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FOURTH EVALUATION ROUND

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

SECOND *INTERIM* COMPLIANCE REPORT

REPUBLIC OF MOLDOVA

Adopted by GRECO at its 93rd Plenary Meeting
(Strasbourg, 20-24 March 2023)

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I. INTRODUCTION

1. This Second Interim Compliance Report assesses the measures taken by the authorities of the Republic of Moldova to implement the twelve outstanding recommendations issued in the Fourth Round Evaluation Report on the Republic of Moldova (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. [The Fourth Round Evaluation Report](#) on the Republic of Moldova was adopted at GRECO's 72nd Plenary Meeting (1 July 2016) and made public on 5 July 2016, following authorisation by the Republic of Moldova. [The Compliance Report](#) was adopted by GRECO at its 81st Plenary Meeting (on 7 December 2018) and made public on 24 July 2019. [The Second Compliance Report](#) was adopted at the 85th Plenary (21-25 September 2020) and made public on 13 October 2020. [The Interim Compliance Report](#) was adopted at GRECO's 89th Plenary Meeting (3 December 2021) and made public on 9 February 2022.
3. In the Interim Compliance Report, GRECO concluded that only six of the eighteen recommendations had been implemented and that this low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure and 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. GRECO asked the Head of delegation of the Republic of Moldova to provide a report on the progress in implementing the outstanding recommendations. The Situation report was received on 27 December 2022 and served, together with information submitted subsequently, as a basis for this Second Interim Report.
4. GRECO selected Azerbaijan and Portugal to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Elnur Musayev, on behalf of Azerbaijan and Mr António Delicado, on behalf of Portugal. They were assisted by GRECO's Secretariat in drawing up the Second Interim Compliance Report.

II. ANALYSIS

5. It is recalled that GRECO, in its Fourth Round Evaluation Report, addressed 18 recommendations to the Republic of Moldova. In the Interim Compliance Report, GRECO concluded that recommendations v, xi, xii, xiv, xvi and xvii had been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, iv, vii to x, xiii, xv and xviii had been partly implemented and recommendations ii, iii and vi had not been implemented. Compliance with the outstanding recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendation i

6. *GRECO recommended ensuring (i) that draft legislation, all amendments and all supporting documents as required by law are published in a timely manner and (ii) that adequate timeframes are followed to allow for meaningful public consultation and parliamentary debate, including by ensuring that the emergency procedure is applied only in exceptional and duly justified circumstances.*
7. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report on account of improvements regarding regular and transparent publications of parliamentary work, involvement of the civil society at the level of parliamentary committees, as well as openness to requests from citizens and media.

It however noted that the parliamentary website remained out of date and the unified e-Legislation portal was not operational.

8. The authorities of the Republic of Moldova now report that civil society organisations have continued to provide contributions to Parliament's legislative process, the majority of which have been either fully or partially considered by parliamentary standing committees. Amendments to draft laws after the first reading and before the final reading are duly published on Parliament's official website, in the legislative process module, under the section concerning draft legislative acts (www.parlament.md). The e-Parliament information system is currently being developed, and the new parliament's website will ensure better transparency and accessibility to information of public interest. The authorities are still working on identifying the most optimal solution that would allow e-Legislation to track the evolution of draft legislation. A report on the monitoring of the 11th legislature¹, covering the period from 26 July 2021 to 29 July 2022, has found that decision-making transparency is largely not respected. This has been manifested through the omission of the elaboration or publication of documents related to citizens' consultations, the disregard of some recommendations or expertise, and also the low rate of hearings and public debates organised by Parliament. Hearings or public debates were organised by standing committees only in respect of 9.2% of the total number of drafts examined. The report has also concluded that the structure of the current Parliament's webpage is outdated, its content does not sufficiently reflect the information of public interest, and the open data on the Parliament's activity is missing or cannot be made available, including due to the construction of the new webpage.
9. GRECO notes that the authorities have made efforts to publish amendments to draft legislation on Parliament's website. However, they also state that additional work is expected to fully comply with the requirements of this recommendation, notably regarding the updating of the website of Parliament, the operationality of e-Parliament and e-Legislation portals, the organisation of meaningful public consultations and proper consideration of the public's contributions.
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii

11. *GRECO recommended (i) adopting a code of conduct for members of Parliament and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within Parliament, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.*
12. GRECO recalls that this recommendation was not implemented in the Interim Compliance Report. The drafting of a Code of Ethics and Conduct of Parliamentarians, initiated in 2016, and the drafting of a Code of Parliamentary Rules and Procedures, initiated in 2018, was still pending.
13. The authorities now report that, by decision no. DGD/C-1 no. 4 of 14 March 2022, the President (Speaker) of Parliament has established a working group to draft the Code on the organisation and functioning of Parliament.
14. GRECO notes that, other than undertaking initiatives to draft various codes throughout the years (such as the Code of Ethics and Conduct of Parliamentarian, the Code of Parliamentary Rules and Procedures, and the Code on the organisation

¹ https://promolex.md/wp-content/uploads/2022/11/Sumar_Parliament_ENGL_final.pdf

and functioning of Parliament), the information provided has not been translated into any concrete actions to implement this recommendation.

15. GRECO concludes that recommendation ii remains not implemented.

Recommendation iii

16. *GRECO recommended introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.*
17. GRECO recalls that this recommendation was not implemented in the Interim Compliance Report, and no relevant provisions appeared in the draft Code of Parliamentary Rules and Procedures.
18. The authorities have reported no further progress.
19. GRECO concludes that recommendation iii remains not implemented.

Recommendation iv

20. *GRECO recommended ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.*
21. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. GRECO noted some positive developments: the independence and effectiveness of the National Integrity Authority (NIA), which had become operational and replaced the National Integrity Commission, was strengthened and its budget increased; rules governing the declaration of assets and personal interests were adopted; NIA developed its controls of the declarations of assets and personal interests of parliamentarians, judges and prosecutors, which controls had indeed resulted in administrative sanctions and, when appropriate, referrals to the criminal investigation bodies. However, the NIA remained understaffed, as only half of the staff expected was appointed.
22. The authorities now report that, following the rejection of three previous drafts by the Integrity Council between 2018-2021, NIA's strategy and activity plan is being drafted and its finalisation is contingent on the selection of its new President. The amendments to the law on NIA and the law on declaring assets and personal interests (law no. 130 of 7 October 2021 and Law no. 96 of 14 April 2022) have imposed the obligation on declarants to declare the real value of the immovable and movable property owned or acquired after 2018 and have broadened the competence of integrity inspectors to carry out or request to carry out property valuation on the basis of the market value. To date, 31 integrity inspectors have been employed out of 43, and competition for filling five other positions is ongoing².
23. The authorities also report that most declarations have been completed and submitted to the automated information system (e-Integrity). In 2021 NIA checked 1,247 annual declarations of assets and personal interests and initiated 46 verifications which targeted 9 MPs, 13 judges and 24 prosecutors. It found violations in respect of 10 MPs, 4 judges and 5 prosecutors. Five contravention reports were drawn up which led to the imposition of fines against 5 prosecutors. NIA made 17 referrals to the General Prosecutor's Office/Anti-corruption Prosecutor's Office

² <https://ani.md/ro/node/2774>

(GPO/APO) for the alleged commission of a crime by 9 MPs, 4 judges and 4 prosecutors. Between January and September 2022, the NIA checked 1,000 annual declarations and initiated 10 verifications in respect of 1 MP, 3 judges and 6 prosecutors. It found 13 violations in respect of 5 MPs, 4 judges and 4 prosecutors. It referred 8 cases to the GPO/APO and imposed no fines.

24. GRECO notes that certain legislative amendments have strengthened the role of integrity inspectors in verifying declarations of assets and interests, who have continued to verify declarations, draw up contravention reports, refer cases to the prosecutor's office and impose fines, as necessary. The e-Integrity system appears to have become operational. Be that as it may, GRECO regrets that the National Integrity Authority (NIA) remains understaffed and that it has operated in the absence of an institutional strategy since its inception. More tangible results are needed for this recommendation to be fully complied with.
25. GRECO concludes that recommendation iv remains partly implemented.

Recommendation vi

26. *GRECO recommended that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity do not hamper or prevent criminal investigations in respect of members of Parliament suspected of having committed corruption related offences.*
27. GRECO recalls that this recommendation was not implemented in the Interim Compliance Report. While some initiatives to amend Article 70 (3) of the Constitution were pending before Parliament, they aimed at making it possible to lift immunity without prior approval of Parliament, in order to detain, arrest, search or prosecute a parliamentarian, if s/he had committed passive or active corruption, abuse of powers, influence peddling, illicit enrichment and money laundering offences.
28. The authorities now report that, between December 2021 and July 2022, Parliament has accepted 16 requests submitted by the acting Prosecutor General for lifting the parliamentary immunity of three MPs who have been allegedly accused of, amongst other offences, corruption, illicit enrichment, money laundering, fraud, embezzlement and abuse of office. Pursuant to Article 143 of the Constitution, the proposal for amending Article 70 (3) of the Constitution expired and is deemed null and void as Parliament failed to pass the appropriate constitutional amendments within a year from the date when the initiative had been submitted.
29. GRECO notes that Article 70 (3) of the Constitution still prevents a full investigation against an MP from taking place, using searches or special investigative techniques, without his/her immunity being lifted (see paragraph 83 of the Evaluation Report). However, the authorities have demonstrated that 16 requests submitted by the acting Prosecutor General led to the lifting of parliamentary immunity of three MPs. GRECO takes this as a positive development which, together with the lifting of parliamentary immunity reported in previous compliance reports (see paragraphs 40 and 41 of the Second Compliance Report and paragraph 27 of the *Interim* Compliance Report), shows a different situation than the one described in paragraph 83 of the Evaluation Report where there had been only one case of the lifting of parliamentary immunity. In these circumstances, GRECO takes the view that this recommendation has been partly dealt with through this emerging parliamentary practice, while the Constitution remains unchanged.
30. Consequently, GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii

31. GRECO recommended (i) changing the composition of the Superior Council of Magistracy, in particular by abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General and by allowing for more diverse profiles among lay members of the Council, on the basis of objective and measurable selection criteria; (ii) ensuring that both judicial and lay members of the Council are elected following a fair and transparent procedure.
32. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report following constitutional amendments³ (which entered into force on 1 April 2022). The composition of the Superior Council of Magistracy (SCM) is to consist of six judges, representing all levels of the courts, and six lay members elected by Parliament, with experience in the field of law or other relevant fields, thus abolishing the *ex officio* participation of the Minister of Justice and the Prosecutor General. However, pending the adoption of subsequent legislation for defining objective and measurable selection criteria and the procedure for the election, appointment, and termination of the mandate of the members of the SCM, GRECO considered that the recommendation was partly implemented.
33. The authorities now report that, pursuant to Law no. 246 of 29 July 2022⁴ which brought about amendments to certain normative acts, including the Law No. 947/1996 on the SCM⁵, its membership is to include judges and lay members. SCM members serve a non-renewable term of six years. At least 4 of the lay members must have experience in law. In order to be elected as a lay member of the SCM, a person should have a high professional reputation, personal integrity, experience in the field of law or political sciences, economics, or psychology and for at least 10 years, not work, at the time of applying, within the legislative, executive, or judiciary authorities and not be politically affiliated. Lay members are to be selected openly and transparently by the Parliament's Standing Legal Committee for Appointments and Immunities (LCAI), based on a public competition. They are elected by a decision of the three-fifths of the elected MPs. The manner of organising the contest is established by Parliament. The competition consists of examining the files and hearing the candidates in a public session. The LCAI draws up reasoned opinions for each selected candidate and proposes their appointment to Parliament. If Parliament fails to elect lay members by a qualified majority after two unsuccessful attempts, they will be elected by a simple majority, if they obtain the positive opinion of a committee of independent experts, which will consist of: the People's Advocate (Ombudsman); a lawyer appointed by the Council of BAR Association; a judge appointed by the Plenum of the Supreme Court of Justice; a prosecutor appointed by the Superior Council of Prosecutors; and a member appointed by the President of the Republic of Moldova. Following a public interview, the committee of independent experts issues an opinion regarding each candidate remaining in the competition. Following a public interview, the committee will issue a positive opinion only if it is convinced that, as a member, the candidate will effectively contribute to the fulfilment of the SCM's mandate.
34. The authorities add that a judge for the position of a member of the SCM, should: have seniority as a judge of at least 2 years of work; have not been disciplinarily sanctioned or the limitation period for the disciplinary sanction should have expired;

³ https://www.legis.md/cautare/getResults?doc_id=127960&lang=ro

⁴ https://www.legis.md/cautare/getResults?doc_id=132980&lang=ro

⁵ https://www.legis.md/cautare/getResults?doc_id=132980&lang=ro

pass the pre-vetting integrity evaluation carried out by an (external) Evaluation (Pre-vetting) Commission for evaluating the integrity of candidates for the position of member in the self-administration bodies of judges and prosecutors. The General Assembly of Judges, as convened by the SCM, will elect their representatives in the SCM from among the candidates who have passed the pre-vetting evaluation⁶. In this connection, the authorities report that on 17 March 2023 Law no. 44/2023 amending the Law on the Organisation of the Judiciary concerning the calling of, and quorum required for, the General Assembly of Judges entered into force. The amending law provides that, in case it is impossible for the Superior Council of Magistracy to convene the General Assembly of Judges because of the expiry of the mandate of its members, the lack of quorum, or the declaration of a state of emergency, the President or interim President of the Superior Council of Magistracy will convene the General Assembly of Judges. If that position is vacant, the Minister of Justice will convene and open the General Assembly of Judges (the present Article 23² (2) states that the Superior Council of Magistracy will convene the General Assembly of Judges). In addition, if the General Assembly of Judges has not been held due to the lack of quorum, the next General Assembly may be convened within two weeks from the date of convening the previous one. The quorum required will be one third of the sitting judges (the present Article 23² (4) requires a quorum of the simple majority of all serving judges).

35. Moreover, the authorities submit that all candidates (both judges and lay persons) to the SCM will undergo a pre-vetting procedure to be carried out by an external Pre-vetting (Evaluation) Commission, with the possibility of lodging an appeal with the Supreme Court of Justice, in accordance with Law No. 26 of 10 March 2022⁷ on measures related to the selection of candidates for the position of members in the self-governing bodies of judges and prosecutors (the Pre-vetting Act). To date, only five judges, representing first-instance courts, have passed the pre-vetting procedure. Twenty-three judges have failed to pass the pre-vetting⁸, including three judges from courts of appeal and three from the Supreme Court of Justice. Several unsuccessful judges have lodged appeals with the Supreme Court of Justice, which has rejected two appeals to date⁹. As regards lay members, the Pre-vetting Commission has held a hearing in respect of seven candidates, while two candidates withdrew from the competition, two others did not submit the required documents in time and one candidate requested to be evaluated without participating in the hearing¹⁰. Also, on 14 February 2023 the Constitutional Court of the Republic of Moldova declared unconstitutional certain parts of Article 14 (8) of the Pre-vetting Act. The court found that, under the contested provision, the Supreme Court of Justice's judicial review was limited only to matters of the substance of decisions given by the Pre-vetting Commission, without covering any procedural issues. The impugned provision did not allow unsuccessful candidates to seek a resumption of the pre-vetting if the procedure before the Pre-vetting Commission was found to have been vitiated by serious procedural defects.
36. Lastly, the authorities provide that, prior to the approval by the Government of certain draft laws introducing a restructuring of the Supreme Court of Justice and an

⁶ The General Assembly of Judges was convened on 17 March 2023. The meeting was adjourned to 28 April 2023 without electing any SCM members from amongst the five judges who had passed the pre-selection process.

⁷ <https://vetting.md/wp-content/uploads/2023/02/Law-26-updated.pdf>. The draft law was subject to review by a joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe ([https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)046-e))

⁸ <https://vetting.md/en/candidates/>

⁹ http://jurisprudenta.csj.md/search_col_civil.php?id=70713 and http://jurisprudenta.csj.md/search_col_civil.php?id=71098

¹⁰ <https://vetting.md/en/seven-non-judicial-candidates-for-positions-in-the-scm-were-heard-by-the-pre-vetting-commission-the-decisions-to-follow/>. Three lay members have reportedly passed the pre-selection process.

external evaluation (vetting) for its judges¹¹, 20 judges have resigned from the Supreme Court of Justice which currently operates with only five sitting judges¹².

37. GRECO welcomes again the new composition of the Superior Council of Magistracy (SCM) which now consists of six judges and six lay members. The amended law on the SCM has laid down selection criteria that lay members and judge members are to meet in order to be elected to the SCM. Lay members can have experience in law or another relevant field, thus allowing for the possibility of having diverse profiles among lay members. Even though it would be recommended to have details about the transparency of the competitive procedure for lay members provided for by law, GRECO considers that the procedure contains certain safeguards for ensuring the transparency of the conduct of the competition. Such matters are described in the Parliament's Standing Legal Committee for Appointments and Immunities (LCAI) regulations on the organisation and conduct of competition for the selection of the candidate for the post of a member of the SCM, which provide in particular that experts in law, public institutions, international organisations working in the field of law and representatives of civil society or any other interested party may take part in the interview of candidates which are public. Also, the LCAI draws up reasoned opinions, which are public. Judge members are to be elected by the General Assembly of Judges (among peers). Having said that, GRECO is seriously concerned about the additional pre-vetting process that applies to candidates to the SCM. It also refers to a recent Constitutional Court decision declaring parts a specific provision of the Pre-vetting Act unconstitutional. It would appear that the pre-vetting of candidates to SCM and the proposed vetting of the Supreme Court of Justice judges currently present obstacles to filling the vacant posts to the SCM with representatives from all court levels. GRECO is further concerned that the amendments to the Law on the Organisation of the Judiciary (which entered into force on 17 March 2023) provide the Minister of Justice with more control over the judges as they give him/her the power to convene the General Assembly of Judges. The amendments appear to be steps going in the wrong direction and contradict this recommendation.
38. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii

39. *GRECO recommended that decisions of the Superior Council of Magistrates be adequately reasoned and be subject to judicial review, both on the merits of the case and on procedural grounds.*
40. GRECO recalls that this recommendation, which concerns decisions given in recruitment, career and disciplinary matters, was partly implemented in the Interim Compliance Report. A mechanism for judicial review of SCM decisions had been introduced, together with some requirements for the SCM to motivate its decisions regarding judicial appointments in case it did not follow a recommendation of the Selection Board. However, the existing practice had to evolve so that SCM's decision on recruitment, career and disciplinary matters included systemic and adequate reasoning.
41. The authorities now refer to the 2022 statutory amendment brought about by Law No. 246 of 29 July 2022(see paragraph 33 above), according to which the amended

¹¹ The draft laws were approved at the Government's meeting of 7 March 2023 (see <https://gov.md/ro/content/sedinta-guvernului-din-7-martie-2023-ora-1000-0>) and they were subject to a joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe (see [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2022\)024-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2022)024-e)). The first reading of the draft laws took place in Parliament on 16 March 2023.

¹² <http://www.csj.md/index.php/despre-curtea-suprema-de-justitie/mass-media-si-relatiile-cu-publicul/2130-demisii-ale-judecatorilor-curtii-supreme-de-justitie>

section 24 states that the SCM adopts decisions with the open vote of the majority of members present, except for the case of proposals on the appointments of candidates to the position of judge, court president or court deputy president. The SCM reasoned decision is drawn up in no more than 30 days and be signed by the chairman of the meeting. The decision will state the number of votes cast in favour of and against the decision. If a member of the SCM has a dissenting opinion, it is immediately announced, reasoned and published together with the decision of the SCM. The amended section 25 stipulates that SCM decisions can be challenged before the Court of Appeal on both the merits and procedural grounds. According to the provisions of Article 191 (3) of the Administrative Code, the Chisinau Court of Appeal examines, in the first instance, applications lodged against SCM decisions. The decisions of the Court of Appeal can be appealed against to the Supreme Court of Justice. In practice, the SCM has given reasoned decisions in a number of disciplinary cases (see paragraph 57 below).

42. GRECO welcomes the statutory amendments providing for the obligation on SCM to motivate and publish its reasoned decisions, including dissenting opinions. It also notes that SCM decisions are subject to judicial review on the merits and procedural grounds. GRECO is pleased to note that SCM has issued reasoned decisions in disciplinary cases. However, for this recommendation to be fully complied with, these amendments should be translated, in practice, with the adoption of reasoned decisions by the SCM regarding matters pertaining to the recruitment and career of judges. No such decisions have been adopted, because the Judges' Selection and Career Board of the SCM, which has only two out of seven members, has not had a meeting since October 2020¹³.
43. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix

44. *GRECO recommended (i) that appropriate measures be taken, with due regard to judicial independence, in order to avoid the appointment and promotion to judicial positions of candidates presenting integrity risks; and (ii) abolishing the five-year probation period for judges.*
45. GRECO recalls that this recommendation was partly implemented in the previous compliance report. GRECO noted that the first part of the recommendation was partly implemented as the authorities envisaged an external assessment (vetting) of all judges and prosecutors. The second part of the recommendation was implemented satisfactorily as the constitutional amendments had abolished the five-year initial probation period for judges.
46. The authorities now report that law no. 246 of 29 July 2022 has introduced a number of amendments to certain normative acts. Thus, under the amended Law No. 544/1995 on the Status of Judge, judges are appointed from among the candidates selected following a competition, by the President of the Republic of Moldova, upon the proposal of the SCM. Judges are appointed until reaching the age limit of 65. The judge will enjoy only functional immunity. The promotion of the judge to the position of judge at a higher court happens only with her/his consent, through competition, at the proposal of the Superior Council of the Magistracy, by the President of the Republic of Moldova. The transfer of the judge to a court of the same level or a lower court takes place only with her/his consent, by the SCM. The appointment of a judge as court president or vice-president of the court is done only with her/his consent, by decision of the SCM, based on the results of a competition.

¹³ <https://www.csm.md/ro/organe-subordonate/colégiul-pentru-selectie-si-cariera-judecatorilor/sedinte-cscj.html>

Under the amended Law No. 789/1996 on the Supreme Court of Justice, the judges of the Supreme Court of Justice are appointed by the President of the Republic of Moldova, upon the proposal of the SCM, within 30 days from the date of receipt of the respective proposal. The President of the Republic will inform the SCM in case of finding the incompatibility of a candidate for the position of judge of the Supreme Court of Justice with that position, the existence of one or more valid disciplinary sanctions or the violation of the legal procedures for his/her selection and promotion. The President of the Republic will also inform the SCM in the event of the appearance of circumstances that require an additional examination. The President of the Republic of Moldova examines the repeated proposal of the Superior Council of Magistracy within 30 days from the date of its receipt.

47. The authorities further provide that a draft law on the external assessment (vetting) of certain categories of sitting judges and prosecutors has been submitted to the Venice Commission for an opinion. The vetting will consist of verifying the ethical and financial integrity of the categories concerned. On 14 March 2023 the Venice Commission published its opinion¹⁴, noting that the draft law contained certain safeguards and that several important issues related to the substantive grounds for the vetting needed to be further addressed
48. GRECO welcomes the increased role of the SCM, in line with its constitutional role as guarantor of the independence of the judicial authority under Article 121 of the Constitution, in the process of appointment, promotion and transfer of judges and court presidents and vice-presidents. That said, the fact remains that the Republic of Moldova envisages implementing an external assessment of the ethical and financial integrity of certain categories of judges and prosecutors (vetting process). The draft law was the subject of an opinion by the Venice Commission. As the vetting process has not been put in place yet, GRECO can only assess the first part of the recommendation as partly implemented. However, GRECO recalls that such vetting should be proportionate and compatible with the requirements of judicial independence and, therefore, that the integrity of judges should be tested within the framework of clear, predictable, comprehensive and consistently applied rules. The authorities are further encouraged to ensure that the legislative framework and operational capacity are in place to replace those judges and prosecutors who fail the vetting, or choose not to undergo it, with well-qualified candidates whose integrity is checked prior to appointment, also in a standards-compliant procedure.
49. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x

50. *GRECO recommended that additional steps be taken (i) to ensure that cases are adjudicated without unjustified delays and (ii) to increase the transparency and accessibility of information available to the public on judicial activity.*
51. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. There were positive trends in the statistics, which seemed to indicate a reduction in the length-of-court proceedings. However, GRECO could not ascertain that additional steps had been taken as regards the legal framework and/or the court practice to adjudicate judicial cases in a reasonable time and to increase the transparency and accessibility of information available to the public on judicial activity.
52. The authorities now report the following statistics:

¹⁴ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)005-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)005-e)

Cases/files	December 2021 - September 2022				
	Adjudicated	Pending	Pending cases of more than 12 months	Pending cases of more than 24 months	Pending cases of more than 36 months
Civil	78400	53863	5466	2016	3636
Criminal	10414	69686	3200	1450	1974
Contravention	16642	5774	-		-

53. GRECO understands that, under Moldovan law, there exists a remedy to expedite the delayed proceedings and/or seek compensation in case of unjustified delays. Be that as it may, GRECO notes that, on the basis of the statistics alone, it is unable to make any conclusive observations about the length-of-court proceedings. For example, there appears to be a positive trend as regards the overall number of cases pending for more than 12 months (11,703 cases pending by the end of 2020 and 8,666 pending cases by September 2022). However, the situation goes in the opposite direction as regards the total number of cases pending for more than 24 months (2,588 cases pending by the end of 2020, and 3,466 cases pending by September 2022). Further, the resignations of 20 judges of the Supreme Court of Justice (see paragraph 36 above), the proposed vetting process of judges and the failure of the SCM's Judges' Selection and Career Board to meet since 2020 to decide on the selection of new candidates to join the judiciary may lead to further delays in the proceedings. Moreover, the authorities have provided no updated information regarding additional steps taken, whether in the legal framework or the court practice, to reduce the length of proceedings.
54. GRECO concludes that recommendation x remains partly implemented.

Recommendation xiii

55. *GRECO recommended that the legal and operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency.*
56. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. Statutory amendments to the Law on the Disciplinary Liability of Judges (LDLJ) provided the definition of "intent" and "gross negligence", reinforced the competences of Judicial Inspectors, introduced the possibility of appealing against the Judicial Inspectorate's decisions rejecting a complaint to the Disciplinary Board, and provided for the publication of decisions on disciplinary matters. GRECO noted that tangible results remained to be shown regarding the adequate reasoning of decisions and the adoption of amendments to various laws to improve the framework of the disciplinary liability of judges.
57. The authorities now report that, by virtue of Law no. 246/2022, amendments were brought about to Law no. 178/2014 on the Disciplinary Liability of Judges (LDLJ). Thus, the Disciplinary Board is to be composed of four judges and three lay members (instead of nine: five judges and four lay members). Judge members are elected by secret ballot of the General Assembly of Judges, provided that they have effectively worked as a judge for at least two years. The judge candidate who obtains the highest number of votes is considered elected. The quorum required for the Disciplinary Board meeting is two-thirds of its members. Admissibility panels are composed of three members of the Disciplinary Board, one of whom must be a judge. The reasoned

decisions of the plenary of the Disciplinary Board are published on the SCM's website. In practice, the SCM has given reasoned decisions in several disciplinary cases¹⁵

58. Also, the authorities indicate that by virtue of Law no. 5 of 2 February 2023¹⁶, which will come into force on 18 April 2023, additional amendments were introduced, which concern, *inter alia*: the repeal of two disciplinary offences¹⁷ and the amendment of two others under Article 4 of LDLJ; the consideration of personal circumstances, under Article 7 (2) of LDLJ, in the imposition of a disciplinary sanction; the criteria for declaring a complaint inadmissible under Article 20 (2) of LDLJ; the procedure for carrying out the verification of a complaint under Articles 23-26 of LDLJ and the procedure before Admissibility Panels under Articles 27-29 of LDLJ; and the right to appeals against SCM decisions on disciplinary measures to the Supreme Court of Justice.
59. GRECO notes that this recommendation requires the revision of the legal and operational framework to strengthen the objectivity, efficiency and transparency of the disciplinary liability of judges. In this connection, it welcomes that the SCM has adopted reasoned decisions in a number of disciplinary cases which have become public. The composition of the Disciplinary Board has been reduced to seven members, most likely to facilitate the conduct of efficient meetings. The Law on the Disciplinary Liability of Judges has been further amended by deleting two broad disciplinary offences, clarifying certain aspects of the procedure and restoring the right to appeal against SCM decisions directly to the Supreme Court of Justice. These are steps going in the right direction. That said, as described in the Evaluation Report (paragraphs 133-135¹⁸), more determined action is required, in law and practice, to strengthen the objectivity, efficiency and transparency of the disciplinary liability of judges. The new SCM is expected to bring the existing regulations in line with the newly introduced statutory amendments.
60. GRECO concludes that recommendation xiii remains partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xv

61. *GRECO* recommended that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the *ex officio* participation of the Minister of Justice and the President of the Superior Council of Magistracy.

¹⁵ See, for example, SCM's decisions in the following cases: <https://www.csm.md/files/Hotaririle/2020/27/320-27.pdf>, <https://www.csm.md/files/Hotaririle/2022/05/51-5.pdf>, <https://www.csm.md/files/Hotaririle/2022/02/13-2.pdf>, <https://www.csm.md/files/Hotaririle/2021/22/222-22.pdf> and the reasoned dissenting opinion <https://www.csm.md/files/Hotaririle/2020/27/320-27-opinia.pdf>

¹⁶ https://www.legis.md/cautare/getResults?doc_id=135622&lang=ro

¹⁷ Disciplinary conduct regarding "the judge's action in the administration of justice that reveal gross and evident professional incompetence" and "failure to perform, or a late or inadequate performance of, a job duty without good reason, if this directly infringed the rights of a case participants or other individuals" were repealed.

¹⁸ Disciplinary offences, such as "the adoption of a court decision that, intentionally or by gross negligence, violates the fundamental rights and freedom of individuals", "the violation of mandatory rules in administration of justice" or "other actions affecting the honour or professional integrity or prestige of justice to such an extent that they affect trust in justice", were noted to be general (para. 134). The disciplinary mechanism, which presently involves five different entities vested with disciplinary powers (the Judicial Inspection, Admissibility Panels, the Disciplinary Board, the Superior Council of Magistracy, and the Supreme Court of Justice) could be simplified (para. 133). In addition to publishing the SCM's decisions, statistics on disciplinary cases and sanctions imposed could be made public (para. 135).

62. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. Pursuant to statutory amendments enacted in 2021, the composition of the SCP had been limited to 12 members (instead of 15), thus excluding the Prosecutor General, the President of the Bar Association, and the Head Prosecutor of the Autonomous Region of Gagauzia, and reducing the age limit to 65. However, GRECO regretted that both the Minister of Justice and the President of the Superior Council of Magistracy remained *ex officio* members of the Superior Council of Prosecutors (SCP).
63. The authorities of the Republic of Moldova now report that, further to amendments¹⁹ to the Law on the Prosecutor's Office, the Superior Council of Prosecutors will consist of 13 members (instead of 12): four *ex officio* members (namely, the President of the SCM, the Minister of Justice, the People's Advocate (Ombudsman) and the Prosecutor General), five members elected by the General Assembly of Prosecutors (one member from the Prosecutor General's office and four members from among the specialised and regional prosecutor's offices) and four members elected by competition from among the civil society appointed by the different branches of powers and institutions (one from the President of the Republic, one from Parliament, one from the Government and one from the Academy of Sciences of the Republic of Moldova).
64. The authorities further provide that on 3 March 2023 the Ministry of Justice has announced additional draft amendments²⁰ to the Law on the Prosecution Service, according to which the *ex officio* membership of the Minister of Justice, the President of the SCM and the Ombudsman in the SCP will be abolished, which will consist of 10 members, including the Prosecutor General who will sit *ex officio*.
65. GRECO notes that the proposed draft amendments to the Law on the Prosecution Service, which envisage abolishing the *ex officio* membership of the Minister of Justice and the President of the Superior Council of Magistracy in the Superior Council of Prosecutors, are positive steps going in the right direction. Pending the passage and entry into force of those draft amendments, this recommendation cannot be regarded as more than partly complied with.
66. GRECO concludes that recommendation xv remains partly implemented.

Recommendation xviii

67. *GRECO recommended that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors.*
68. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. GRECO noted that the system for the disciplinary liability of prosecutors was operational and that the decisions on disciplinary liability were published on the website of the Disciplinary and Ethics Board. However, the legal framework had not been amended yet.
69. The authorities of the Republic of Moldova now report that on 3 March 2023 the Ministry of Justice has made available for public consultation draft amendments²¹ to the Law on the Prosecution Service, according to which (i) certain disciplinary

¹⁹ [Law no. 280 of 6 October 2022](#), in force since 10 October 2022.

²⁰ <https://justice.gov.md/ro/content/proiectul-de-lege-pentru-modificarea-unor-acte-normative-imbunatatirea-mecanismului-de>

²¹ <https://justice.gov.md/ro/content/proiectul-de-lege-pentru-modificarea-unor-acte-normative-imbunatatirea-mecanismului-de>

offences will be clarified and amended and (ii) the Prosecutors' Inspection will become an independent authority, to be composed of 6 inspectors. The tasks of the Prosecutors' Inspection will be *inter alia* to examine complaints that allegedly constitute disciplinary misconduct and present the findings to the Disciplinary and Ethics Board and the SCP. The amendments further intend to regulate the disciplinary procedure instituted against inspectors. Decisions of the Disciplinary and Ethics Board have been published on the SCP website and the statistics of the Disciplinary and Ethics Board for 2022 are as follows: it commenced 39 disciplinary procedures in respect of 35 prosecutors and examined 162 appeals against decisions of the Inspection; it adopted 136 decisions (25 decisions on disciplinary procedures in respect of 25 prosecutors and 111 decisions regarding appeals against decisions of the Inspection).

70. GRECO takes note of the figures provided by the authorities, and of the proposed draft amendments which intend to bring about changes to certain disciplinary offences and to establish the Prosecutors' Inspection as an independent authority. In GRECO's view, they would contribute to the implementation of this recommendation and the Action Plan of the Strategy on ensuring the independence and integrity of the justice sector for 2022-2025, passed by Law no. 211 of 6 December 2021²².
71. GRECO concludes that recommendation xviii remains partly implemented.

III. CONCLUSIONS

72. **GRECO concludes that the Republic of Moldova has now implemented satisfactorily or dealt with in a satisfactory manner six of the eighteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, ten have been partly implemented and two have not been implemented.
73. More specifically, recommendations v, xi, xii, xiv, xvi and xvii have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, iv, vi, vii to x, xiii, xv and xviii have been partly implemented and recommendations ii and iii have not been implemented.
74. Concerning members of parliament, other than an emerging parliamentary practice to lift the immunity of MPs, progress in implementing the outstanding recommendations is rather absent. A code of conduct for parliamentarians remains to be adopted, including rules for various situations of conflicts of interest and for interactions with third parties/lobbyists. More robust efforts should be made to update the Parliament's website with information on draft legislation and to organise meaningful public consultations and ensure a proper consideration of the public's contributions. The National Integrity Authority continues to be understaffed and in need of an institutional strategy.
75. As far as judges are concerned, the removal of the *ex officio* membership of the Minister of Justice and the Prosecutor General from the Superior Council of Magistracy (SCM) - which is an important step in itself, the establishment of criteria for the election of judges and lay members as SCM members, the statutory obligation on SCM to reason all its decisions, the adoption of reasoned decisions in disciplinary matters and certain amendments to the disciplinary procedure of judges are positive developments. However, it should be underlined that the pre-vetting process of

²² https://www.legis.md/cautare/getResults?doc_id=129241&lang=ro. Specific objective no. 1.2.4 of the Action Plan of the Strategy provides that legal amendments on excluding the Inspection of Prosecutors from the subordination of the General Prosecutor's Office, by granting it the status of an autonomous specialized body of the Superior Council of Prosecutors, had to be drafted and adopted by the end of 2022.

candidates to the SCM, the proposed vetting of certain categories of judges, as well as the increased role of the Minister of Justice in convening the General Assembly of Judges negatively affect the implementation of certain outstanding recommendations and may reverse the achievements accomplished to date.

76. As regards prosecutors, draft amendments to abolish the *ex officio* membership of the Minister of Justice and the President of the SCM in the Superior Council of Prosecutors and to review and strengthen the legal framework for disciplinary liability of prosecutors are underway. The authorities are encouraged to adopt the proposed amendments and give effect to the implementation of the outstanding recommendations.
77. In view of the above, GRECO concludes that the current low level of compliance with the recommendations remains “globally unsatisfactory” in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to continue 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 asks the Head of delegation of the Republic of Moldova to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i-iv, vi-x, xiii, xv and xviii) as soon as possible, however – at the latest – by 31 March 2024.
78. In addition, in accordance with Rule 32, paragraph 2, ii (b), GRECO invites the President of the Statutory Committee to send a letter to the Permanent Representation of the Republic of Moldova to the Council of Europe drawing the attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
79. Finally, GRECO invites the authorities of the Republic of Moldova to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.