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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

ADDENDUM TO THE SECOND COMPLIANCE REPORT MALTA

Adopted by GRECO at its 87th Plenary Meeting
(Strasbourg, 22-26 March 2021)

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I. INTRODUCTION

1. The Addendum to the Second Compliance Report assesses the measures taken by the authorities of Malta to implement the recommendations issued in the Fourth Round Evaluation Report on Malta (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 Malta](#) was adopted at GRECO's 66th Plenary Meeting (8-12 December 2014) and made public on 23 June 2015, following authorisation by Malta.
3. The [Fourth Round Compliance Report](#) was adopted by GRECO at its 75th Plenary meeting (24 March 2017) and made public on 27 March 2017, following the authorisation by the Maltese authorities.
4. [The Second Compliance Report](#) was adopted at the 83rd Plenary meeting (21 June 2019) and made public on 13 December 2019, following authorisation by Malta. As required by GRECO's Rules of Procedure, the authorities of Malta submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 30 September 2020 and served as the basis for this Addendum.
5. The current Addendum to the Second Compliance Report evaluates the progress made in implementing the pending recommendations since the previous Second Compliance Report (i.e. recommendations i, ii, iii, v and vi) and provides an overall appraisal of the level of compliance with these recommendations.
6. GRECO selected the United States of America (with respect to parliamentary assemblies) and Bosnia and Herzegovina (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Jane LEY, on behalf of the United States of America and Mr Adnan DLAKIC, on behalf of Bosnia and Herzegovina. They were assisted by GRECO's Secretariat in drawing up this Addendum.

II. ANALYSIS

7. It is recalled that GRECO addressed nine recommendations to Malta in its Fourth Evaluation Report. In the Second Compliance Report, GRECO concluded that four of the nine recommendations (iv, vii, viii and ix) had been implemented satisfactorily by Malta. Five remaining recommendations (i, ii, iii, v and vi) had been partly implemented. Compliance with the five pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i, ii and iii.

8. *GRECO recommended:*
 - *that a thorough review of the current provisions of the Code of Ethics for members of parliament and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest be undertaken with a view to adopting improvements that will provide more subject matter coverage, consistency and clarity, as well as guidance. (recommendation i)*

- *that measures be taken to ensure there is appropriate supervision and enforcement of (i) the rules on the declaration of assets, financial interests and outside activities, and (ii) the standards of ethics and conflicts of interest provisions applicable to members of parliament. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available. (recommendation ii)*
 - *(i) establishing a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest in relation to their legislative duties, as well as financial declaration obligations; and (ii) providing regular awareness raising activities for members of parliament covering issues, such as ethics, conflicts of interest, acceptance of gifts, honoraria, hospitality and other advantages, outside employment and activities, declarations of financial/activity interests, as well as other activities related to the prevention of corruption and the promotion of the integrity within the Parliament. (recommendation iii)*
9. GRECO recalls that recommendation i was partly implemented according to the Second Compliance Report, as the Act on Standards in Public Life has been adopted and the Parliamentary Commissioner for Standards has been appointed. However, the review of the Code of Ethics had not been completed. Recommendations ii and iii were partly implemented as the Act on Standards in Public Life did not provide sufficiently dissuasive sanctions, such as the possibility of expulsion and/or fines for late filing, false filing or failure to file the required financial reports under the Code of Ethics.
 10. The Maltese authorities now report that in July 2020 the Parliamentary Commissioner for Standards submitted proposals on the revised codes of ethics for MP's and ministers¹ to the Standing Committee on Standards for consideration. These proposals, in particular, refer to GRECO's recommendations from the Fourth and Fifth Evaluation Rounds in respect of Malta and aim *inter alia* at addressing the shortcomings leading to these recommendations. The draft Code of Ethics for Members of the House of Representatives is accompanied by draft Guidelines focussing on gifts, benefits and hospitality, registration of financial and other interests and declaration of possible conflicts of interest.
 11. Further, as to recommendations ii and iii, the authorities reiterate that pursuant to Article 13(1)(c) of the Act on Standards in Public Life, one of the functions of the recently appointed Commissioner for Standards is providing recommendations on issues of ethics to public officials covered by the scope of this Act. The authorities express the view that in spite of the absence of any sanctions for violations of ethical rules, the mere finding by the Commissioner that an MP is in violation of these rules constitutes a "reputational damage" and should be viewed as having a dissuasive effect. Reference is also made to the Commissioner's competence to refer cases of suspected corruption to the Attorney General for prosecution, and the right to appeal the Attorney General's decisions not to prosecute. In addition, referring to GRECO's recommendation under the Fifth Evaluation Round regarding the dissociation of the function of confidential advice from that of the regulatory role, the authorities indicate that a draft law is in preparation to detach the advisory role of the Commissioner of Standards and transfer it to other organs or bodies/committees within Parliament.
 12. GRECO takes note of the information provided. It notes the progress made with regard to reviewing the Code of Ethics for parliamentarians, which led to a new draft Code, tabled by the Parliamentary Commissioner of Standards before the Standing

¹ Consisting of the draft Code of Ethics for Members of the House of Representatives and the draft Code of Ethics for Ministers and Parliamentary Secretaries.

Committee on Standards. The draft Code of Ethics appears to address most of the issues referred to in recommendation i. However, given that the process possibly leading to the adoption of the new Code of Ethics is at an early stage, and the need to establish consistency between the Code and Standing Orders relating to integrity, GRECO cannot conclude that this recommendation has been implemented more than partly.

13. As to recommendation ii, GRECO notes that the draft Code of Ethics for members of parliament contains provisions on ethics and conflicts of interest. However, the draft contains no provisions regarding sanctions and their effective enforcement in case of violations, which was specifically indicated in this recommendation. GRECO recalls that the Act on Standards in Public Life does not include sanctions for late filing, false filing or failure to file the required financial reports. It is not convinced that the “reputational damage” alone is equivalent to “effective, proportionate and dissuasive sanctions”. In addition, the authorities’ reference to the role of the Speaker of the House of Representatives describes the same supervision and enforcement arrangements, as was considered insufficient by GRECO at the time of the adoption of the Evaluation Report². Therefore, the lack of effective supervision and enforcement, with a range of effective, proportionate and dissuasive sanctions, still needs to be addressed.
14. With regard to recommendation iii, GRECO takes note of the Commissioner’s new function to provide advice to public office-holders covered by the scope of the Act on Standards in Public Life and the on-going work to draft new legislation to dissociate the advisory and the regulatory roles of relevant bodies. While these developments can be regarded as steps in the right direction, they are still at an early stage. In addition, the authorities provide no information on any regular awareness-raising activities for members of Parliament, or other activities related to the prevention of corruption and the promotion of integrity within Parliament.
15. In view of the above, GRECO concludes that recommendations i, ii and iii remain partly implemented.

Corruption prevention in respect of judges

Recommendation v.

16. *GRECO recommended that the system of judicial accountability be significantly strengthened, notably by extending the range of disciplinary sanctions to ensure better proportionality and by improving the transparency of complaints processes.*
17. GRECO recalls that this recommendation was partly implemented. In its Compliance Report, GRECO welcomed, in particular, the authorities’ effort to adjust and reinforce the disciplinary framework against judges by entrusting it to an independent authority, and by reviewing the range of disciplinary sanctions to improve their efficiency and proportionality. Nonetheless, GRECO stressed the need to take additional steps to improve the transparency of complaints processes. This could have been achieved by publishing statistics on complaints received, types of breaches and sanctions etc., which could contribute to identifying and preventing corruption within the judiciary and raising public awareness of actions taken.
18. The Maltese authorities refer to legal amendments carried out in 2016 and in 2020, whereby Parliament has been removed from the procedure of the dismissal of judges and the Commission for the Administration of Justice has been made fully in charge

² In particular, see paragraphs 44-46 of the Fourth Evaluation Report on Malta, accessible via the following link: <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c8abe>

of judicial discipline procedures, including the removal of judges and magistrates; however, the outcomes of such proceedings are still not made public.

19. GRECO takes note with satisfaction of the measures taken to strengthen the system of judicial independence and accountability by making the Commission for the Administration of Justice in charge of judicial discipline procedures and discontinuing the involvement of Parliament in the dismissal of judges. That said, no tangible steps have been taken to improve the transparency of such procedures in the judiciary.
20. GRECO concludes that this recommendation remains partly implemented.

Recommendation vi.

21. *GRECO recommended that (i) a compulsory induction training programme, including consideration of judicial ethics, be developed; (ii) that mentoring arrangements for new judges, exploring the ethical implications of appointment, be formalised; and (iii) that a regular programme of in-service training be provided along with targeted guidance and counselling on corruption prevention topics and judicial ethics for the various persons required to sit in court (judges, magistrates, and adjudicators of boards and tribunals).*
22. GRECO recalls that this recommendation was partly implemented. In the Compliance Report, GRECO stressed the need to reinforce training and advisory opportunities on judicial ethics not only for newly appointed judges, but also for the entire judiciary, particularly in the light of past experience of unethical behaviour of some of its senior members.
23. The Maltese authorities now inform GRECO that the Judicial Studies Committee (JSC) reiterates its commitment to always include the topic of judicial ethics in the yearly training programme and that in-service training is regularly provided to all members of the judiciary. According to the JSC, the last two-day training session on judicial ethics took place in September 2019. Further, the authorities report that a Management Board is planned to be set up in March 2021 to allocate funds for enhancing training of members of the judiciary, among others. The Board will also assist the JSC in improving induction training, including on judicial ethics and corruption prevention. Finally, following a recent public call to recruit new members of the judiciary, a compulsory induction training programme is said to be in preparation, which is expected to cover *inter alia* judicial ethics, as well as other aspects of professional and social life of a judge.
24. GRECO takes note of the information provided. As in the previous Situation Report, the authorities have not provided additional information regarding the existing training programme, mentoring arrangements for new judges, regular programme of in-service training, or targeted guidance and counselling on corruption prevention and judicial ethics. Some measures are envisaged but have not yet materialised. It follows that GRECO cannot conclude that this recommendation has been dealt with satisfactorily.
25. GRECO concludes that recommendation vi remains partly implemented.

III. CONCLUSIONS

26. **In view of the foregoing, GRECO concludes that Malta has still implemented satisfactorily or dealt with in a satisfactory manner only four of the nine recommendations, while five remain partly implemented.**

27. More specifically, recommendations iv, vii, viii and ix have been implemented satisfactorily or dealt with in a satisfactory manner, and recommendations i, ii, iii, v and vi have been partly implemented.
28. With respect to members of parliament, GRECO takes note of the proposed draft Code of Ethics for Members of the House of Representatives, initiated by the Parliamentary Commissioner for Standards. However, the process possibly leading to the adoption is at a very early stage, and there is still a need to ensure appropriate supervision and enforcement of rules on declaration of assets, interests and outside activities through effective, proportionate and dissuasive sanctions. Further, the confidential counselling for members of Parliament on ethical questions, conflicts of interest and financial declarations still needs to be established. The authorities should also enhance their efforts to provide regular awareness-raising and other activities for parliamentarians on the prevention of corruption and the promotion of integrity.
29. As regards the judiciary, it is to be welcomed that disciplinary proceedings, including dismissal of judges, are no longer within the competence of Parliament. That said, an induction training programme for newly appointed judges still needs to be implemented, covering judicial ethics, and a regular in-service training programme, targeted guidance and counselling on corruption prevention and judicial ethics should be established for various professionals of courts (judges, magistrates, and adjudicators of boards and tribunals).
30. In view of the fact that five (out of nine) recommendations remain to be implemented fully, GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Malta to submit additional information regarding the implementation of pending recommendations i, ii, iii, v and vi by 31 March 2022.
31. Finally, GRECO invites the authorities of Malta 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.