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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

DENMARK

For adoption by GRECO at its 80th Plenary meeting
(Strasbourg, 18-22 June 2018)

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Denmark to implement the recommendations issued in the Fourth Round Evaluation Report on Denmark (see paragraph 2). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Denmark was adopted at GRECO's 63rd Plenary meeting (28 March 2014) and made public on 16 April 2014, following authorisation by Denmark ([Greco Eval IV Rep \(2013\) 6E](#)).
3. The Fourth Round Compliance Report was adopted by GRECO at its 71st Plenary meeting (18 March 2016) and made public on 15 April 2016, following the authorisation by the Danish authorities. As required by GRECO's Rules of Procedure, the authorities of Denmark submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 2 March 2018 and served, together with the information submitted subsequently, as a basis for the Second Compliance Report.
4. GRECO selected the United Kingdom and the Russian Federation to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr David MEYER, on behalf of the United Kingdom and Mr Aslan YUSUFOV, on behalf of the Russian Federation. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

II. ANALYSIS

5. It is recalled that GRECO addressed six recommendations to Denmark in its Evaluation Report. In the Compliance Report, GRECO concluded that only one had been implemented satisfactorily (recommendation vi), whereas four had been partly implemented (recommendations i, iii, iv and v) and one (recommendation ii) had not been implemented. Compliance with the pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

6. On a general note, the authorities of Denmark make reference to letters of 30 August 2013 and 4 February 2014 from Mogens Lykketoft, then Speaker of the Danish Parliament, on behalf of its Presidium to the GRECO Secretariat outlining some of the foundational thoughts behind the democratic system in Denmark and putting the relative lack of formal restrictions on the activities of Danish Members of Parliament into a broader perspective and also reflecting the views of the current Presidium of the Parliament. In particular, the Presidium is concerned with the need to safeguard a conscience-based relationship between voters and MPs. The presidium is not completely averse to positive rules, however, it remains convinced that the pressure of public opinion is well suited to keep elected representatives on the path of righteousness. It is concerned that a highly prescriptive body of rules may hinder that mechanism.

Recommendation i.

7. *GRECO recommended (i) that a code of conduct for members of parliament – including, inter alia, guidance on the prevention of conflicts of interest, on questions concerning gifts and other advantages and on how to deal with third parties seeking to obtain undue influence on MPs' work – be adopted and made easily accessible to*

the public; and (ii) that it be complemented by practical measures for its implementation, such as dedicated training or counselling.

8. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted that the outgoing Speaker had, in 2014, addressed issues highlighted in the recommendation in the form of a letter to all MPs, in order to draw MPs' attention to ethical conduct and to the responsibility for upholding public trust in Parliament. GRECO expressed its opinion that ethical standards must remain dynamic and evolve to adapt to current and emerging challenges. Yet it did not agree that enshrining such standards in a code of conduct was an obstacle to such a process. GRECO noted that MPs' conduct had not been debated in the Danish Parliament beyond the level of the Presidium. It took the view that a code of ethics needed to be adapted to the country context and that complementary measures, such as training and/or counselling, which were not in place, were equally important. While falling short of the recommendation, it acknowledged that principles by which all MPs should abide, were contained in the letter of the Speaker as an initial measure.
9. The authorities now report that the Presidium of the Danish Parliament remains of the view that a letter such as the one that was sent by the former Speaker on behalf of the former Presidium of the Danish Parliament, ahead of the 2015 elections, was an appropriate format for such a document in the context of the political system of Denmark. The current Presidium will consider, ahead of the next parliamentary elections, whether a similar letter to members elected at that time can advantageously be accompanied by examples without detracting from the overall spirit of the letter. The authorities add that it intends to initiate a discussion on the content of a similar letter in the Standing Orders Committee (which includes representatives of all parties and all party group chairpersons) as well as within the Presidium itself (which contains representatives of the five largest parties). Moreover, the Presidium will ensure that any similar letter to members elected in the next election is made accessible to the public.
10. Moreover, with the comparatively non-specific and aspirational approach that the Presidium has found to be the most appropriate way forward, it believes that the best accompanying measure is to provide a forum for sharing of views, experience and concerns on matters of ethics, both generally and in concrete cases. The Presidium therefore intends to encourage the parliamentary groups to make better use of the relatively frequent meetings of party group chairpersons to this end. Such an arrangement will allow individual members to consult with their party group chairperson at first – generally a senior and experienced member of parliament – and then for the party group chairperson to take up the matter with his or her colleagues, if necessary, in a manner that protects the anonymity of the individual member in question.
11. GRECO takes note of the information provided, which aims at repeating what the previous Presidium did, i.e. to establish a new letter containing expected ethical conduct of MPs. However, in the future such a letter is to be based on broader debate in Parliament, in the Standing Orders Committee, where all political groups are represented, as well as in the Presidium itself. This foreseen process would be more inclusive and is to be welcomed as it will further the discussions and the awareness of the conduct expected of MPs. The letter by the former Speaker, referred to in the Compliance Report, was a good initiative, but it would appear necessary that such a document, whatever form it takes, obtains some form of recognition and authority over time and regardless of elections. What the Danish authorities have submitted in respect of complementary activities, as required in the second part of the recommendation, is no more than some form of participation in the process leading up to a document on expected conduct (letter, circular, etc)

and cannot be considered sufficient in respect of training or counselling, which require more dedicated measures. This part of the recommendation remains not implemented.

12. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

13. *GRECO recommended that a requirement of ad hoc disclosure be introduced when a conflict between the private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings.*
14. It is recalled that this recommendation was not implemented in the Compliance Report. The Danish authorities were of the opinion that such a requirement could at the most take the form of an unenforceable encouragement to Members of Parliament to declare any private interests in particular decisions and to consider not participating in a decision if doing so would appear improper. The authorities could not see how, within the limits of the Danish Constitution, a requirement of ad hoc disclosure could be enforced in any way. GRECO welcomed the encouragement given in the Speaker's letter to MPs to either abstain or declare any interest that they or their relatives or associates held, which it thought might prevent them from acting in a given matter under consideration by parliament. However, the letter did not bring any change to the voluntary regime that was analysed in the Evaluation Report.
15. The authorities of Denmark now report that the current Presidium of Parliament takes the same position as the previous, namely that a requirement of ad hoc disclosure cannot be enforced under the Constitution. However, the Presidium will contemplate whether a similar letter (as referred to above) to members elected in the next parliamentary election should include some examples of conflicts of interest for illustration, and will invite the Standing Orders Committee to take part in these deliberations as well.
16. GRECO takes note of the information provided which largely remains the same as reflected in the Compliance Report. It is of the view that a provision of ad hoc disclosure could possibly be provided in a soft law instrument as a strong recommendation, even if such a requirement could not be legally sanctioned.
17. GRECO concludes that recommendation ii remains not implemented.

Recommendation iii.

18. *GRECO recommended (i) that regular public registration of occupations and financial interests by members of parliament be made mandatory; (ii) that the existing system be further developed, in particular, by including quantitative data on the occupations and financial interests of members of parliament as well as data on significant liabilities; and (iii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).*
19. GRECO recalls that this recommendation was partly implemented in the Compliance Report. The first part of the recommendation had been complied with, as the registration of occupations and financial interests had been made compulsory for MPs. The second part of the recommendation was not implemented as the registration system had not been further developed. Also the third part of the

recommendation was not implemented as the authorities had not provided sufficient information suggesting that this part had been duly considered.

20. The authorities report nothing new in respect of the second part of the recommendation. As to the third part of the recommendation they insist that the former Presidium of Parliament has duly considered the issue of widening the scope of the registry of occupations and economic interests to include information on spouses and dependent relatives and stated its reasons for not taking any initiatives towards such an expansion (as noted in the Compliance Report).
21. GRECO notes that the first part of the recommendation was already implemented in the Compliance report. As to the second and third parts of the recommendation, nothing new has been reported.
22. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

23. *GRECO recommended that appropriate measures be taken to ensure supervision and enforcement of i) the rules on registration of the occupations and financial interests by members of parliament and ii) standards of conduct applicable to them, where necessary.*
24. It is recalled that the current recommendation was partly implemented in the Compliance Report. The first part had been implemented satisfactorily through the publication on the Parliament's website of the list of MPs that had not registered (regularly updated by the Legal Services Office). This "naming and shaming" measure appeared pertinent, given that it was subject to a high degree of transparency. However, the second part of the recommendation was not implemented; the Presidium of Parliament had not seen fit to take any initiatives towards a formal mechanism with regard to compliance with the principles of ethics contained in the letter of the Speaker (as referred to above).
25. The authorities now report in respect of the second part of the recommendation (which is the only pending) that the Presidium of Parliament, with reference to its position regarding recommendation i, is of the view that the nature of any supervisory or enforcement mechanism must clearly depend on the nature and level of specificity of the rules to be supervised. With the comparatively non-specific and aspirational approach that the Presidium has found to be appropriate for the Danish Parliament and its choice of a letter to all members (instead of a code of conduct) as the most suitable format, it can see little potential for establishing an efficacious set of mechanisms for formal supervision or enforcement in this situation.
26. GRECO takes note of the response provided by the Danish authorities. It agrees that a supervisory mechanism needs to be adapted to the rules on conduct it is to oversee. As follows from its reasoning under recommendation i, GRECO has considered the letter submitted by the outgoing Presidium to MPs to partly comply with that recommendation and it has welcomed the current Presidium's intentions to prepare a new conduct document following a more thorough and inclusive procedure. GRECO maintains its position that a form of supervisory mechanism is required. However, to do nothing, as the Danish authorities suggest, is clearly not in line with this recommendation.
27. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

28. *GRECO recommended i) that a set of clear ethical standards/code of professional conduct – accompanied by explanatory comments and/or practical examples, including guidance on conflicts of interest and related issues – be made applicable to all judges and be made easily accessible to the public; and ii) that it be complemented by practical measures for its implementation, including dedicated training for professional judges, lay judges and expert judges.*
29. It is recalled that this recommendation was partly implemented in the Compliance Report. The first part of the recommendation was partly met as a code of ethics had been established; however, it had not been accompanied by explanatory comments and practical guidance, as required. The second part of the recommendation had been met by the provision of dedicated training provided to judges.
30. The authorities now report that the Danish Court Administration has taken note of the requirement to accompany the Ethical Principles, as adopted by the Association of Danish Judges in October 2014, with practical examples and explanatory comments and it submits that it will consider this part of the recommendation further.
31. In addition, the Court Administration also states that the Danish judiciary and the judges work according to the Ethical Principles, which are based on fundamental principles of democracy, the rule of law and individual's rights. They also refer to the framework furthering these principles in the law, e.g. the Administration of Justice Act, Statute relating to Public Servants and the Criminal Code etc. All judges are familiar with this legislation, as well as the fundamental principles that apply to them, such as independence, impartiality and integrity; freedom of speech and association, confidentiality; media relations, etc.
32. GRECO welcomes again the adoption of the Ethical Principles for Judges, which are built on various fundamental principles drawn from the Constitution and legislation, as reflected by the authorities. GRECO has no doubt that judges in Denmark are fully aware of these principles and the related legislation. That said, the aim of establishing the Ethical Principles, as well as accompanying them with further guidance, serves to further clarify the standards expected of judges including in practical situations (eg conflicts of interest, gifts, third party contacts etc.) These instruments will also send a positive message and provide awareness to the public about the high standards of conduct that is to be upheld by the judiciary.
33. GRECO is pleased to note that the Danish Court Administration will further consider the part of the recommendation that calls for establishing practical examples and/or explanatory comments to the Ethical Principles, referred to above.
34. GRECO concludes that recommendation v remains partly implemented.

III. CONCLUSIONS

35. **In view of the foregoing, GRECO concludes that Denmark has implemented satisfactorily only one of the six recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, four have been partly implemented and one has not been implemented.
36. More specifically, recommendation vi has been implemented satisfactorily, recommendations i, iii, iv and v have been partly implemented and recommendation ii has not been implemented.
37. With respect to members of parliament, all recommendations have been considered by the current Presidium of the Danish Parliament. Since the former Speaker of the Parliament submitted a letter to members of parliament to draw their attention to ethical conduct, no tangible progress has been reported, other than that the current Presidium intends to follow a similar path by elaborating a letter including expected conduct of MPs for the next Parliament (following the next elections). However, it is positive that such a process is to follow a more inclusive procedure, now involving a standing committee and the Presidium. This is a step in the right direction, but it would appear necessary that the result of such a process (document) be given sufficient recognition, be accurate over time and accompanied by training and counselling. A supervisory function, adapted to such an instrument, also remains to be put in place.
38. As far as judges are concerned, ethical principles have been adopted, as already acknowledged in the Compliance Report and GRECO trusts that these will be complemented with practical examples and/or explanatory comments in due course.
39. In view of the above, GRECO notes that in the present absence of final achievements, Denmark has not made sufficient or decisive progress in terms of recommendations fully implemented, since the Compliance Report was adopted, more than two years ago. The vast majority of recommendations remain partly implemented. Under these circumstances, GRECO has no choice but to consider the situation as "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Danish delegation to provide a report on the progress made in implementing recommendations i-v as soon as possible, however – at the latest – by 30 June 2019.
40. Finally, GRECO invites the authorities of Denmark 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.