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COUNCIL OF EUROPE



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## FOURTH EVALUATION ROUND

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

### *INTERIM* COMPLIANCE REPORT

### MONACO

Adopted by GRECO at its 88th Plenary Meeting  
(Strasbourg, 20-22 September 2021)

## I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Monaco to implement the recommendations in the Fourth Round Evaluation Report on Monaco, which was adopted at GRECO's 76th Plenary Meeting (19-23 June 2017) and made public on 13 July 2017, following authorisation by Monaco ([GRECOEval4Rep\(2017\)1](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. In accordance with GRECO's Rules of Procedure, the Monegasque authorities submitted a situation report containing information on measures taken to implement the recommendations. GRECO had selected Andorra (in respect of parliamentary assemblies) and Belgium (in respect of judicial institutions) to appoint rapporteurs for the compliance procedure.
3. The Compliance Report adopted by GRECO at its 84th plenary meeting (6 December 2019) and made public on 17 February 2020 with Monaco's authorisation ([GRECORC4\(2019\)20](#)) concluded that the low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, revised, paragraph 8.3, of its Rules of Procedure. GRECO therefore decided to apply Rule 32, paragraph 2.i, in respect of members not in compliance with the recommendations contained in the mutual evaluation report and asked the head of the Monegasque delegation to provide a report on progress in implementing the recommendations on which no action had been taken (namely recommendations i to x and xiii to xvi).
4. On 31 March 2021, the Monaco authorities provided information on the measures taken to implement the outstanding recommendations. This information has served as the basis of the report of the two rapporteurs, Ms Eva Garcia Lluelles of Andorra and Mr Ricardo Parrondo Ramos of Belgium. They have been assisted by the GRECO Secretariat in the drafting of this interim Compliance Report.
5. This interim Compliance Report examines the state of implementation of the fourteen outstanding recommendations (i to x and xiii to xvi) since adoption of the Compliance Report and makes an overall assessment of Monaco's level of compliance with these recommendations.

## II. ANALYSIS

*Corruption prevention in respect of members of parliament*

### **Recommendation i**

6. *GRECO recommended that a series of significant measures be taken to enhance the transparency of the legislative process, including with regard to easy public access to adequate information on consultations held, and with regard to reasonable deadlines for submitting draft texts, amendments and working documents.*
7. It is recalled that in the Compliance Report, GRECO found that the recommendation had not been implemented. The measures taken had not been sufficient to enhance in a significant way the transparency of the legislative process. More specifically, the National Council's unanimous proposal to arrange public current affairs sessions on its website, to improve the visibility of parliamentary activities, had not been taken up by the executive. It also noted that proposals to set deadlines for communicating amendments and other preparatory texts had not so far been implemented.

8. The Monegasque authorities now state that the National Council approved its Rules of procedure on 25 November 2020, which came into force at the start of 2021. These make it obligatory to publish committees' agendas and all the written opinions of bodies that those committees have consulted (and no longer just advisory opinions regarding institutional issues), all draft proposals for amendments to legislation as soon as they are lodged with the National Council's secretariat, and reports of committees containing proposals for and draft changes to legislation. To assist this publication procedure, the National Council's internet site has been updated and now presents legislation, draft amendments and other proposals by subject matter to facilitate searches. For each item consulted, it now includes a timeline of the relevant proceedings up to the final vote and videos explaining the legislation in question. Each piece of legislation consulted includes an explanatory link to the legislative process so that the public can understand how this takes place. The government also announced on 17 June 2021 that legislation published in the Monaco Official Gazette would now include the report of the relevant parliamentary committee and the government's response. Moreover, the National Council's internet site now invites persons with an interest in proposed legislation or amendments to contact the relevant committee with questions for the chair or suggestions. These measures to ensure transparency and public awareness are fully compatible with the ISO 9001 standard, which certifies the National Council.
9. The Monegasque authorities also state that the government did not approve the proposed public current affairs sessions because of the very nature of the Principality's political system, which was that of a hereditary and constitutional monarchy in which the government was answerable to the Prince. Nevertheless, the National Council is currently considering draft finance legislation on the outcome of each year's budget. The aim is to fill the gap left by the lack of any public current affairs debate on the budget in the first half of the year, without the need to await the financial debates in the second half. Budget debates are traditionally the opportunity for National Councillors to express their views on all aspects of the Principality's public policies and are followed closely by the public and the media. The authorities also state that the National Council's new Rules of procedure place the existing practice of voting resolutions – non-binding statements tabled by members of parliament to place issues on the public agenda – on a more formal footing. This practice is becoming increasingly frequent. In 2020, for example, four resolutions were adopted, on the National Council's Rules of procedure, combating Covid 19 and promoting women's representation on the governing bodies of public and private entities answerable to the state.
10. The Monegasque authorities also state that article 40 of the new Rules of procedure now requires draft legislation and regulations, amendments and other documents that are to be discussed in committee to be presented to National Council members at least two days in advance.
11. GRECO welcomes the introduction of the new National Council Rules of procedure and their accompanying implementing measures, which should strengthen considerably the transparency of the legislative process and the visibility of parliamentarians' activities. It takes note of the obligation to publish their work on the National Council's internet site, which has been reorganised accordingly, and of the certification of these publication procedures via the ISO 9001 standard. These measures are consistent with the recommendation. GRECO also takes note of the authorities' argument that the specific nature of Monaco's political system makes it impossible to hold public current affairs sessions in the National Council, but recognises the authorities' willingness to move further in the direction of public current affairs debates by extending the budgetary process to offer an additional opportunity for such discussions in the first half of the year. It encourages the authorities to finalise this process. GRECO also notes that the new National Council

Rules of procedure authorise and establish a procedure for the adoption of resolutions on current issues and that this practice is developing satisfactorily. It notes, finally, that the new Rules of procedure establish a minimum two-day period for submitting draft legislation and regulations, amendments and other working documents to members of parliament before relevant committee sessions, which is consistent with its recommendation.

12. GRECO concludes that recommendation i has been implemented satisfactorily.

**Recommendation ii.**

13. *GRECO recommended (i) that a code of conduct be adopted for the attention of members of the National Council to set standards in respect of general conduct, gifts and other benefits, and relations with third parties, and that it be brought to the attention of the public; ii) that measures be taken to facilitate its implementation in practice (explanatory comments, concrete examples etc.).*
14. It is recalled that GRECO concluded in the Compliance Report that this recommendation had not been implemented. It was important to give effect to the adoption of a Code of conduct, backed up by practical examples of the risks that parliamentarians might face. It underlined also that appropriate training was necessary to secure effective implementation of principles, rules and practices concerning general conduct, gifts and other benefits, and relations with third parties, and that the Code should be properly publicised.
15. The Monegasque authorities now state that ethical issues are included explicitly in the new Rules of procedure,<sup>1</sup> rather than in a separate charter, to ensure their legal force. They include principles relating to general conduct, conflicts of interest and the ban on initiating, requesting, accepting or receiving benefits in exchange for action on any matter on which the parliamentarian concerned might be required to take a decision. Gifts and benefits to a value of more than 200 euros must also be the subject of a confidential declaration registered and maintained by the National Council, which may be consulted by the Council's Ethics Adviser in the course of infringement proceedings. The Rules of procedure lay down penalties for failure to comply with these principles (see recommendation v below). The Rules have been published in the Monaco Official Gazette and are available on the National Council's internet site.
16. The National Council Ethics Adviser (*déontologue*), appointed in May 2021, has been charged with drafting, before 31 October 2021, three explanatory notices for parliamentarians to clarify the scope of the provisions of the Rules of procedure concerning the ethical rules and declaration requirements applicable to National Councillors.
17. The National Council organised training for its members in January 2020 on corruption prevention and the criminal penalties incurred. Nineteen of the 24 National Councillors took part. The new Ethics Adviser has a special responsibility for training. In July 2021, he was authorised by the Council, sitting as a Plenary Study Committee, to present the whole range of his responsibilities to the National Councillors and hold an initial discussion with them on their obligations. A second session is scheduled for October 2021. All new National Councillors will receive training at the start of their term of office, starting with the next parliamentary term in 2023. Specific training sessions are also provided for to ensure that, with each updating of the rules of procedure or relevant change to the legislation, National Councillors will be informed

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<sup>1</sup> Chapter II of Part II: Discipline, ethics and deontology.

about the new provisions. Other forms of one-off training may be organised on specific topics.

18. GRECO welcomes the adoption of the new National Council Rules of procedure, which now include rules governing its members' general conduct, gifts and other benefits they may receive and their relations with third parties. It notes also that these provisions are publicly available, including on the National Council's internet site, and that training on these provisions has been organised for parliamentarians and will henceforth continue to be systematically provided to new parliamentarians. It therefore considers that the first part of the recommendation has been fully implemented. Turning to the second part of the recommendation, GRECO notes that the National Council's Ethics Adviser is responsible for securing the application of these provisions through the drafting of explanatory notices by late October 2021.

19. GRECO concludes that recommendation ii remains partly implemented.

#### **Recommendation iii.**

20. *GRECO recommended that a requirement of ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament might emerge in relation to a matter under consideration in parliamentary proceedings (in plenary or committee work) independently of whether such a conflict might also be revealed by members' declarations of activities and income.*

21. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had not been implemented. It welcomed the changes to the law to strengthen anti-corruption measures but noted that apart from criminalising the illegal acquisition of interests, giving or receiving bribes and trafficking in influence, it was important to prevent such offences, particularly through measures requiring parliamentarians to declare in advance occasional conflicts of interest related to subjects connected with their legislative work. It urged the authorities to carry through on their plans to introduce such a requirement into the Code of conduct.

22. The Monegasque authorities now state that National Council members are obliged to report personal conflicts of interest likely to have a direct influence on the independent, impartial and objective exercise of their mandates. The aforementioned new Rules of procedure require them to disclose, either orally or in writing, any private interests relating to subjects under consideration in the course of legislative proceedings, at the stage of the work in committee or in plenary session. Such declarations are recorded in the relevant meeting reports. When they are made in committee, they are reported to the National Council by its Chair, before the start of the relevant debate. Parliamentarians may then decide not to take part in the proceedings, because of possible conflicts of interest. The Rules of procedure have been published in the Monaco Official Gazette and are available on the National Council's internet site.

23. GRECO welcomes the introduction and associated publication in the National Council's Rules of procedure of the provisions concerning the declaration of *ad hoc* personal private interests in the context of parliamentary proceedings, in both committee and plenary sessions, in accordance with its recommendation.

24. GRECO concludes that recommendation iii has been implemented satisfactorily.

#### **Recommendation iv.**

25. *GRECO recommended (i) introducing a system of public declaration of National Councillors' financial and economic interests (income, assets and significant*

*liabilities) and (ii) envisaging including information on their spouses and dependent family members (it being understood that such information would not necessarily be made public).*

26. It is recalled that in the Compliance Report, GRECO concluded that the recommendation had not been implemented. While acknowledging the country's specific features arising from its size, it thought that parliamentarians, and even dependent members of their families, should supply information on their financial and economic interests, and that their declarations should be checked.
27. The Monegasque authorities repeat their position that public declarations of National Councillors' assets are unacceptable in the light of the Principality's demographic and social situation. This would be detrimental to the country's democratic life, entailing a disproportionate breach of privacy of persons ready to take up public responsibilities - with the accompanying risk of greatly limiting the number of candidates for office. To increase transparency of public life in this specific regard, however, the National Council has amended its Rules of procedure to include arrangements for parliamentarians to declare their interests and activities. In the two months after taking up office National Council members must now declare to the Council's Secretary General their interests and activities at the time of their election and those retained during their term of office (paid occupational activities, membership of the governing bodies of public or private institutions or companies, direct financial interests in a company, voluntary or charitable functions that could lead to a conflict of interests, and other elected offices), as well as the spouse's or partner's professional/occupational activities. These declarations are updated annually. They remain confidential, are registered and sealed when they are lodged and updated, and are kept under lock and key. They can be consulted by the National Council Ethics Adviser in the course of infringement proceedings brought against National Councillors (see Recommendation v below). The Ethics Adviser is required to produce an explanatory note to clarify National Councillors' declaration obligations and ensure that they are properly applied (see paragraph 16).
28. GRECO confirms that it recognises the specific features linked to the country's size and the fact that the links between citizens are particularly close-knit, and has noted the significant progress sought by the National Council in its new Rules of procedure regarding the obligations now placed on parliamentarians to declare their interests and activities, as well as their spouses' occupational and professional activities. This is consistent with the recommendation. However, the recommendation is essentially concerned with increasing the transparency of public life and public confidence in their representative institutions. This objective remains unobtainable if such declarations remain confidential, or even secret, and can only be used in infringement proceedings, whereas the very fact that these declarations are public knowledge should be a guarantee that such proceedings can, if necessary, be launched. GRECO notes that the Ethics Adviser responsible for drawing up the documentation on how the Rules of procedure should be applied has sole authority to access parliamentarians' declarations of activities and interests, in a specific context. GRECO cannot therefore conclude that this recommendation has been fully implemented.
29. GRECO concludes that recommendation iv has been partly implemented.

### **Recommendation v.**

30. *GRECO recommended that measures be taken to ensure the proper supervision and enforcement of the obligations of declaration and the rules of conduct of members of parliament, together with proper sanctions for failure to honour all these obligations.*
31. It is recalled that in the Compliance Report, GRECO found that this recommendation had not been implemented. GRECO encouraged the authorities to develop measures to ensure effective monitoring and enforcement of the reporting obligations and standards of conduct of parliamentarians, including adequate sanctions in relation to all obligations.
32. The Monegasque authorities now state that the new National Council Rules of procedure have established the post of Ethics Adviser (*déontologue*), who is independent, has relevant professional qualifications, and is appointed by the Council's Bureau for a three-year term. The Ethics Adviser was appointed in May 2021. An Ethics Committee has also been established, with three full and three alternate members from the National Council, including one of each from the opposition. It was established in July 2021. A procedure has also been introduced for investigating possible infringements of National Councillors' declaration obligations or standards of conduct, reported to the Ethics Committee or the Council Bureau by a National Councillor or which the Committee or the Bureau have themselves decided to take up. The Ethics Adviser's opinion is then sought and must be transmitted to the Ethics Committee. When drafting his opinion, the Adviser can consult the declarations of gifts and benefits, and of interests and activities, of the parliamentarian concerned. The Ethics Adviser's opinions and consultations are bound by confidentiality (and can only be made public by the parliamentarian concerned). The Ethics Committee may then decide, by majority vote, to propose to the Council Bureau that a Plenary Study Committee be established to determine possible penalties. The latter have recently been strengthened by the new article 93 of the Rules of procedure to include temporary prohibition of acting as rapporteur, temporary prohibition of taking part in committee votes, temporary prohibition of standing for a committee chair or deputy chair, and partial or total suspension of parliamentary allowances, with or without temporary exclusion. The Rules of procedure also specify the periods for which these penalties will apply. They also state that such penalties may be imposed on National Councillors convicted of illegal acquisition of interests, giving or receiving bribes, or trafficking in influence. To date, no such infringements have been referred to the National Council.
33. GRECO welcomes the establishment, under the National Council's new Rules of procedure, of the means, with accompanying penalties, for scrutinising and enforcing parliamentarians' declarations and standards of conduct, coupled with bodies responsible for conducting these proceedings.
34. GRECO concludes that recommendation v has been implemented satisfactorily.

### **Recommendation vi.**

35. *GRECO recommended (i) that training and awareness measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests; and (ii) that MPs be provided with confidential counselling on these.*
36. It is recalled that in the Compliance Report, GRECO concluded that the recommendation had not been implemented, since the conduct and ethics-related measures that were the subject of the proposed training and counselling had still not been introduced.

37. The Monegasque authorities now state that the new National Council Rules of procedure place great emphasis on the Ethics Adviser's role in helping parliamentarians to apply the rules relating to integrity and declarations of private interests. He may be consulted at any time, by any means, by any members of the National Council regarding their personal cases, on the attitudes to be taken to apply these principles and observe these procedures. Moreover, the National Council's Secretary General has organised a number of training sessions on good professional conduct and the criminal law relating to integrity and corruption, and will repeat this training, taking into account the new Rules of procedure. Such training will be provided automatically to new National Councillors at the start of each parliamentary term (see para. 17).
38. GRECO notes the importance attached by the new National Council Rules of procedure to making parliamentarians aware of ethical principles and the need for integrity and to advising them individually of the conduct expected of them to give effect to these principles. It also notes that relevant training sessions have been held and that in future such training will be provided systematically for all new members of the National Council, in accordance with its recommendation.
39. GRECO concludes that recommendation vi has been implemented satisfactorily.

*Corruption prevention in respect of judges and prosecutors*

**Recommendation vii.**

40. *GRECO recommended that the authorities enhance the role and operational independence of the Judicial Service Commission (HCM), review its composition and give it a central role in guaranteeing the independence and good functioning of the justice system, as well as in the recruitment, career management and disciplinary proceedings in respect of judges and prosecutors.*
41. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had been partly implemented. More specifically, while acknowledging the Monaco authorities' readiness to confirm in law the key role of the Judicial Service Commission (HCM) as guarantor of the independence and effectiveness of the judicial system, GRECO had recommended strengthening of the HCM's independence *vis-à-vis* the executive, which should be enshrined in the constitution. Its composition should be re-balanced so that more members were elected by their peers, its opinions on appointments should be binding, it should be able to meet on its own initiative, without the need to be summoned by the Director of Judicial Services, and its activity reports should be made public
42. The Monegasque authorities now state that the legislation on the status of the judiciary was enacted on 30 June 2020 and has come into force. The State Secretary for Justice (formerly called the Director of Judicial Services)<sup>2</sup> and the HCM are now jointly responsible for applying the rules governing the status of judges and prosecutors and, in carrying out their duties, ensuring compliance with the principle of judicial independence enshrined in the Constitution. The authorities therefore argue that the HCM's main role, as guarantor of judicial independence, is formally vested in law since article 46 of the Constitution expressly excludes from government oversight affairs that are the responsibility of the State Secretary for Justice, who is independent of, and not a member of, the government. They maintain that this

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<sup>2</sup> The authorities state that one of the reasons for the Order of 14 July 2020 amending this title was the wish to give greater prominence to and ensure the visibility of the State Secretary for Justice, as being independent of the government in the exercise of his or her duties.

independence excludes any risk of his or her subservience to the executive when acting as chair of the HCM.

43. The Monegasque authorities also note that under the new article 3 of the status of the judiciary legislation, disciplinary cases can be referred to the HCM not just by the State Secretary for Justice but also by the First President of the Court of Review, as Chair of the HCM body that hears disciplinary cases, at the request of a majority of members of the HCM, excluding the State Secretary for Justice. It also notes that the HCM plays a key role in the judicial recruitment procedure and judges' and prosecutors' subsequent career progression (see recommendation ix below).
44. GRECO notes the amendments to the status of the judiciary legislation which strengthen the HCM's ability to safeguard judicial independence and protect the status of judges and prosecutors, in conjunction with the State Secretary for Justice. It notes that the latter is independent of the government in carrying out his duties. To that extent, and although it regrets that the HCM's role is not enshrined in the Constitution, GRECO could consider that part of its recommendation has been dealt with satisfactorily, bearing in mind the Principality's distinctive constitutional, circumstances. It also notes that the HCM is now empowered to hear disciplinary cases against judges or prosecutors if a majority of its members so decide, which is also consistent with its recommendation. However, GRECO finds that the composition of the HCM has not been adjusted to increase the number of members elected by their peers and its activity reports are not made public. Nor has it been given a greater role in the appointment of judges and prosecutors and their career management.
45. GRECO concludes that recommendation vii remains partly implemented.

#### **Recommendation viii.**

46. *GRECO recommended (i) that the appointment of members of the Supreme Court be based on a transparent procedure and adequate objective criteria and (ii) that they be provided with appropriate rules on incompatibilities, conflicts of interest and other obligations related to integrity.*
47. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had been partly implemented. GRECO had particularly welcomed the amendments to the normative framework on the Supreme Court, which incorporated rules on its members' integrity, and the new Code of conduct. However, it called for a more transparent appointment procedure for members of the Supreme Court.
48. The Monegasque authorities consider that the appointment procedure for members of the Supreme Court, which functions as a constitutional court, is transparent and based on adequate objective criteria. Under article 89 of the Constitution, its members must be highly competent and are appointed by the Prince on the proposal of various functionally independent institutions (National Council, Council of State, Crown Council, Court of Appeal and First Instance Court), which places a strict limit on the Prince's freedom of choice. The members of the Supreme Court must be very well qualified, particularly in constitutional matters and administrative law, having regard to the Court's areas of jurisdiction, and those nominated have always been distinguished academics or lawyers with experience in the relevant fields.
49. GRECO notes that it has not received any new information on the appointment procedure and criteria for members of the Supreme Court and concludes that recommendation viii remains partly implemented.

## **Recommendation ix.**

50. *GRECO recommended ensuring the transparency of the process for appointing judges and prosecutors in Monaco, whether seconded or not, based on clear and objective criteria, including for appointments to the most senior positions and for the extension and early termination of secondments.*
51. It is recalled that in the Compliance Report, GRECO found that this recommendation had not been implemented. It welcomed the open invitation to apply for the post of Prosecutor General, which should be made a statutory requirement, but regretted that there was no public procedure governing career progression and, above all, promotion to more senior posts in the hierarchy. With regard to the renewal of secondments of French judges and prosecutors, and with one particular case in mind, it stressed that the renewal procedure must not in any circumstances be used to exert pressure on judges or prosecutors.
52. The Monegasque authorities recall that every vacant judicial post, whether or not seconded, is accompanied by an invitation to apply, either internally or via the French authorities, and this includes appointments to the most senior positions. These invitations to apply include details of the post in question, specifying the required qualifications and skills and a description of the duties entailed. The “job descriptions” include precise indications of required length of service, professional qualifications and experience. If the State Secretary for Justice considers that serving judges and prosecutors in Monaco, whether Monegasque or French, might be qualified to fill a vacant post, an administrative memorandum is sent to all Monegasque and seconded judges and prosecutors via the heads of court and the Prosecutor General. If a judicial secondment is deemed necessary, particularly to ensure continuity of service, a professional profile is sent, via diplomatic channels, to the French Ministry of Justice. A call for applications is then circulated to members of the French judiciary on the basis of the objective recruitment criteria specified by the Monaco authorities. Monegasque judges and prosecutors may also apply. Candidates meeting these criteria are interviewed by the HCM, which issues an opinion that forms the basis of a report by the State Secretary for Justice to the Prince with a recommendation on whom to appoint, which the Prince validates. If this involves a French candidate, the French Ministry of Justice consults the French Council for the Judiciary. In the event of the latter’s opposing the appointment, the Monaco authorities do not proceed with the proposed secondment. Those concerned are formally appointed by a Prince’s Order.
53. The authorities state that they are currently considering ways of incorporating these procedures into the legislation on the status of the judiciary.
54. The Monegasque authorities also state that for the first time in ten years, in 2020 there was a competition for recruitment aimed at the Monaco judiciary. The competition was confined to candidates of Monegasque nationality who met the requirements of the legislation on the status of the judiciary and was organised by an independent panel chaired by the First President of the Court of Review and made up of judges/prosecutors and other qualified figures from outside the Principality who had already taken part in recruitment or training activities organised by the French Judicial School (*Ecole Nationale de la Magistrature*). Since April 2021, the appointed candidate has been following the complete training course provided by the School to its trainees.
55. GRECO notes the information again provided concerning the procedure for publicising vacancies and appointing judges and prosecutors of both Monegasque and French nationality. It also notes that for the first time in ten years, there has been a competition offering Monegasque nationals access to a post in the Principality’s

judiciary. These are encouraging signs that are consistent with greater transparency of the judicial appointments procedure, but are not sufficient to conclude that the recommendation has been fully implemented. In practice, the relevant procedure should be clearly laid down in legislation and regulations to ensure complete transparency and strengthen the HCM's role in this area. GRECO therefore again urges the Monegasque authorities to enact legislation that fully and clearly specifies the appointment procedure, including that governing the renewal of secondment periods for French judges and prosecutors, to ensure that it poses no threat to the independence of those concerned.

56. GRECO concludes that recommendation ix has been partly implemented.

**Recommendation x.**

57. *GRECO recommended extending the principle of periodic evaluations to include more judges and prosecutors and ensuring that consideration is given in this exercise to integrity-related matters.*

58. It is recalled that in the Compliance Report, GRECO concluded that the recommendation had been partly implemented. GRECO welcomed the fact that the evaluation forms now contained an assessment of ethical values and encouraged the authorities to amend the law to extend the evaluation system to certain senior judges or prosecutors.

59. The Monegasque authorities now state that the new legislation on the status of the judiciary came into force in July 2020, which specifies that the judges of the First Instance Court, the guardianship judge and the justice of the peace are subject to evaluation by the President of the Court. In addition, the President and Vice-president of the First Instance Court, the judges of the Court of Appeal and the investigating judges are evaluated by the President of the Court of Appeal. The Deputy Prosecutor General and the other prosecutors are evaluated by the Prosecutor General.

60. GRECO notes that the new legislation on the status of the judiciary extends the evaluation system to all the judges and prosecutors at the First Instance Court and the Court of Appeal, other than the First President of the Court of Appeal and the Prosecutor General, which is consistent with the recommendation.

61. GRECO concludes that recommendation x has been implemented satisfactorily.

**Recommendation xiii.**

62. *GRECO recommended carrying out an assessment of the parallel activities performed by judges and prosecutors, including those who are still working in France, and, depending on the results, taking the necessary steps to ensure more robust and consistent rules on incompatibilities.*

63. It is recalled that in its Compliance Report, GRECO concluded that the recommendation had been partly implemented. In particular, it welcomed the ongoing evaluation of the extra-judicial activities of all judges and prosecutors, including seconded French judges and prosecutors, and encouraged the authorities to take account of the findings to make practical improvements to the rules on incompatibilities.

64. The Monegasque authorities now state that the results of the assessment exercise show that none of the serving judges and prosecutors perform gainful activities, in a professional capacity or as an employee, incompatible with their judicial functions. Legal teaching or training undertaken free of charge or at standard rates is recorded.

In connection with the assessment, the Directorate of Judicial Services asked the judges and prosecutors to report all their related or ancillary activities, whether or not they were remunerated. The authorities also state that an administrative memorandum from the State Secretary for Justice was sent to all the heads of court and to the prosecutor's department advising all the judges and prosecutors of the provisions of the status of the judiciary law concerning incompatibilities and possible exceptions. Under these rules on concurrent and additional activities, judges and prosecutors who undertake prohibited activities are liable to disciplinary sanctions. When French judges or prosecutors are seconded, they are automatically scrutinised for any secondary activities. Moreover, the State Secretary for Justice ensures that these provisions will continue to be enforced by asking all those taking up their duties about any related or ancillary activities and advising them that they must then automatically inform him of any such additional activities they subsequently take on. The Directorate maintains a record of the replies which is regularly updated.

65. GRECO emphasises the importance of preventing and rectifying conflicts of interest that might arise from judges' and prosecutors' extra-judicial duties and activities. It notes the findings of the assessment exercise carried out among serving judges and prosecutors in Monaco, including seconded French judges and prosecutors, according to which none of them performed secondary activities incompatible with their judicial functions. It also notes that when judges and prosecutors take up their duties, they are all formally advised by the State Secretary for Justice of the legal incompatibilities between the duties of judges and prosecutors and other activities specified in the legislation on the status of the judiciary, and of their obligation to keep him informed of any possible changes in the situation. Under this legislation, the HCM may be called on to impose disciplinary sanctions in the event of failure to comply with the incompatibility provisions.
66. GRECO concludes that recommendation xiii has been implemented satisfactorily.

**Recommendation xiv.**

67. *GRECO recommended (i) spelling out in legislation the disciplinary power and capacity of action of the Judicial Service Commission, including in respect of senior judges and prosecutors; ii) defining in greater detail those breaches of the integrity rules discussed in this report which are liable to result in disciplinary actions.*
68. It is recalled that in its Compliance Report, GRECO concluded that the recommendation had been partly implemented. It awaited the opportunity to consider the new legal provisions authorising the HCM to initiate disciplinary proceedings *ex officio* and drew attention to the benefits of more clearly dissociating the functions of prosecution and investigation when the procedure was initiated by the then director of judicial services. Furthermore, it noted that the rules on the integrity of judges and prosecutors were laid down in the compendium of ethical and deontological principles, and that breaches of these rules were subject to disciplinary sanctions.
69. The Monegasque authorities now state that the legislation on the status of the judiciary, which came into force in July 2020, provides for the HCM to hear disciplinary cases if a majority of its members, excluding the State Secretary for Justice, so request. The new law also dissociates the prosecution and investigation functions in disciplinary cases before the HCM. When the HCM hears cases referred by the State Secretary, the latter is not present at its deliberations, and it is chaired by the First President of the Court of Review, who is accompanied by the President, or if necessary, the Vice-president of the Court of Appeal. When cases are referred by the First President of the Court of Review at the request of a majority of its members, the HCM sits without the presence of the President and the members who

voted for the referral, each of whom is replaced by his or her alternate. The First President of the Court of Review appoints the member of the HCM who will chair the disciplinary proceedings, accompanied by the First President of the Court of Appeal.

70. GRECO welcomes the entry into force of the new legal provisions empowering the HCM to hear disciplinary cases on its own initiative if a majority of its members so decide and establishing a clear separation in such cases of the prosecution and investigation functions. This new legislation is compatible with its recommendation.
71. GRECO concludes that recommendation xiv has been implemented satisfactorily.

#### **Recommendation xv.**

72. *GRECO recommended that a system of in-service training for judges and prosecutors be introduced on integrity-related matters and deontology, which would also make it possible to address the future rules adopted in this area.*
73. It is recalled that in its Compliance Report, GRECO concluded that the recommendation had been partly implemented. It welcomed the adoption of the Compendium of ethical and deontological principles and encouraged the Monegasque authorities to implement effectively and fully the envisaged training scheme.
74. The Monegasque authorities now state that the French Judicial School provides initial training for judges and prosecutors serving in Monaco, including training in ethical and integrity-related principles. Turning to continuing training, the authorities state that a training seminar on ethical and deontological principles was held in November 2020, and that such training will now take place on a regular basis. Moreover, following a proposal of the State Secretary for Justice, the Monegasque Institute for the training of legal professionals was established in April 2021, with the task of preparing candidates for the competitive examination for posts in the judiciary or the bar examination, and organising training seminars for judges and prosecutors, including ethical and integrity training. The institute will also arrange colloquies and other events concerned with legal topics and help to disseminate Monegasque law through the publication of legal articles and reports and court decisions.
75. GRECO notes the information supplied by the Monegasque authorities on the training that has taken place and is intended to continue, including that under the aegis of the new Monegasque Institute for the training of legal professionals. It encourages the authorities to bring this regular training into operation. These ongoing developments respond to the concerns underlined in the recommendation.
76. GRECO concludes that recommendation GRE xv has been implemented satisfactorily.

*Corruption prevention regarding prosecutors specifically*

#### **Recommendation xvi.**

77. *GRECO recommended that the prohibition to issue any instruction in individual cases be laid down in legislation.*
78. It is recalled that in the Compliance Report, GRECO concluded that this recommendation had not been implemented. GRECO noted that, according to the authorities, the State Secretary for Justice did not, in practice, instruct the Prosecutor General to prosecute, but it invited the authorities to strengthen the legislation to ensure that prosecutors could not be instructed not to prosecute and that instructions to prosecute were strictly regulated.

79. The Monegasque authorities now state that the recent legislation of 8 July 2020 amends the Law on judicial administration and organisation and the Code of Criminal Procedure in line with the GRECO recommendation. The State Secretary for Justice can now only give instructions to prosecute, in writing and with reasons given, and the instruction is recorded in the case file.
80. GRECO welcomes the changes to the Law on judicial administration and organisation and the Code of Criminal Procedure, which establish a statutory framework for instructions to prosecute and ensure their transparency by means of a written procedure setting out reasons, which is recorded in the case file. It agrees with the information by the Monegasque authorities according to which the existence of a provision referring explicitly to instructions "to prosecute" implies that it is not permissible to give instructions not to prosecute. Although it would have preferred to see legislation that clearly excluded any possibility of giving instructions in individual cases, GRECO acknowledges that these changes to the legislation are consistent with Council of Europe Recommendation (2000)19 on the role of public prosecution in the criminal justice system and Opinion No. 13(2018) of the Consultative Council of European Prosecutors on Independence on accountability and ethics of prosecutors. Therefore it considers that the law is compatible with the spirit of recommendation xvi.
81. GRECO concludes that recommendation xvi has been dealt with in a satisfactory manner.

### III. CONCLUSIONS

82. **In the light of the foregoing, GRECO concludes that Monaco has implemented satisfactorily or dealt with in a satisfactory manner eleven of the sixteen recommendations contained in the 4th round Evaluation Report.** Five other recommendations have been partly implemented.
83. More specifically, recommendations i, iii, v, vi, x à xvi have been implemented or dealt with in a satisfactory manner, while recommendations ii, iv, vii to ix have been partly implemented.
84. As regards *parliamentarians*, significant progress can be noticed, particularly following adoption of the National Council's Rules of procedure and their implementing measures. They help to increase the transparency of the legislative process, particularly through publication of the National Council's activities on its internet site and the certification of its publication procedures. Extensions to the budgetary process and the procedure for adopting resolutions should lead to more current affairs debates. Minimum advance periods have been established for the submission of preparatory documents to parliamentarians, prior to consideration in committee. The Rules of procedure also regulate members' general conduct, including such matters as gifts and other benefits and their relations with third parties. These provisions are available to the public and are the subject of training sessions. The Rules also cover the declaration of private interests, both at the start of parliamentarians' period of office and on an *ad hoc* basis during the legislative process. There are procedures, with appropriate sanctions, for monitoring and enforcing declarations and standards of conduct requirements and bodies have been established to implement these procedures. However, parliamentarians' declarations of private interests should not remain confidential and accessible only to the Ethics Adviser (*déontologue*) for use in infringement proceedings, and instead should be made public. More generally, it should be noted that the National Council's Ethics Adviser plays a key part in securing the application of the integrity provisions of the rules of procedure to National Council members.

85. Turning to *judges and prosecutors*, GRECO welcomes the new legislation on the Supreme Court and the adoption of the Code of conduct for its members and of the Compendium of ethical and deontological principles for judges and prosecutors. It is pleased to note that there has been an increase in the number of public hearings of the court of review. Attention should also be drawn to the significant progress resulting from the new legislation on the status of the judiciary. The new law strengthens the role of the Judicial Service Commission (HCM) in safeguarding judicial independence and the status of judges and prosecutors, in conjunction with the State Secretary for Justice. It also provides, in a satisfactory fashion, for the evaluation of judges and prosecutors and authorises the HCM to initiate disciplinary hearings *ex officio*, while separating the prosecution and investigation functions in such cases. It should, however, be noted that the composition of the HCM has not been re-balanced to give more weight to judges elected by their peers and that its activity reports are not published. The vacancy notice procedures for the appointment of Monegasque and French judges and prosecutors are now more transparent. A continuing and coherent system has been established to regulate incompatibilities and secondary activities in the courts and the prosecution service. A final positive development concerns the change to the legislation which formalises and protects the transparency of prosecution instructions issued by the State Secretary for Justice, which must be in written form, with reasons given, and recorded in the case file.
86. Consequently, in the light of the foregoing, GRECO concludes that the level of compliance with the recommendations is no longer “globally unsatisfactory” within the meaning of Rule 31, revised, paragraph 8.3, of its Rules of Procedure. GRECO therefore decides to discontinue the application of Rule 32 in respect of members not in compliance with the recommendations in the evaluation report.
87. Pursuant to Rule 31, paragraph 8.2, of the Rules of Procedure, GRECO asks the head of the Monaco delegation to provide a report on progress in implementing the pending recommendations (namely recommendations ii, iv, vii to ix) by 30 September 2022 at the latest.
88. Lastly, GRECO invites the Monaco authorities to authorise publication of this report as soon as possible.