FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

LUXEMBOURG

Adopted by GRECO at its 68th Plenary Meeting
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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the Luxembourg authorities to implement the recommendations issued in the Fourth Round Evaluation Report on Luxembourg, which was adopted at GRECO's 60th plenary meeting (21 June 2013) and made public on 1 July 2013, following authorisation by Luxembourg (Greco Eval IV Rep (2012) 9E). GRECO's Fourth Evaluation Round deals with corruption prevention in respect of members of parliament, judges and prosecutors.

2. As required by GRECO's Rules of Procedure, the authorities of Luxembourg submitted a Situation Report on the measures taken to implement the recommendations. This report was received on 23 January 2015 and served, together with the information appended thereto or submitted subsequently by the national authorities, as a basis for the Compliance Report.

3. GRECO selected 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, expert adviser to the Federal Office of Justice, on behalf of Switzerland, and Mr Georgi RUPCHEV, on behalf of Bulgaria. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 14 recommendations to Luxembourg in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that i) as intended with the current draft code of conduct, a set of ethical rules and standards is 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.*

7. The Luxembourg authorities have informed GRECO that the Code of Conduct for Members of Parliament relating to financial interests and conflicts of interest was adopted by the Chamber of Deputies on 16 July 2014 by 58 votes for and 2 against. This code is incorporated under Article 167 of the (internal) Rules of Procedure of the Chamber of Deputies.[1] Its provisions are set out in Appendix 1 to the Rules of Procedure. These provisions entered into force with the ordinary session opened on 14 October 2014.

[1] "**Art. 167.-** Members shall comply with the provisions of the Code of Conduct for Members of Parliament relating to financial interests and conflicts of interest, as set out in the appendix to the Rules, of which it forms part.", cf. publication in the official gazette, Memorial A No. 201 of 29 October 2014, www.legilux.public.lu/leg/a/archives/ 2014/0201/a201.pdf#page=2 .

8. Concerning the second part of the recommendation, so as to reinforce consistency between the provisions laying down guiding principles (Article 1) and those concerning members' main duties (Article 2) and with a view to clarifying the rules, both articles have been supplemented by a sub-paragraph c). In the case of Article 1, this new sub-paragraph c) provides clarifications for the guidance of members who are intervening on behalf of a person in one way or another. According to the code, such an intervention is possible solely on the basis of the beneficiary's rights or merits. The wording adopted draws on the French National Assembly's code of ethics, which contains a virtually identical provision. Concerning the list set out in Article 2, the new sub-paragraph c) refers to the provisions of Article 246 of the Criminal Code relating to trading in influence.[2] This useful clarification is intended as a response to the evaluation team's criticism that Article 1 can be assumed to be restricted to "financial interests (which excludes appointments, the award of honours, favours, or the provision of insider information, for instance), while Article 2 appears broader in scope and mentions other rewards". According to Members of Parliament, the definition of a conflict of interest is generally considered to be sufficiently broad to encompass a whole series of events and situations. The Institutions and Constitutional Review Committee and the Committee on Rules of Procedure, who drew up the code, adopted the definition applied by the European Parliament, whose code of conduct served as a general basis for the code of the Chamber of Deputies.[3]

9. The Code of Conduct was the subject of a proposed amendment to the Rules of Procedure of the Chamber of Deputies, submitted for analysis to the Committee on Rules of Procedure,[4] which adopted a report followed by a supplementary report in July 2014. Apart from the text of the code, this document contains an explanatory memorandum and a commentary on the articles, providing a whole range of clarifications, which will undoubtedly be useful for the application of the code's operative provisions. The same applies to the two reports by the Committee on Rules of Procedure.

10. Further clarifications on the proper application of the code may also be issued by the Bureau of the Chamber of Deputies under Article 9 of the code. For lack of tangible examples, the members considered that it was not easy to determine or predict which matters might pose problems in future and necessitate the adoption of implementing measures. In the same spirit, in respect of the rules applicable to gifts and other benefits (Article 6, paragraph 4) the code provides that it may be necessary to clarify the exact scope of the provisions through implementing measures to be taken by the Bureau.

11. Moreover, in their report on the code's provisions, submitted to the Chamber of Deputies with a view to its adoption, the members of the Committee on Rules of Procedure deemed it helpful that, pursuant to Article 9 of the code, the Bureau of

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[2] Criminal Code – "**Art. 246**. (L. 13 February 2011) A penalty of five to ten years' imprisonment and a fine of between EUR 500 and EUR 187 500 shall be incurred by persons exercising public authority and other public officials, law enforcement officials and persons performing public duties or holding elective public office who solicit or receive, without entitlement, directly or indirectly, for themselves or for anyone else, offers, promises, gifts, presents or any advantage, or who accept an offer or promise thereof: 1. Either for performing or refraining from performing an act in the exercise of their functions, role or mandate or facilitated thereby; 2. Or for abusing their real or supposed influence to obtain from a public authority or administration distinctions, appointments, contracts or any other favourable decision."

[3] The European Parliament's Code of Conduct (2011/2174) (REG) provides "A conflict of interest exists where a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member. A conflict of interest does not exist where a Member benefits only as a member of the general public or of a broad class of persons."

[4] Parliamentary Document No. 6691 – Proposal to amend the Rules of Procedure of the Chamber of Deputies with a view to introducing a Code of Conduct for Members of Parliament relating to financial interests and conflicts of interest tabled on 30.05.2014: www.chd.lu/wps/PA_RoleEtenduEuro/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/115/399/131948.pdf

the Chamber of Deputies should produce a guide intended to make it easier for members to draw up their declarations of interests. Concerning the interpretation of the code's provisions, the Chamber may draw on the European Parliament's practical experience. Provisions must always be read and interpreted in the spirit of the Code of Conduct, which is aimed at either preventing conflicts of interest or, where a conflict of interest exists, determining the rules that will enable a rapid, transparent solution. Lastly, the Luxembourg authorities indicate that the Members of Parliament will not fail to conduct an initial review once the Code of Conduct has been implemented. This will necessarily cover any problems of interpretation and application to which the code has given rise. In this context, the guidance on the interpretation and implementation of the code given by the Advisory Committee on Members' Conduct, established under Article 7 of the code, could be very useful. While this committee is admittedly seized of an issue at a member's own request, the fact nonetheless remains that the tasks assigned to it – publishing a report on its work, seeking advice from experts and assessing alleged breaches – will permit it to carry out the review and afford a framework for any further clarifications.

12. GRECO welcomes the adoption, in July 2014, of the Code of Conduct for Members of Parliament whose wording – apart from taking into account many considerations underlying the Evaluation Report of June 2013 – would seem from various technical standpoints to be more coherent than the draft which existed at the time of the adoption of the Evaluation Report. The first branch of the recommendation has therefore been implemented. Concerning the second branch, the code governs all integrity-related issues,[5] but is characterised by an economy of language, as mentioned in the Evaluation Report. GRECO welcomes the fact that Article 9 of the code provides for the adoption of an implementing instrument by the Bureau. For lack of such an instrument, GRECO cannot conclude that this part of the recommendation has been acted upon. The extra time that will lapse until the next Compliance Report should permit the necessary hindsight and the Luxembourg authorities already plan to conduct a review. As the Evaluation Report pointed out, an implementing instrument will make it possible to provide various clarifications and examples, whether concerning declaratory obligations or relating to the functioning of supervision or to certain concepts inherent in the code. For instance, the concept of "reward" in Article 2, a "personal" conflict of interest in Article 3 (which must not be strictly confined to a member, but should also concern his or her family) and gifts or similar benefits in Article 6 and the situations concerned (see also paragraph 22 below).

13. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

14. *GRECO recommended that the declaration system be further developed in particular i) by including data which is 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).*

[5] For the instrument in force, cf. www.legilux.public.lu/leg/a/archives/2014/0201/a201.pdf#page=2. It includes the following provisions: Article 1: general principles (disinterest, integrity, primacy of the public interest, and so on); Article 2: main duties of members (prohibition of agreements in the interests of certain persons, prohibition on advantages in exchange for exerting an influence, reference to Article 246 on trading in influence); Article 3: management of conflicts of interest (avoiding them or otherwise reporting them in writing to the President, possibility of obtaining confidential advice from the advisory committee established under Article 7); Article 4: mechanism for declaring members' financial interests; Article 5: rules on lobbying; Article 6: gifts and similar benefits; Article 7: Advisory Committee on Members' Conduct; Article 8: procedure in the event of a breach; Article 9: implementing instrument to be adopted by the Bureau; Article 10: entry into force and transitional provisions.

15. The Luxembourg authorities indicate that, during five working meetings held between February and May 2014, the Institutions and Constitutional Review Committee of the Chamber of Deputies discussed a possible extension of the existing declaration system for parliamentarians. A majority of the committee's members in the end came out in favour of retaining a system modelled on that provided for under the European Parliament's code, which in particular makes no specific provision for a more extensive declaration of assets. To seek a compromise, the Chair of the committee then proposed that the members consider the possibility of an obligation to declare assets at the beginning and the end of the parliamentary mandate, along the lines of the obligation existing in France for example, but this proposal was also rejected by a vast majority of the members on grounds linked to the principle of equal treatment (considering that they could not be made subject to stricter obligations than other categories of individuals, particularly members of the Government), respect for the privacy of parliamentarians and their families and the rights of the family in the broad sense. The members also noted that there was a tendency to extend the scope of these declarations in other countries, but it was not clear how such an extension could offer additional guarantees of detecting cases of abuse and possibly even corruption by a Member of Parliament. Concerning the first part of the recommendation, the members nonetheless agreed that Article 4 of the code should be supplemented (in relation to the initial draft) through the inclusion of a new sub-paragraph d) concerning the obligation to declare the special pension or temporary salary paid together with the parliamentary allowance in certain cases.[6] Concerning the second part of the recommendation, the outcome of the discussions held during the above-mentioned meetings was that a very large majority was against extending the declaration of financial interests to members of a parliamentarian's family, on the grounds already stated. The argument of unequal treatment of different categories of persons making such declarations was also underlined.[7]

16. GRECO takes note of the fact that the declaratory mechanism applicable to MPs is now included in the Code of Conduct for Members of Parliament adopted in July 2014 (see recommendation i), which is an integral part of the Rules of Procedure of the Chamber of Deputies. It welcomes that these declaratory duties are now mandatory for all parliamentarians. It also takes note of the consultations and discussions conducted beforehand within the Chamber. Luxembourg has not taken advantage of this opportunity to implement the first part of the recommendation. The inclusion in the declaration form of a new section devoted to the special pension or temporary salary still falls short of the recommended improvements regarding not only assets but also parliamentarians' resources. GRECO recalls that the person making the declaration is asked to tick a box corresponding to his/her tranche of remuneration[8] but that the upper limits of these tranches are scarcely relevant to the context in Luxembourg, especially in the case of MPs who are in the highest brackets (see paragraphs 39 and 40 of the Evaluation Report). This point has clearly not been taken into consideration, and GRECO does not subscribe to the arguments advanced to justify the lack of initiative. When Luxembourg reconsiders this matter, clarification would also be needed regarding participation in companies; chapter G. leaves excessive room for discretionary interpretation by the

[6] When an MP is a former public official – a civil servant – or a member of the Government. For more details, see Article 129 of the amended Law on Elections of 18 February 2003: www.legilux.public.lu/leg/textescoordonnes/recueils/ELECTIONS/Elections.pdf

[7] It is claimed that a married MP to whom the full community property regime applies would have to "expose" all of his/her own assets and those of his/her spouse, whereas a married MP to whom the regime of separation as to property applies would partly escape this obligation since he/she would declare only his/her own assets.

[8] 1. From EUR 5 000 to 10 000 per year;
2. From EUR 10 001 to 50 000 per year;
3. From EUR 50.001 to 100 000 per year;
4. Over EUR 100 000 per year.

declarants[9]. Regarding the second part of the recommendation, which concerned consideration of the advisability of extending the declaration system to spouses and dependent family members, there can be no doubt that this has been done, although GRECO here too regrets the final conclusions, despite the possibility offered of not making public the information relating to family members. GRECO reiterates that information on the latter's situation may be important for addressing risks of bribery (undue advantages conferred on family members) and also conflicts of interest, which may in particular involve an MP's family members. This second part of the recommendation has thus been implemented.

17. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

18. *GRECO recommended that the future rules relating to gifts and other benefits be made more consistent, based on prohibition in principle.*

19. The Luxembourg authorities indicate that the Institutions and Constitutional Review Committee has decided to extend the principle of prohibition valid for gifts to payment of an MP's travel, accommodation or subsistence expenses by a third party. Any gift made to a public official or employee must constitute a case of legitimate suspicion. Limited exceptions to the rule are provided for in the Code of Conduct. Official gifts are subject to specific rules. The provision finally adopted is set out in Article 6 of the code, which establishes a prohibition in principle concerning the acceptance of gifts and similar benefits. This prohibition is valid only for gifts or other benefits offered to an MP in the exercise of his/her functions. Gifts having an approximate value of less than EUR 150 may be accepted on condition that they are made as a matter of courtesy by a third party or when an MP is representing the Chamber in an official capacity. Official gifts are to be reported to the President or to the Bureau if the recipient is the President. Gifts with an approximate value equal to or greater than EUR 150 must be refused, unless they are made by a foreign national institution or an international institution or the MPs concerned are representing the Chamber in an official capacity. All such gifts are to be transferred to the Chamber, which becomes their owner.

20. Gifts having no connection with the parliamentary mandate, such as gifts made by family members or received in a professional capacity, may be accepted regardless of their value and need not be reported.

21. Payment by a third party of an MP's travel, accommodation or subsistence expenses is assimilated to a gift. Pursuant to the general principle of prohibition, the acceptance of such a benefit, if directly related to the MP's functions, is proscribed. An exception is made in cases where the expenses are borne by a public-interest organisation, a foreign national institution or an international institution. The latter cases must nonetheless be reported to the Bureau and published on the Chamber's web-site. In cases of doubt, MPs may consult the Advisory Committee on Members' Conduct. The code provides that, based on experience, it may be necessary to set out the various hypotheses concerning possible benefits that MPs may receive in implementing rules to be adopted by the Bureau.

22. GRECO welcomes the clear improvements made to the rules on gifts and other similar benefits. The adoption of a future implementing instrument to clarify the various situations concerned is a measure to be supported and comes within the

[9] S/he is required to indicate according to the four tranches seen before "any participation in a financial joint stock or private company, when there are possible repercussions on public policies or where this participation (…) confer significant influence upon the conduct of business in the entity concerned"

scope of recommendation i. This would make it possible to reiterate, as necessary, the need for objective impartiality, that is to say publicly perceived as such, and therefore to clarify the often fine dividing line that may exist for public and political figures between benefits linked to the exercise of their mandate and those concerning their private or professional life (for which the code establishes no limit). The main concerns behind this recommendation have in any case presently been taken into account.

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

Recommendation iv.

24. *GRECO 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.*

25. The Luxembourg authorities underline that, although in Luxembourg lobbying has not developed to the same extent as in other parliaments, it was considered appropriate to lay down a number of rules so as to enhance the regulation of relations between MPs and representatives of public or private interests. The parliamentarians agreed to recognise that interest groups may exert an influence both at the level of the executive branch (the source of most legislation) and during the legislative procedure. They therefore deemed it appropriate, as recommended in GRECO's report, to introduce certain "rules on the way in which MPs should conduct themselves with third parties seeking to influence the work" of parliament. The Code of Conduct contains a specific article on lobbying. However, the code as adopted in July 2014 makes no provision for a special register of representatives of interest groups. An instrument of this kind, which has been introduced within the European Parliament and in a number of other parliaments of large States, would be of no practical use in the context prevailing in Luxembourg. The MPs were indeed unable to identify any added value of such a system for Luxembourg in comparison with the present situation. Moreover, inclusion in such a register would in exchange entail accreditation of interest groups giving them access to certain parts of the Chamber of Deputies' premises, which would not be in keeping with local tradition.

26. To date, contacts with interest groups take place in two ways: in an official capacity (request for an appointment made to the President of the Chamber of Deputies, the Chair of a parliamentary committee, a rapporteur or a political group in connection with legislative activity under way) and unofficially. Moreover, nothing prevents interest groups from submitting their positions in writing to the Chamber of Deputies and the political groups.

27. Concerning official contacts, paragraphs 1, 2 and 4 of Article 26 of the Rules of Procedure of the Chamber of Deputies, as currently in force, provide as follows:

> *"**Art. 26.**- (1) When examining a bill, examining a draft European directive or regulation or drawing up a report, a committee shall be able to seek the opinions of extra-parliamentary individuals or bodies and issue invitations to members of the European Parliament, obtain documentary information from them and accept or request their co-operation.*
> *(2) Any intervention of this kind must relate to the matter before the committee. It may solely be consultative in nature. It may be authorised solely where the committee, in accordance with a resolution adopted by an absolute majority of its members, considers that it would be likely to enlighten its discussions.*
> *(3) …*
> *(4) In the cases provided for in paragraphs (1) and (3) of this article, the authorisation of the President of the Chamber shall be necessary. The latter shall take a decision following the prior assent of the Conference of Presidents.*
> *(5) … ."*

28. Based on their experience, the MPs pointed out that interest groups do not confine themselves to contacting rapporteurs or the Chairs of parliamentary committees. If an interest group does not obtain a satisfactory response from the above-mentioned persons, it will approach other members of the committee dealing with a piece of draft legislation. Given this observation, the parliamentarians decided to extend the obligation to disclose contacts with interest groups likely to influence legislation under discussion to the Chairs of committees and other members.

29. The final wording of Article 5 of the code, as adopted in July 2014, is as follows:

> ***Art. 5.*** *Rules concerning lobbying*
> *(1) Relations between MPs and representatives of public or private interests shall be subject to rules guaranteeing transparency and public disclosure.*
> *(2) As a general rule, these contacts shall take place within committees in accordance with Article 26, paragraphs (1), (2) and (4) of the Rules of Procedure (of the Chamber of Deputies). When this is not the case, no meeting with interest representatives may be held within the Chamber's premises.*
> *(3) In so far as the interventions of interest representatives may have a direct impact on legislation under discussion, the member concerned shall disclose them during the committee's debates and the rapporteur shall mention them, if need be, in his/her written report.*
> *(4) By decision of the committee, a position adopted by an interest group may be published.*

30. The adopted text is therefore aimed at ensuring greater transparency regarding lobbying in the parliamentary sphere. Here too, the focus is not on a severe restriction, or possibly a prohibition, of such contacts, which are inevitable and even normal in a democracy, but on disclosure of such relations. This new disclosure rule applies to any form of intervention which may have a direct impact on the legislation under discussion. The intervention may be aimed at having the legislation under discussion modified or left unchanged. It is for the MP concerned to make known this intervention during the committee proceedings.

31. GRECO takes note of the above and of the positive intentions confirmed by members of the Luxembourg parliament. The recommendation leaves room for Luxembourg to decide on the comprehensiveness of rules to be introduced and its focus is on the parliamentarian's situation. Other countries recall in their rules the legitimacy of lobbying and at the same time, the sensitivity of this matter for transparency (with rules to inform the public about contacts and consultations held) and some do sometimes prohibit / limit income and other benefits from third parties who seek to influence the parliamentary work. GRECO also notes with interest that it is now acknowledged that influence may also be exerted on the Chamber, which was not the case at the time of the visit. In view of the above, the added value of the 2014 Code of Conduct, and of Article 5 thereof, in relation to the provisions of the Chamber's Rules of Procedure, is slight. As was the case during the on-site visit, both these instruments continue to deal mainly with the question of official contacts, such as committee hearings or recourse to outside experts. Concerning non-official contacts with third persons who exert an influence, the Code now requires that these take place outside the Chamber (Article 5, paragraph 2), but without limiting sufficiently such relations. Article 5, paragraph 3 of the code simply requires that they be notified to the committee if they have a direct impact on legislation under discussion. Various aspects of this issue remain unaddressed. For example, from a strict reading of the text it would seem that it does not concern interventions relating to legislation which has not yet been examined, nor interventions concerning other parliamentary activities (questions to the government, investigating committee proceedings, and so on). Lastly, it should be noted that there are still significant deficiencies in the regulations governing the financing of election campaigns in Luxembourg, in particular concerning direct support for candidates/elected representatives (see recommendations iv and vi of

the Third Evaluation Round report, which remained partly implemented at the end of the compliance procedure).[10] These various risks should not be neglected, and Luxembourg should accordingly pursue its efforts with greater intensity.

32. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

33. *GRECO recommended the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of conduct for parliamentarians.*

34. The Luxembourg authorities indicate that the MPs have acknowledged the need to guarantee the monitoring of the requirements incumbent on them, in particular the declaration of financial interests, and to put in place effective sanctions in the event of a violation thereof. They nonetheless considered that a system should be introduced that would make it possible to give notice before a breach of the declaration requirement could be sanctioned, since an MP must have the right to explain the reasons for a breach of this requirement, which may be a result of mere forgetfulness or of a delay attributable to a third party (for example, failure to issue an attestation of an MP's income within the required deadline). The new provision relating to the notice to be given before finding a breach of the requirement to file a full declaration of financial interests is included in Article 4, paragraph (4) of the Code of Conduct. The new text replaces the provisions contained in the same section of the draft code, which merely concerned the sanction applicable in the event of failure to submit a declaration, but without addressing the possibility of a partial declaration. While the applicable sanction has not changed in itself, it is now included, for reasons of consistency, in Article 8, which lists the whole range of penalties and the procedure to be followed.

35. More generally, it can be noted that the code in force establishes a three tier system of monitoring and sanctions as follows: a) the MP's personal responsibility; b) assistance and monitoring by the advisory committee; c) sanctions.

36. The values on which an MP must base his/her conduct, which are set out in Articles 1 and 2 of the Code of Conduct, are inextricably linked to a very high degree of accountability. An MP remains fully responsible for his/her actions. Conflicts of interest are to be identified and solved by the MP him/herself and under his/her own responsibility. He/she is responsible for filing a declaration of activities and must bear the consequences of his/her action, if need be. MPs are assisted by the advisory committee, whose members come from outside the Chamber, to ensure this body's independence and impartiality. This external monitoring is, in all respects, preferable to a system where an MP in breach of a provision of the Code of Conduct would be "tried" by his/her peers. It should be pointed out that the three members of the Advisory Committee on Members' Conduct, provided for in Article 7 of the code, have recently been appointed by the Bureau of the Chamber of Deputies. They are a retired Deputy State Prosecutor, a Honorary President of the Chamber of Deputies and a Honorary President of the Conseil d'État.

37. Further to the recommendations made by GRECO, Article 8 of the code now provides for a range of sanctions which are intended to be sufficiently dissuasive, effective and proportionate to the breach of the code found to have been committed. An MP may now incur the following penalties: a) a simple warning; b) a reprimand with entry in the record; c) a reprimand with temporary

[10] www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)8_Second_Luxembourg_EN.pdf

disqualification;[11] d) exclusion from certain committee meetings for up to six months; e) non-eligibility for certain offices within the Chamber of Deputies or its "organs", where "organs" must be understood to include the Bureau, the Conference of Presidents or parliamentary committees; f) exclusion from appointment to the functions of rapporteur or from participation in an official delegation of the Chamber. The last three penalties may be cumulative. All the penalties, except for a warning, are pronounced in a public sitting. The penalty is accordingly automatically included in the verbatim report of the proceedings and the record of the sitting. The MPs consider that the public nature of a finding of a breach of the code in itself constitutes a serious, effective and dissuasive penalty, which names and shames the MP concerned. Moreover, a sanction of this kind is to be found in virtually all the parliaments in possession of a code of conduct.

38. The procedure to be followed in the event of a breach of the Code of Conduct is also set out in Article 8 thereof. The authorities explain that the concepts of *violations* and *infractions* [concepts used in the original French text] used in articles 7 and 8 are generally applicable and that both refer to the various possible infringements of the Code. The procedure involves the President of the Chamber and the advisory committee, and in the event of an appeal by the MP concerned, the Conference of Presidents, whose decision is final. The President of the Chamber is now required to bring before the advisory committee any serious suspicion that an MP has breached the code. The version of the code adopted in July 2014 therefore eliminated the margin of discretion conferred on the President by the initial draft text, which merely provided for the possibility of referral to the advisory committee. Concerning in particular the declaratory obligations on functions, assets and interests, the authorities explain – upon the rapporteurs' request – that the Legal Department together with the Secretary General and deputy Secretary General in charge of the Department, make sure that deadlines are complied with (declarations are to be filed within 30 days after taking the oath) and that declarations are fully filled in. As from October 2015, the Legal Department will resume with the practice of reminders calling parliamentarians to update their declarations if needed. The content of declarations is also briefly checked by this Department and the members of the general parliamentary administration, including through interviews with individual parliamentarians, as the need may be. However, the Code is silent about the extent of controls (whether the information declared is likely to be correct or not) and therefore the supervisory bodies mentioned above are not responsible for false or inaccurate declarations.

39. Once it has been seized the advisory committee examines the circumstances of the alleged breach and interviews the MP concerned, so as to respect the adversarial principle and ensure a fair hearing for the MP, who prior to this stage has not necessarily been informed that the President has referred the matter to the committee. The committee ends its investigation by issuing a recommendation addressed to the President of the Chamber with a view to a possible decision by the latter. If the MP is to be sanctioned, the President adopts a reasoned decision to that effect after interviewing the MP. The decision determines the penalty according to the seriousness of the breach found to have been committed. The decision is notified to the MP either in person or by registered mail.

40. The Conference of Presidents is the body which hears appeals against disciplinary decisions by the President of the Chamber. Paragraph (4) of the same article fills a gap in the provisions of the draft code, since it deals with the procedures to be followed in the event of a breach of the code by the President of the Chamber, who is also an MP. The code stipulates further that if the acts of which the MP is accused

[11] The penalty of a reprimand with temporary disqualification automatically entails temporary deprivation of the parliamentary allowance, by reason of the reference made to Article 50 of the Rules of Procedure.

may constitute offences under the Criminal Code, the file shall be sent to the public prosecutor, in accordance with Article 23 of the Code of Criminal Investigation.[12]

41. GRECO notes with satisfaction that a new monitoring mechanism was introduced in July 2014, which is intended to be complete and consistent, with a view to ensuring Luxembourg MPs' compliance with the provisions of the Code of Conduct and hence all of the rules on MPs' integrity. GRECO appreciates the care taken with various aspects of this mechanism, in particular the involvement of an advisory committee independent of the MPs and the restrictions of the discretionary power of the President of the Chamber. However, at the same time, the authorities confirm that the Code does not entrust the bodies involved in the supervision with the task to check the content of declarations of assets and interest. There is therefore a risk that supervision may be too limited in scope and insufficiently effective. The means of the parliament for a scrutiny are not spelled out, should a member of the public, an elected representative or any other person raise doubts concerning the accuracy of the information supplied by an MP. As already underlined in paragraph 57 of the Evaluation Report, it is important that the monitoring system should be able to detect inaccurate or false declarations. In conclusion, the progress made is praiseworthy but incomplete.

42. GRECO concludes that recommendation v has been partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

43. *GRECO 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 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.*

44. The Luxembourg authorities indicate that the suggestions made in this recommendation will be taken into account during the drafting work on the bill concerning the establishment of a National Judicial Council (NJC). This work is currently in progress at the Ministry of Justice and the bill should be finalised in the course of 2015. It should be noted that, following the early elections of October 2013, a new government with a new political coalition came to power. This government incorporated its own ideas into the constitutional reform project and the work to establish the NJC. This recommendation will accordingly be implemented when the NJC is set up. The principle, firstly, of the existence of the NJC and, secondly, of the appointment of judges and prosecutors on a proposal by this body is already included in the latest version of Article 104 of the co-ordinated text of the draft revised Constitution.

> ***Art. 104****. The National Judicial Council shall make proposals for the appointment of judges and public prosecutors...*
> *...*
> *The composition and functioning of the National Judicial Council and the conditions of exercise of its competences shall be laid down by law.*

45. GRECO notes that, on account of the early elections and the need first to establish the National Judicial Council (NJC), it has not yet been possible to introduce the measures proposed in this recommendation, although the Luxembourg authorities

[12] Article 23 of the Code of Criminal Investigation:
www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/cic_L1_T1.pdf

have confirmed their intention to implement them. GRECO will be in a position to assess again the situation only once the NJC is established.

46. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

47. *GRECO recommended that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits risks for the general integrity of judges.*

48. The Luxembourg authorities reiterate that Article 67 of the law on the organisation of the courts (LOJ) provides that the Supreme Court of Justice (SCJ) has the right to oversee the two district courts and the magistrate's courts. It therefore ensures the efficient operation of the various courts. If the Principal State Prosecutor refers matters affecting the efficient operation of the courts to it, it conducts an investigation in the court concerned, during which it may interview any person it wishes and obtain any document. When the investigation reveals deficiencies, the Supreme Court may give any orders necessary to the proper functioning of the court concerned. Any failure to follow these orders is reported to the Principal State Prosecutor. There is accordingly already a legal basis for the harmonised management of the courts. It should be noted that on 11 May last, an internal e-mail was sent by the President of the Supreme Court to the chairpersons of the two district courts and magistrate's courts to remind a) the general oversight duty attributed to the SCJ, including its right to be notified by the State Prosecutor General of issues related to the general functioning of the justice services; b) the importance for judges and prosecutors to act in line with the principles of independence, integrity, impartiality and diligence; c) the need to remind to judges and prosecutors the existence of the compendium of deontological standards of May 2013. This point will moreover also be examined in the context of the reform aimed at establishing the National Judicial Council, which will also be responsible for certain aspects of judicial ethics.

49. GRECO takes note of the above. It acknowledges the an e-mail dated 11 May recalls the supervisory role performed by the Supreme Court of Justice in respect of the two district courts and the magistrate's courts, and the responsibility of their chairpersons in ensuring compliance with rules of conduct. However, GRECO is expecting further new measures – also concerning more courts – in response to the various underlying concerns raised in paragraphs 112 and 113 of the Evaluation Report: the need to reinforce the presiding judges' role and the supervision they exercise within the courts themselves, the need for harmonised management of workloads, and so on. As in the case of the previous recommendation, it can be seen that the establishment of a National Judicial Council is a key prerequisite for any more ambitious reform. It will therefore be necessary for GRECO to re-examine the measures decided by the NJC when the time comes.

50. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

51. *GRECO recommended clarifying the status of the various rules on recusal applicable to members of the courts, and ensuring their uniform application to the various categories of persons required to decide cases, whatever the subject-matter.*

52. The Luxembourg authorities have provided a 27-page table summarising the situation of judicial assistants (*attachés de justice*), judges, members of the

prosecution service, members of the labour courts and members of the social security courts. They have indicated that the application of the legal provisions to the various courts can be summed up as follows: a) judges of the judicial (ordinary) courts are covered by Articles 521 et seq. of the New Code of Civil Procedure (NCCP), while magistrates are the subject of special provisions set out in Articles 125 et seq. of the NCCP; b) judges of the administrative courts are also covered by Articles 521 et seq. of the NCCP, to which express reference is made in Article 24 of the law on the organisation of the administrative courts, in respect of both instances; c) judicial assistants, assimilated to judges, are covered by Articles 521 et seq. of the NCCP if they are seconded to the district courts; d) the assessors in the labour courts (non-professional judges) are covered by Articles 521 et seq. of the NCCP (formerly Article 378 of the Code of Civil Procedure) to which express reference is made in Article 56-2 of the LOJ under the chapter on the labour courts; e) members of the social security courts (the Social Security Arbitration Court and the Supreme Social Security Court) are covered by Articles 11 and 12 of the Grand Ducal Regulation, as amended on 24.12.1993.[13]

53. In sum they consider that virtually all judges (whether professional or not) are covered by Articles 521 et seq. of the NCCP, and the special laws are very similarly worded. The authorities also stipulate that Article 6 of the European Convention on Human Rights encompasses all the situations mentioned in Article 521 of the NCCP in respect of judicial impartiality and that these rules are applied in the relevant courts.

54. Consideration must also be given to the provisions of Articles 639 to 649 of the NCCP relating to actions ("prises à partie") against judges,[14] which permit parties to lodge a complaint against a judge in the following cases a) alleged wilful misconduct, fraud or taking of bribes during either a judicial investigation or a trial; b) when such an action is expressly provided for by law; c) when judges' liability is established by law, with the payment of damages; d) in the event of a denial of justice. Concerning denials of justice, the Court of Cassation has ruled that such an action is the sole legal remedy available against a judge who has abused his/her position.

55. Lastly, prosecutors are covered by Articles 521 et seq. of the NCCP solely when the prosecution service intervenes as an additional party joined to proceedings (Article 524 of the NCCP) but never when it is a principal party.

56. GRECO takes note of the information provided. It appreciates the assurances given by Luxembourg concerning the globally satisfactory situation, but cannot fully share in this optimism. It refers to the findings made in paragraph 119 of the Evaluation Report on the basis of a sample of the provisions on recusal identified at that time, in particular the existence of rules which are difficult to decipher even for practitioners in the country itself, the fact that provisions are sometimes contained in different pieces of legislation, and the co-existence within a single law of specific rules applicable to the different ordinary courts of first instance (magistrate's courts and district courts), sometimes with inconsistencies in their wording. The information and the summary table now submitted by the authorities do not really answer GRECO's expectations. On the contrary, they confirm that there are deficiencies in some cases: for example, no mention is made of any rules relevant to the ordinary courts of appeal and of cassation. In the case of the administrative courts, Article 24 of the Law of 21 June 1999 regulating the procedure before these courts merely contains a general reference to the applicability of the rules on recusal in civil matters, as can also be seen from the table supplied by the

[13] www.legilux.public.lu/rgl/1993/A/2320/1.pdf
[14] www.legilux.public.lu/leg/textescoordonnes/codes/nouveau_code_procedure_civile/P1_L6_voies_attaquer_jugements.pdf

Luxembourg authorities. However, these issues are addressed by the New Code of Civil Procedure not just in Articles 521 et seq., but also – under different rules – in Articles 125 et seq.[15] Furthermore, these matters are also dealt with by Articles 105 et seq. of the law on the organisation of the courts (LOJ),[16] which may apply both to judges in general and to prosecutors. In fact, the Luxembourg authorities refer to the LOJ in the information they have provided in response to recommendation x below, which concerns a neighbouring matter. In the light of the few examples above, it is therefore necessary for the Luxembourg authorities to take the necessary action to implement this recommendation. GRECO would also point out that this recommendation calls for measures intended to result in a uniform application, typically information measures accessible by practitioners and also by parties to proceedings. The Luxembourg authorities have so far not mentioned any initiative at this level, and the summary table provided cannot constitute an alternative response in view of the nature of this document and the various issues that remain outstanding.

57. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

58. *GRECO recommended 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.*

59. The Luxembourg authorities refer to the table they have provided, as mentioned under recommendation viii, which in their contention clarifies the state of national legislation on the management of conflicts of interest. The various possible conflicts of interest that may result in a recusal are listed in Article 521 of the new Code of Civil Procedure, which is reproduced in the table. Except for the general provisions (see the following paragraph), the General Civil Service Regulations do not apply to judges of the ordinary courts including the prosecutors – since they are part of the courts in accordance with articles 11 and 33 of the law on the organisation of the courts – nor to the members of the administrative courts. The same applies to judicial assistants who may be assigned to a court by order of the Grand Duke and who have the status of judge for the duration of this assignment, even if they do not yet definitively hold judicial office. Only the social security courts are governed by special provisions.

60. In their latest comments, the Luxembourg authorities indicate that following a law of 25 May 2015, amending notably the General Civil Service Regulations of 1979 applicable to State employees[17], article 1 paragraph 2 of the said Regulations was modified as follows: "*The present Regulations apply also to magistrates, judicial assistants and justice personnel who are civil servants, with the exception of articles 4, 4bis, 4ter and 42, subject to the applicability of provisions contained in the law on the organisation of the courts, the law on the organisation of the administrative courts and the law on judicial assistants concerning the recruitment, filling of posts, training, non-removability, incompatibilities, place of residence, leave, holidays, the organisation of hearings and discipline.*"

[15] The authorities explain that articles 125 et seq. only deal with members of the magistrate's courts.
[16] See the footnote to paragraph 65.
[17] This law amends a series of legislative texts on the State administration: http://www.legilux.public.lu/leg/a/archives/2015/0059/a059.pdf ; the Civil Service Regulations are available on the webpage dedicated to the status of civil servants: http://www.fonction-publique.public.lu/fr/legislation/statut-regime/index.html

61. Pending the establishment of the National Judicial Council, the Principal State Prosecutor is the contact person for the various courts and the person to whom judges or prosecutors confronted with a possible conflict of interest should address themselves. It remains clear, however, that the hierarchical superior will always remain available to discuss such issues. When a judge or prosecutor has questions about his/her situation, he or she should turn to the Principal State Prosecutor to enquire as to whether his/her circumstances are compatible with the exercise of judicial office. This approach is justified in so far as it is the Principal State Prosecutor who brings disciplinary proceedings against judges and prosecutors.

62. GRECO firstly draws attention to the specific issues mentioned in paragraph 120 of the Evaluation Report: "The GET also notes a) the existence of Articles 14 and 15 of the General Civil Service Regulations, which lay down certain obligations to declare gainful activities, also with regard to civil servants' close friends and relatives, and a general mechanism for management of conflicts of interest; b) that the law of June 2012 on judicial assistants (Article 18) (…) amends these general civil service regulations by extending their application to "magistrats" and judicial assistants, in so far as this would not conflict with the special statutory rules concerning them (at least for all courts except the social security courts, military courts and the Constitutional Council). As construed by the GET, it follows from the foregoing that, in addition to the above-mentioned provisions which mainly concern recusal on the ground of personal relations with a party, there is indeed a general apparatus for declaring and managing conflicts of interest, potentially applicable to most Luxembourg judges in the various types of courts, including judicial assistants with civil servant status. The GET's respondents seemed on the whole unaware of this innovation and its effect. Owing to the significant uncertainties, speedy clarifications are therefore necessary." The information provided by Luxembourg authorities shows that the amendments made in March 2015 to the General Civil Service Regulations clarify and enumerate the subject areas for which judges, prosecutors and judicial assistants are subject to the specific rules of the law on the organisation of the courts and the law on the organisation of the administrative courts, instead of those of the Civil Service Regulations. The list refers i.a. to non-removability, incompatibilities and discipline. As GRECO understands, 'incompatibilities' refers to article 16 (which is indeed entitled "incompatibilities") and possibly also to further provisions contained in article 14 of the Regulations. Luxembourg needs however to confirm this. Moreover, conflicts of interest as such – which can arise at any moment and which are covered by article 15 of the Regulations – constitute a subject-matter which is distinct from that of incompatibilities in GRECO's work. It recalls the importance for countries to have clear and adequate rules in place concerning conflicts of interest involving the professionals under discussion. This matter is also linked to that of recusals addressed under recommendation viii which has not been implemented to date. GRECO cannot conclude that Luxembourg has resolved the various issues underlying this recommendation.

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

Recommendation x.

64. *GRECO recommended 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.*

65. The Luxembourg authorities indicate that, from a legal standpoint, the rules on incompatibilities and accessory activities of judges and prosecutors are set out in

Chapter II of the law on the organisation of the courts (LOJ), in Articles 99 to 110.[18] For judicial assistants, since they are assimilated to judges, Articles 99 to 110 of the LOJ should be applied by analogy. Concerning members of the labour courts, reference is made to Article 56-2 of the LOJ, and for members of the social security courts to Articles 11 and 12 of the Grand Ducal Regulation, as amended on 24.12.1993. From an ethical standpoint, incompatibilities and accessory activities are covered (under the head Impartiality) by the digest of ethical rules distributed to all judges and prosecutors and available on the Intranet site of the Ministry of Justice. At this stage of thinking, it is envisaged that the rules on incompatibilities and accessory activities will moreover be taken into account when examining applications during the appointment process before the future National Judicial Council.

66. GRECO takes note of the above information and reiterates the findings made in the Evaluation Report (paragraphs 121 et 122), in particular that "the rules on incompatibilities and secondary activities generally establish limitations regarding various risks of corruption. However, they remain quite diverse and, once again, difficult to decipher because of the vague concepts and the interconnection of the provisions. For instance, the concept 'judicial office' in Article 100 of the law on the organisation of the courts (LOJ), construed by the judges encountered on site as embracing judges, prosecutors but also bailiffs (the Luxembourg authorities later pointed out that bailiffs are not in fact included): it is unclear whether the concept is identical to that of 'member of the judiciary' in Article 104 LOJ, which has other implications. The consequences of non-compliance with the rules are not systematically stipulated either, nor which rules judicial assistants may precisely come under and in which case (General Civil Service Regulations, LOJ, law on administrative courts - LOJA), considering that they are sometimes called upon to sit as judges or to represent the prosecution. The members of the social security courts are apparently not subject to any restriction." GRECO repeats once again that the rules must be clear, coherent and comprehensible for the practitioners concerned and free of loopholes regarding the diverse categories that exist among them. It draws attention to the difficulties encountered during the visit by both the evaluators, the practitioners and the representatives of the Luxembourg authorities merely in order to determine the rules applicable and to which categories of staff they apply. GRECO welcomes the intention to address these issues in future, when the National Judicial Council is put in place and can ensure a uniform approach. For the time being, this remains a statement of intent and the Luxembourg authorities' repetition of the information does not fulfil the recommendation's objective. GRECO also notes that, according to the above information, the situation of the members of the administrative courts remains outstanding and refers to the reservations it expressed concerning the information provided in respect of recommendation viii. In conclusion, it encourages the authorities to act with greater determination as regards the implementation of this recommendation.

67. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

68. *GRECO recommended that information on disciplinary procedures and the sanctions applied in respect of persons called upon to sit in court or work for the prosecution be kept in a systematic and centralised manner.*

69. The Luxembourg authorities indicate that a central register of information relating to disciplinary proceedings is now kept by the Principal State Prosecutor's office. They give no further details except that this register comprises the complete file of

[18] www.legilux.public.lu/leg/textescoordonnes/compilation/code_administratif/vol_1/cours_tribunaux.pdf

the person concerned – decision taken, administrative file and disciplinary enquiry – and that the limited number of judges and prosecutors in the country has not made it necessary to establish a computerised registration: the General Prosecutor's office has dealt with only two files since 2006 and various problems were resolved at an early stage thanks to individual discussions. Administrative courts in the same time span have had three disciplinary cases.

70. GRECO takes note of the above information. It refers to the Evaluation Report (paragraph 136), which indicates that the prosecution service already retains information on all disciplinary procedures but not necessarily on all the disciplinary measures decided: "the lack of information on cases heard or brought to date prevents any assessment of its application in practice. Indeed, there is no centralised data on the disciplinary records of judges and prosecutors (even though the prosecution service retains information on all disciplinary procedures applied to judges and prosecutors, information related to warnings is retained by the presiding judges of courts). Systematic recording of this kind of data would be useful in future in the context of a desirable modernisation of staff management." At this stage GRECO cannot conclude that all relevant information on disciplinary matters is effectively centralised and kept on record in the new register, and is accordingly easily available.

71. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

72. *GRECO recommended that dedicated training programmes be established for the various persons required to sit in court or to work for the prosecution, focusing on the questions of judicial ethics, conflicts of interest (including their management, recusal and withdrawal), the rules on gifts and other advantages, relations with third parties and the various other measures for preventing corruption and preserving integrity generally.*

73. The Luxembourg authorities indicate that sessions on judicial ethics are currently being proposed as part of the training of judicial assistants. The most recent individual session took place in October 2014 over two days for a total of eight hours and concerned the following subjects: a) explanation of the evaluation procedures applied by GRECO and other international organisations, analysis of our system; b) presentation of Luxembourg law on corruption (in the broad sense): passive/active bribery, the specific case of judges and prosecutors, trading in influence, unlawful taking of an interest, conflicts of interest (delimitation, situations – recusal/impartiality, source of the rules, digest of ethical rules). The above training module has now become a standard component of the initial training. The authorities also point out that the digest of ethical rules for the judiciary addresses situations entailing a conflict of interest. This digest, which has been sent to all members of the judiciary, has been published on the justice ministry's Intranet site and can be consulted at any time. Lastly, it should be pointed out that a division president of the Supreme Court of Justice is a member of the Council of Europe's Consultative Council of European Judges. In this capacity he regularly passes on this Council's announcements and recommendations to the national judicial authorities.

74. GRECO takes note of the above information. The special training session proposed in October 2014 for judicial assistants (who constitute the pool of future judges and prosecutors) appears to be more complete than the evaluators' findings based on the initial training course would have seemed to suggest, although the part concerning the international evaluation procedures is in principle of less relevance. GRECO appreciates the fact that this module is now part of the standard initial

training. However, it would also seem that no steps have been taken so as to include similar opportunities in the in-service training courses for judges and prosecutors already holding office, members of the administrative courts and persons required to sit in the various courts without necessarily being professional judges or prosecutors (this concerns the labour and social security courts). GRECO recalls that the on-site visit brought to light a significant ignorance of the applicable rules, in addition to the heterogeneity and lack of clarity of the rules themselves. Luxembourg must therefore make more intensive efforts to implement this recommendation in full.

75. GRECO concludes that recommendation xii has been partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xiii.

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

77. The Luxembourg authorities indicate that a governmental agreement of December 2013 expressly provides that "The prosecution service will be reformed so as to guarantee its independence from political influence." This independence will be enshrined in the Constitution, which is currently being revised. In the latest version of the co-ordinated text of the draft Constitution (November 2014) Chapter 7 on Justice includes a proposed wording for Article 100 (2)[19] establishing the principle that: "(2) The public prosecution service shall bring prosecutions and enforce application of the law. It shall be independent in the exercise of these functions."

78. GRECO takes note of the fact that, at this stage of the drafting work, the constitutional provisions intended to safeguard the functional independence of the prosecution service continue to be worded differently from the text that existed and was discussed at the time of the visit. The aim is nonetheless still the same. Given that the new Constitution has not yet been adopted, the reform has not been completed, as recommended, and the situation has therefore not progressed since the evaluation. GRECO reiterates that, as indicated in the evaluation report (paragraph 147), the constitutional amendment is "a step in the right direction which should not only be supported (at least in order to enhance the public perception of its independence) but also supplemented by legal provisions aimed at translating this independence into practice in the texts on the functioning of the prosecution service. The representatives of the prosecution service said that the new law will probably abolish ministerial instructions, but that instructions would remain in force within the hierarchy of the prosecution service." Concerning the latter, even if it is important to be able to "awake a sleeping prosecutor", GRECO has often simultaneously underlined the importance within the prosecution service of providing for superiors' instructions to be given in writing, entered in the case file and open to challenge. The authorities indicate in their latest comments that such instructions are rare and that in practice they are always in writing and added to the file. Luxembourg thus needs to enshrine this in written rules, together with a right to challenge instructions.

79. GRECO concludes that recommendation xiii has not been implemented.

[19] In the version published on13 March, this corresponds to Article 97(2).

Recommendation xiv.

80. *GRECO recommended i) that 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.*

81. The Luxembourg authorities indicate that the discussions currently taking place foresee such a role for the National Judicial Council. For instance, Article 104 of the co-ordinated text of the draft revised Constitution provides that the National Judicial Council shall investigate disciplinary cases involving judges and prosecutors.

82. GRECO takes note of the above and acknowledges the fact that the wording of the current draft Constitution now provides for measures consistent with the first part of the recommendation. However, the draft is at an early stage of discussion within the Ministry of Justice and at the same time, the setting-up of the National Judicial Council has been delayed as it is indicated under recommendation vi. GRECO therefore cannot conclude that any tangible progress has taken place. Concerning the second part of the recommendation, it seems clear that its implementation also depends on the more general reform concerning the Constitution and the National Judicial Council. GRECO will have to conduct a detailed examination of these aspects once the reform has moved forward.

83. GRECO concludes that recommendation xiv has not been implemented.

III. CONCLUSIONS

84. **In the light of the above, GRECO concludes that Luxembourg has satisfactorily implemented only one of the fourteen recommendations contained in the Fourth Round Evaluation Report.** Among the other recommendations, eight have been partly implemented and five have not been given effect.

85. More specifically, recommendation iii has been implemented satisfactorily, recommendations i, ii, iv, v, vii, ix, xi and xii have been partly implemented and recommendations vi, viii, x, xiii and xiv have not been implemented.

86. Concerning parliamentarians, GRECO notes with interest that progress has been made in the five fields where improvements were recommended. A code of conduct for members of the Chamber of Deputies was adopted in July 2014 and the approach followed by Luxembourg shows a desire for coherence. For instance, the rules applicable to gifts and other benefits have been reviewed and a basic prohibition has been clearly established. The code is also intended to regulate the various issues concerning parliamentary integrity and hence to take account of GRECO's recommendations, and it is accompanied by an enforcement mechanism. Nonetheless, Luxembourg still needs to adopt an implementing instrument, which would in particular clarify the key concepts (and give practical guidance) as well as certain arrangements relating to the declaration of MPs' income and interests. Luxembourg has now made this declaration mechanism mandatory but it has not further improved it along the recommended lines, so as to include sufficiently precise information on revenues, as well as on the patrimonial situation. Furthermore, the code takes a too minimalist approach regarding MPs' relations with third parties who may seek to influence the work of parliament. Lastly, it provides for monitoring by the President of the Chamber, with the assistance of an advisory body, which leaves various outstanding questions as to its real scope and effectiveness as regards MPs' declaratory obligations.

87. Concerning judges and prosecutors – who constitute a single body in Luxembourg – little real progress has been made. This is due in part to the fact that the more general justice reform, with the creation of a National Judicial Council, has been delayed on account of the early elections. GRECO therefore expects that, once this key reform has been implemented, significant steps will be taken to make the promotion procedures for judges and prosecutors more transparent and to introduce harmonised, more effective management of the courts, first and foremost by the heads of the bodies concerned. Luxembourg must also be more active to ensure the clarification and coherence of certain basic rules relating to judicial integrity (recusals, conflicts of interest). GRECO also expects clearer efforts to be made regarding the centralisation of information on disciplinary procedures, and also concerning the introduction of training programmes focusing on the questions of ethics and integrity, including in an in-service training context. With more specific relevance to prosecutors, Luxembourg intends to introduce a constitutional guarantee of the prosecution service's operational independence and to give the future National Judicial Council a role in disciplinary matters. These expected reforms have yet to be adopted.

88. In view of the above, GRECO notes that, for lack of any definitive tangible results so far, significant further progress is needed regarding members of parliament and the reforms in respect of judges and prosecutors must be pursued, so as to demonstrate that an acceptable level of compliance with the recommendations can be attained over the next 18 months. Since a number of far-reaching reforms are under way and given the perception that the Luxembourg authorities intend to pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" within the meaning of Article 31, paragraph 8.3 of its Rules of Procedure. GRECO asks the head of the Luxembourg delegation to submit additional information on the implementation of recommendations i, ii, iv to xiv by 31 December 2016.

89. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.