and summaries of candidates' campaign accounts are now available in a standardised format on the NAO's website. The authorities add that the new legislation (Act. 121/2010) amending articles 9 and 11 of the Act 162/2006, clarifies political parties' and candidates' duty to disclose certain information to the NAO and the deadline for submission of such information.
45. GRECO notes that the authorities have addressed the shortcomings identified in the Evaluation Report and that the current legislation and practical guidelines established by the NAO are in line with the requirements of the recommendation.
46. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

47. *GRECO recommended to (i) establish clear rules ensuring the necessary independence of auditors called upon to audit the accounts of political parties and candidates; and (ii) establish procedures for auditors of such accounts, consistent with accepted international auditing standards, on when, how and to whom to report suspicions of significant/substantial infringements of existing legislation on political funding which they may come across in the course of their work.*
48. The authorities of Iceland submit that a new Act on Auditors (79/2008) has been adopted, incorporating the Directive 2006/43/EC of the European Parliament and of the Council on statutory audits of annual accounts and consolidated accounts. The new law provides, *inter alia*, that auditors are subject to regular quality monitoring, that they are required to be members of the Institute of State Authorised Public Accountants and obliged by law to follow the Code of Conduct etc. Auditors are also subject to more stringent requirements concerning their impartiality, according to the new law. The term "sound auditing practices" means, *inter alia*, that audits are to be carried out using recognised methods in accordance with the International Standards on Auditing (ISA). The authorities stress that the rules and demands applying to the audit of political

organisations' consolidated accounts are the same as those applying to the accounts of other legal entities, such as public limited companies.

49. GRECO welcomes that new general legislation, incorporating international auditing standards in Iceland have been adopted, which also apply in respect of the auditing of political parties. In general, this complies with the aims of the recommendation, however, GRECO notes that the first part of this recommendation was triggered by a particular reason, ie that “*auditors in some instances were long time members of the party to whom they provided their services and that they had served as their parties' respective auditor for a number of years*” (Evaluation report, paragraph 78). This situation calls for measures specific to the auditing of political parties, in addition to general auditing standards concerning impartiality. Iceland has not taken such specific measures.
50. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

51. *GRECO recommended that the National Audit Office be vested with appropriate authority to carry out, as needed, a material verification (in addition to the existing formal review) of the information provided by election candidates.*
52. The authorities of Iceland report that the new legislation (Act 121/2010) provides the National Audit Office (NAO) with the authority to request documentation from election candidates in order to verify the information in their financial reports, similar to what is possible in respect of political parties. The NAO has now the power to request further documentation at any time, so as to ascertain that election campaign expenses and contributions from individuals and legal entities to candidates are within the limits specified by law.
53. GRECO takes note of the information, indicating that material monitoring and verification is now under the authority of the NAO, similar to its mandate in the monitoring of political parties.
54. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation ix.

55. *GRECO recommended to review the sanctions available for the infringement of rules concerning the funding of political parties and election candidates and to ensure that these sanctions are effective, proportionate and dissuasive.*
56. The authorities of Iceland explain that amendments (Act 121/2010) to article 12 of Act 162/2006 have been made, to clarify the content of criminal liability of individuals and legal entities for violations of this Law; paragraph 1 of article 12 states that anyone who accepts unlawful donations is subject to fines or imprisonment up to two years. Submission of incomplete information or neglecting to submit information to the National Audit Office (NAO) is according to paragraph 2 of the same article to be punished by fines; paragraph 3 provides that legal entities violating these rules may be subject to fines; paragraph 4 makes it clear that these sanctions are applicable whether the violation is committed intentionally or as a result of negligence. Paragraph 5 extends the scope of Article 12 to attempts, aiding and abetting. The authorities also stress that article 5 of the same Act has been amended to include the general requirement that the right to public political funding is subject to satisfactory compliance with the submission of relevant

information to the NAO. The authorities finally submit that it has been discussed whether to adopt administrative sanctions in addition to the above sanctions; however, it was deemed premature to do so before the above new system has been tested and assessed in practice.

57. GRECO takes note of the information provided which indicates that the authorities have thoroughly reviewed the previous system of sanctions. GRECO takes the view that the recommendation has been complied with; however, it regrets that the authorities have not at this stage introduced administrative sanctions, which would be readily available for the National Audit Office in relation to minor violations of the procedural rules. However, GRECO notes that the authorities may consider such a possibility in the future.
58. GRECO concludes that recommendation ix has been implemented satisfactorily.

III. CONCLUSIONS

59. **In view of the above, GRECO concludes that Iceland has now implemented satisfactorily or dealt with in a satisfactory manner eight of the fifteen recommendations contained in the Third Round Evaluation Report.** With respect to Theme I – Incriminations – recommendations i–iii and v have been partly implemented and recommendations iv and vi have not been implemented. With respect to Theme II – Transparency of Party Funding – recommendations i–v, vii and ix have been implemented satisfactorily or dealt with in a satisfactory manner and recommendation vi has been partly implemented.
60. GRECO is pleased to note that Iceland has adopted substantial legislation and implemented other measures which, to a very large degree, meet the requirements of the recommendations contained under Theme II (Transparency of Party Funding). Furthermore, the authorities of Iceland have prepared draft legislation in order to comply with several of the recommendations under Theme I (Incriminations).
61. In view of the above, GRECO therefore concludes that the current level of compliance with the recommendations is no longer “globally unsatisfactory” in the meaning of Rule 31, 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.
62. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of the Icelandic delegation to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i - vi regarding Theme I and recommendation iv, regarding Theme II) by 30 September 2011.
63. GRECO invites the authorities of Iceland to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.