



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 25 March 2022
Publication: 28 March 2022

Public
GrecoRC4(2022)4

FOURTH EVALUATION ROUND

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

THIRD *INTERIM* COMPLIANCE REPORT LUXEMBOURG

Adopted by GRECO at its 90th Plenary meeting
(Strasbourg, 21-25 March 2022)

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I. INTRODUCTION

1. The [Fourth Round Evaluation Report on Luxembourg](#) was adopted at GRECO's 60th plenary meeting (21 June 2013) and made public on 1 July 2013, following authorisation by Luxembourg. GRECO's Fourth Evaluation Round addresses "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. In the [Compliance Report](#), adopted at GRECO's 68th Plenary Meeting (19 June 2015), it was concluded that Luxembourg had satisfactorily implemented only one of the 14 recommendations contained in the Fourth Round Evaluation Report. Eight recommendations had been partly implemented and five had not been implemented.
3. In the [Second Compliance Report](#), adopted by GRECO at its 77th plenary meeting (18 October 2017), it was concluded that Luxembourg had satisfactorily implemented or dealt with only four of the 14 recommendations contained in the Evaluation Report (six others had been partly implemented and four not implemented). In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 paragraph 2.i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report and asked the Head of the Delegation of Luxembourg to provide a report on the progress made in implementing the recommendations still pending.
4. In the [Interim Compliance Report](#), adopted by GRECO at its 82nd plenary meeting (22 March 2019), it was concluded that Luxembourg had made some progress since the previous report, although that progress had had no impact on the number of fully implemented recommendations. Four of the 14 recommendations contained in the Evaluation report remained satisfactorily implemented and the remaining ten had been partly implemented. GRECO therefore concluded once again that the level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure.
5. In the [Second Interim Compliance Report](#), adopted by GRECO at its 86th plenary meeting (29 October 2020), it was concluded that Luxembourg had made no progress in implementing the recommendations and in the case of one recommendation, there had even been a step backwards since the previous report. Four of the 14 recommendations remained satisfactorily implemented, nine had been partly implemented and one recommendation had once again become not implemented. GRECO therefore concluded that the level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. In accordance with Rule 32, paragraph 2, subparagraph ii.b), GRECO called on the President of the Statutory Committee to send a letter to the Permanent Representative of Luxembourg to the Council of Europe drawing his attention to non-compliance with the relevant recommendations and the need to take resolute steps to achieve tangible progress as soon as possible. In addition, pursuant to Rule 32 paragraph 2, subparagraph i), GRECO asked the Head of the Luxembourg delegation to submit a report by 31 October 2021 on the measures taken to implement the recommendations still pending. That report, received on 29 October 2021, forms the basis of this report.
6. This [Third Interim Compliance Report](#) assesses the further implementation of the 10 recommendations pending since the adoption of the Second Interim Compliance Report (Recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv) and performs an overall appraisal of the level of Luxembourg's compliance with these recommendations.

7. GRECO instructed Switzerland (with respect to parliamentary assemblies) and Bulgaria (with respect to judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Olivier Gonin, for Switzerland, and Mr Georgi Roupchev, for Bulgaria. They were assisted by GRECO's Secretariat in drafting this report.

II. **ANALYSIS**

Corruption prevention in respect of members of parliament

Recommendation i.

8. *GRECO had recommended that i) as intended with the current draft Code of Conduct, a set of ethical rules and standards be adopted with the aim of preventing corruption and safeguarding integrity in general; ii) these rules be supplemented by an implementing instrument providing the necessary clarifications.*
9. GRECO points out that this recommendation had been partly implemented. The first part of the recommendation had been implemented through the adoption and entry into force in 2014 of the Code of Conduct relating to financial interests and conflicts of interest for the members of the Chamber of Deputies.¹ As for the second part of the recommendation, the Bureau of the Chamber of Deputies adopted an implementing instrument providing further clarification of certain provisions of the Code on 26 April 2018. GRECO had welcomed this text in one of its previous reports, but had felt that it should be more illustrative in nature, providing specific, and above all fuller, examples to explain all the Code's provisions, including those relating to conflicts of interest and lobbying. It had noted in its last report that the need for clarification on these points was all the more pressing given that practice appeared to reveal diverging interpretations of these concepts among members of parliament and, in some quarters, a very restrictive view of conflicts of interest.
10. The Luxembourg authorities state that serious efforts have been made with regard to conflicts of interest and lobbying, with the texts implementing the Code now being much fuller and more illustrative in nature (see recommendations ii and iv). For example, forms and tables to break down income were provided to help members of parliament, thereby leaving no room for interpretation and facilitating the disclosure and monitoring process.
11. The explanations provided by parliamentarians during the debates on amendments to the Code of Conduct may be consulted for any problems in interpreting certain provisions because they contain all the necessary information and form an integral part of the Code. The debates were published and announced in the press. Any member of parliament with a query about the exact interpretation of a particular provision of the Code may therefore find the answer in explanatory memoranda and the records of the debates.
12. GRECO welcomes the clarifications on conflicts of interest and lobbying provided by the parliamentary committee's discussions on amending the Code of Conduct. It does, however, point out the difficulty entailed in finding this information, as the committee's meeting reports have to be consulted one by one. It urges the Luxembourg authorities to compile a summary of the outcomes of these discussions in a document to be appended to the Code of Conduct to clarify all its provisions in the manner of the 2018 implementing instrument. Easing access to this information would help members of parliament to comply with the Code.

¹ www.legilux.public.lu/leg/a/archives/2014/0201/a201.pdf#page=2

13. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

14. *GRECO had recommended that the declaration system be further developed in particular i) by including data which are sufficiently precise and pertinent, for instance on financial assets, debts and resources of parliamentarians; ii) by considering including information on assets of spouses and dependent family (it being understood that such information would not necessarily need to be made public).*
15. GRECO points out that this recommendation had been partly implemented. Notwithstanding the introduction of a declaration system applicable to all parliamentarians under the Code of Conduct for MPs and the introduction of an obligation to declare the special pension or temporary salary, the data to be declared regarding interests, assets and income are still largely vague and incomplete. Members of parliament opted to stick with the declaratory system modelled on that of the European Parliament and not revise and broaden their own declaration system. The second part of this recommendation had been taken into account following a series of consultations and discussions run since 2014, although GRECO had expressed regret at the MPs' decision not to extend the declaratory obligations to close relatives.
16. The Luxembourg authorities report that the Code of Conduct was amended with regard to MPs' disclosure of financial interests in response to criticism from GRECO. The changes include the following points.
17. The declaration must make it easier to establish MPs' financial situation prior to their election and during their term in office. In this regard, the first section of the declaration of interests now pertains to MPs' activities before taking office, while the second covers those since then.
18. To ensure greater transparency, the disclosure requirement was expanded to include non-trading partnerships, associations and groupings of communes linked to the exercise of MPs' other political offices and direct or indirect interests in companies and commercial partnerships. With regard to the latter, the declaration of direct or indirect interests was split into two parts for the sake of clarity: the first relating to any public policy repercussions and the second to MPs' significant influence on the affairs of the body in which they have declared a direct or indirect interest. Disclosure requirements now also cover old-age pensions and leave for political activities.
19. In response to a high level of demand from all sides, the income brackets were adjusted and a new bracket (zero) was added for political offices conducted without any financial remuneration. Income above €100 000 is now also broken down into a further two brackets: from €100 001 to €200 000 and above €200 000. Any occasional outside activities must now be declared, instead of only those for which more than €5 000 in total is paid each year. The Code also clearly states that taxable income is the only relevant income category for declarations.
20. The changes to the Code of Conduct took effect on 12 October 2021 and oblige all MPs to review their previous declarations and to amend them retroactively from when they took office.
21. GRECO welcomes the improvements made to the disclosure system, in particular, those adding a section on MPs' circumstances prior to their election and extending disclosure requirements to participation in companies, non-trading partnerships, associations, groupings of communes, old-age pensions and leave for political activities. As far as income is concerned, GRECO considers that in the Luxembourg

context, the adapted ranges are sufficiently precise and relevant to fulfil the transparency purpose of the declaration system.

22. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iv.

23. *GRECO had recommended the introduction in the Code of Conduct of rules on the way in which MPs should conduct themselves with third parties seeking to influence the work of the legislature.*
24. GRECO points out that this recommendation had been partly implemented. The Code of conduct devotes one of its rules to lobbying (Rule 5), stipulating that contact with third parties, other than at committee meetings, must take place outside the Chamber. MPs must disclose any contact they have with lobbyists, during debates in committee meetings or in writing, but only where such contact has a direct impact on a legislative text being discussed. The competent committee may decide to publish an opinion of an interest group. GRECO had deemed these improvements insufficient to render MPs' contact with third parties more transparent and more able to withstand influences driven by various interests. Successive efforts to regulate unofficial contact with third parties which does not directly concern the legislative process had not borne fruit.
25. The Luxembourg authorities indicate that the Chamber of Deputies introduced a transparency register² in December 2021 in Article 178a (Chapter 18a) of its Rules of Procedure. In order to ensure greater transparency of MPs' contacts with various spheres of influence, any extra-parliamentary person wishing to enter into organised contact with an MP in order to influence his or her legislative work or the Chamber's decision-making process must now be entered in this register. Without such registration, there can be no organised contact with Members for this person.
26. The register is public and can be consulted on the Chamber's website. It shall contain information on the name, legal form and name of the third party represented by the extra-parliamentary person.
27. Only members of the European Parliament, other state institutions or organisations representing local, municipal and inter-municipal authorities and professional chambers do not fall within the scope of the transparency register.
28. Article 5 of the Code of conduct for members, which is annexed to the Rules of Procedure and forms an integral part thereof, has also been adapted to take account of the entry into force of the transparency register. According to this article, all contacts organised between members and third parties referred to in Article 178a of the Rules of Procedure shall be subject to rules guaranteeing the transparency and publicity of such contacts. If they are not entered in the register in advance, members are deemed to refuse all contact with the third parties referred to. This obligation applies at all times and without distinction as to the place where contacts might take place – whether in the Chamber, in the offices of political groups, in places accessible to the public such as bars or restaurants or in private places.
29. MPs who find that prior registration has not occurred must inform those who seek to contact them of the obligation to register. The obligation to mention during debates or reports in committee contacts with third parties which may have a direct impact on legislative texts under discussion has been maintained.

²<https://www.chd.lu/wps/portal/public/Accueil/OrganisationEtFonctionnement/Organisation/RegistreTransparence>

30. GRECO welcomes the entry into force of the public transparency register and the updating of Article 5 of the Code of conduct for members. In particular, it is positive that all lobbyists and the majority of third parties wishing to influence parliamentary work and processes are covered by the transparency rules, irrespective of where contacts with MPs take place, and that members are obliged to refuse contacts with third parties not included in the register. Exceptions to the scope of the register are also compatible with the transparency objective of the recommendation.
31. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

32. *GRECO had recommended the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of Conduct for members of parliament.*
33. GRECO points out that this recommendation had been considered partly implemented. A new monitoring and sanctioning mechanism had been introduced in July 2014 to ensure compliance with the various provisions of the Code of conduct. It involved an independent advisory committee issuing recommendations on shortcomings reported by MPs and on the powers of the Speaker of the Chamber to take reasoned decisions and decide on sanctions.³ It provided for a range of sanctions and also the possibility of appeal. But GRECO had found that the measures taken, while positive developments, were still insufficient, in particular because the Code did not entrust the monitoring bodies with responsibility for checking the accuracy of declarations and no details were given regarding the means of parliamentary oversight. The Institutions and Constitutional Review Committee had recommended that the Chamber of Deputies be given the necessary means of oversight to detect false or inaccurate declarations, but its recommendations had not yet been followed up. In July 2018, it became possible for any citizen suspecting irregularities in an MP's declaration of financial interests to refer the matter to the Speaker of the Chamber. GRECO had welcomed this development but noted that it could not be a substitute for genuine proactive monitoring by the Chamber of Deputies itself, which was the only way of guaranteeing full and effective oversight.
34. The Luxembourg authorities report no progress in respect of the recommendation.
35. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges and prosecutors

36. Rather than addressing each recommendation in turn, the Luxembourg authorities report on the progress of legislative work relating to the setting up of a Supreme Judicial Council (CSJ), which has an impact on the implementation of all the recommendations regarding judges and prosecutors. Specific information is only provided for recommendation xiii, which will be dealt with separately below.

Recommendations vi, vii, ix, x and xiv.

37. *GRECO had recommended:*
- *that under the rules of the future National Judicial Council, the procedures for the promotion of the various categories of judges and public prosecutors, including*

³ The Conference of Committee Chairs initiates the disciplinary procedure against the Speaker of the Chamber and imposes sanctions for any wrongdoing.

access to senior functions of president or vice-president of a court and Principal State Prosecutor, should be reviewed and made more transparent, particularly through the use of objective criteria and periodic appraisal (recommendation vi);

- *that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits the risks for the general integrity of judges (recommendation vii);*
- *that it be clarified which of the provisions of the General Civil Service Regulations – on management of conflicts of interest or other matters relevant for the purposes of preventing corruption – are in force at present and in respect of which categories of justice posts, with a view to enforcing the applicable clauses of the regulations (recommendation ix);*
- *that the rules on incompatibilities and secondary activities be clarified and made more coherent in respect of all persons required to sit as judges or act as prosecutors (recommendation x);*
- *i) the future collegial body for the judiciary be involved in supervision and in disciplinary decisions concerning prosecutors; ii) that the disciplinary arrangements applicable to prosecutors, including the applicable sanctions, be defined more clearly (recommendation xiv).*

38. GRECO recalls that the recommendations relating to corruption prevention in respect of judges (recommendations vi, vii, ix and x) and recommendation xiv relating to corruption prevention in respect of prosecutors had been deemed to be partly implemented. GRECO had noted that Draft Law No. 7323 on the organisation of the Supreme Judicial Council (CSJ), tabled in the Chamber of Deputies on 15 June 2018, was a step towards complying with all these recommendations. However, there were still a number of points requiring clarification, in particular the assessment criteria for appointing and promoting the various categories of judges and prosecutors given that there was no periodic appraisal system for the judiciary – which GRECO found regrettable – and that interviews with candidates (recommendation vi) were merely optional. GRECO had also wished to consider, at the appropriate time, the practices of the future CSJ (recommendations vii, ix and x). Regarding clarification of the rules on incompatibilities and secondary activities (recommendation x), GRECO had urged the authorities to pursue their efforts in this regard. Lastly, the draft law addressed two parts of the recommendation concerning the disciplinary arrangements applicable to prosecutors (recommendation xiv). In the last compliance report, GRECO had taken note of the lack of progress in the Chamber of Deputies regarding Draft Law No. 7323, on which the setting up of the CSJ is dependent. It had also drawn the authorities' attention to the fact that in addition to establishing this institution, further steps would have to be taken to ensure that some of these recommendations were fully implemented.

39. The Luxembourg authorities note that on 6 June 2018, the Institutions and Constitutional Review Committee of the Chamber of Deputies adopted the parliamentary report on the proposal to amend and restate the Constitution (parliamentary document no. 6030). At the same time, the committee also laid down the future constitutional text concerning the National Judicial Council. The MPs adopted a report that marked the end of the debates on introducing a new Constitution. This report was the result of a political agreement reached with the broad support of MPs and in principle, concluded this work. Draft Law No. 7323, assessed by GRECO in a previous report, was tabled in the Chamber as part of this agreement. It mainly provided for setting up the CSJ, enshrining in law the independence of the Public Prosecution Service and modernising the disciplinary law of the judiciary.

40. At the beginning of summer 2019, a major opposition political party changed its position. This led to a stalemate and many statements being issued, but there was no longer any question of guaranteeing the Public Prosecution Service's independence from the executive. This new development was heavily criticised by GRECO, which downgraded recommendation xiii from "partly implemented" to "not implemented". These criticisms were picked up in the political sphere, triggering a great deal of reaction and debate.
41. By dispatch of 12 May 2020, the Speaker of the Chamber of Deputies submitted the bill to revise Chapter VI of the Constitution, tabled by some MPs on 5 May 2020, to the Council of State for opinion. This constitutional reform proposal forms part of the new strategy adopted by the Institutions and Constitutional Review Committee. As the Committee could no longer count on broad political consensus for a wholesale amendment as in the past, it would now revise the Constitution by stages and chapters according to priorities it had set.
42. It was decided to start by reforming the provisions relating to the functioning of the judiciary. The reform proposal includes most of the provisions of Draft Law No. 6030 on establishing a new Constitution. The main difference between the reform proposal and the text of the aforementioned draft law concerns the standing of the Public Prosecution Service (see recommendation xiii below).
43. At the end of 2020, the government commended the decision of the members of the Institutions and Constitutional Review Committee to revise the chapter on the justice system. The fact that the reform of the justice system was the first step in a comprehensive overhaul of the Luxembourg Constitution was also welcomed. The government did, however, point out a number of fundamental considerations with a view to ensuring compliance with the recommendations of international bodies such as GRECO.
44. In a first vote held in October 2021, the Chamber of Deputies passed the constitutional provisions on the functioning of the judiciary. The second vote must be held after expiry of a mandatory three-month period following the first vote.
45. As a result of a series of parliamentary amendments, the text of the CSJ draft law was divided into two parts. The first part relates to the composition, functioning and powers of the National Judicial Council. The second part deals with the regulations for judges and prosecutors, which are identical for both and relate to appointment criteria, ethics, functioning, disciplinary proceedings, relations between the Public Prosecution Service and the Ministry of Justice, retirement and secondments.
46. These two texts, which are largely based on the bills discussed above while being more precise and designed to be in line with GRECO's expectations, have been submitted for opinion to the various interested parties. They have therefore not yet been finalised and cannot be examined in detail in this report.
47. GRECO takes note of the latest developments concerning constitutional reform and the CSJ draft law. It also notes that the revision of the chapter in the Constitution on the justice system was approved in the first vote in the Chamber of Deputies. As this chapter provides, inter alia, for setting up a National Judicial Council, enshrining the independence of the judiciary and introducing regulations for judges and prosecutors, it is in line with all the recommendations. GRECO hopes to be able to review the complete provisions concerning the National Judicial Council and the regulations for judges and prosecutors in its next report.

48. GRECO concludes that recommendations vi, vii, ix, x and xiv remain partly implemented.

Recommendation xiii.

49. *GRECO had recommended that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service's decisions be completed.*

50. GRECO points out that this recommendation was considered not to have been implemented in its previous report. After several years of broad political consensus on the issue of the prosecution service's independence on the basis of which this recommendation could be considered partly implemented in previous compliance reports, the fact that there was no longer any consensus following an opposition party's change of position had led to this recommendation being downgraded to not implemented. GRECO had urged the Luxembourg authorities to reconsider their position on this issue.

51. The Luxembourg authorities now report, as discussed above, that political positions on the issue of the prosecution service's independence have again shifted and that the proposed constitutional reform of Chapter VI on the justice system was approved in a first vote in the Chamber of Deputies in October 2021. This draft provides for the addition of a second sentence to Article 87(2) of the Constitution: "The Public Prosecution Service shall bring prosecutions and enforce application of the law. It is independent in conducting individual investigations and prosecutions, without prejudice to the government's right to issue criminal policy guidelines".

52. Pursuant to the relevant procedural rules, a second vote on Chapter VI must be held after the mandatory three-month period following the first vote.

53. GRECO welcomes the fact that the Chamber of Deputies approved the draft revision of Chapter VI of the Constitution and in particular the proposed new wording of Article 87 (2) in its first vote. This new wording would therefore enshrine at the highest level the independence of the prosecution service in the conduct of prosecutions in individual cases, which is in line with the recommendation. It points out, however, that in order to fully implement the recommendation, the separation of powers as enshrined in the Constitution must be incorporated into the legislation on the functioning of the prosecution service, taking into account the shortcomings identified in the Evaluation Report.

54. GRECO concludes that recommendation xiii is partly implemented.

III. CONCLUSIONS

55. **In view of the foregoing, GRECO concludes that Luxembourg has made some progress in implementing the recommendations since the October 2020 Interim Compliance Report. Six of the fourteen recommendations contained in the Evaluation Report have now been satisfactorily implemented.** The eight other recommendations have now all been partly implemented.

56. More specifically, recommendations ii, iii, iv, viii, xi and xii have been implemented satisfactorily. Recommendations i, v, vi, vii, ix, x, xiii and xiv have been partly implemented.

57. With regard to MPs, the creation of a public transparency register on lobbying and the prohibition on MPs contacting third parties not on the register are positive, as are

the improvements to the declaration system for MPs. Discussions in a parliamentary committee provided some clarifications on conflicts of interest and lobbying, but GRECO considers that this information is not easily accessible and should therefore be compiled in a document appended to the Code of conduct for MPs. Lastly, no progress has been made with regard to the introduction of an effective system of monitoring and sanctions concerning breaches of the Code of conduct for MPs.

58. With regard to judges and prosecutors, GRECO welcomes the fact that the Chamber of Deputies approved the draft revision of Chapter VI of the Constitution, which would enshrine the independence of the prosecution service at the highest legal level. Full implementation of the recommendations remains pending, however, until the final adoption of this chapter and the setting up of the National Judicial Council, which has an impact on the recommendations regarding the promotion of members of the judiciary, management of the courts (and the prosecution service), the Council's role in determining and monitoring rules on ethics, and the disciplinary liability of members of the judiciary.
59. In the light of the above, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. It therefore decides not to pursue the application of Rule 32 with regard to those members who do not comply with the recommendations contained in the mutual evaluation report.
60. Pursuant to Rule 31 revised, paragraph 8.2 of the Rules of Procedure, GRECO invites the Head of the Luxembourg Delegation to provide a report on the measures taken to implement the outstanding recommendations (i.e. recommendations i, v, vi, vii, ix, x, xiii and xiv) as soon as possible but by 31 March 2023 at the latest.
61. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.