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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

Adopted by GRECO at its 72nd Plenary Meeting
(Strasbourg, 27 June – 1 July 2016)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of "the former Yugoslav Republic of Macedonia" to implement the recommendations issued in the Fourth Round Evaluation Report on "the former Yugoslav Republic of Macedonia" which was adopted at GRECO's 62nd Plenary Meeting (6 December 2013) and made public on 17 March 2014 following authorisation by "the former Yugoslav Republic of Macedonia" ([Greco Eval IV Rep \(2013\) 4E](#)). 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 "the former Yugoslav Republic of Macedonia" submitted a Situation Report on measures taken to implement the recommendations. This report was received on 26 June 2015. GRECO had to postpone the discussion of the present report and various other Fourth Round compliance reports in order to accommodate the workload generated by the many non-terminated compliance procedures of the Third Round. The authorities submitted an updated version of the report on 6 June 2016. These submissions served as a basis for the Compliance Report.
3. GRECO selected Armenia and Denmark to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Anna MARGARYAN, on behalf of Armenia and Mr Martin Vedel STASSEN, on behalf of Denmark. 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 19 recommendations to "the former Yugoslav Republic of Macedonia" in its Evaluation Report. Compliance with these recommendations is dealt with below.
6. By way of introductory remark, the authorities of "the former Yugoslav Republic of Macedonia" (hereinafter "the authorities") indicate that after the adoption and publication of the Evaluation Report, many projects were initiated in order to implement the recommendations. However the period until now was marked by a complex political situation which has *inter alia* blocked the work in Parliament including a series of legislative and other amendments which are necessary for implementing several recommendations issued in the Fourth Round evaluation, in particular, draft Constitutional amendments (which are in the third and final phase), a Draft Law on Courts, a Draft Law on Public Prosecution, a Draft Law on the Prevention of Corruption as well as the Ethical Code of the Parliament.
7. For the purposes of the present report and in order to determine the actual status of draft legislation and other changes under way, GRECO recalls that the above-mentioned political situation has sparked important domestic unrest and criticism from the international community which intervened to negotiate an outcome to the

situation¹. It started in a context of claims of serious shortcomings in the early parliamentary elections of 27 April 2014, together with a second round of presidential elections, and opposition MPs subsequently boycotting parliament. It was accompanied by a "wiretapping affair" pointing to massive fraud and corruption involving also government members². It was agreed to hold early elections in April 2016 and from 20 October 2015, a transitional government was installed including the two main parties. In January 2016, the government then resigned ahead of those elections, and on 6 April the parliament was dissolved. Opposition parties then indicated that they would boycott the election (which had in the meantime been re-scheduled to 5 June 2016). Subsequently, on 16 May 2016, the Constitutional Court ruled that the dissolution of parliament was unconstitutional and halted all preparations for the elections. Parties are currently negotiating a date for these parliamentary elections, possibly in the autumn.

Corruption prevention in respect of members of parliament

Recommendation i.

8. *GRECO recommended (i) swiftly proceeding with the development of a code of conduct for members of the Assembly and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within the Assembly, 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.*
9. The authorities indicate that in March 2012 the President of the Assembly, together with the Vice-presidents and coordinators of the political parties' parliamentary groups held a first meeting on the introduction of a Code of Ethics for the members of the Assembly. At this meeting, some common positions were sought and conclusions were adopted, including the principle that a future text would be adopted by consensus involving all parties. A second meeting of that working group was held, but the subsequent boycott for several months by the opposition group did not allow to reach a consensus for the adoption of the Code and stopped the work of the Working group. The authorities point out, without further precision, that the opposition groups are expected to resume their participation in the working group meetings.
10. The authorities refer to a series of events, including: a) on sharing experience with parliamentary codes of ethics in Europe: an ECPRD Seminar was held in May 2014, on "Structures and procedures regarding the codes of behaviour for the members of Parliaments and the integrity of the Parliamentary service"; 51 experts of 34 parliamentary houses as well as representatives from GRECO and OSCE/ODHR participated; it has provided input for the preparation of the intended Code of Ethics for the national parliament; b) in cooperation with the State Commission for Prevention of Corruption - SCPC and as part of a Twinning Project with Germany on "Support to effective prevention of, and fight against corruption" (conducted in

¹ For a retrospective overview, see for instance:

<http://www.euractiv.com/section/enlargement/news/macedonian-opposition-boycotts-parliament-over-claims-of-election-fraud/> , <http://www.rferl.org/content/explainer-crisis-in-macedonia-leads-to-violent-protests/27675969.html> , <http://www.balkaninsight.com/en/article/macedonia-court-halts-june-5-elections-05-18-2016#sthash.R5hVCZgM.dpuf> ; <http://www.independent.mk/articles/32781/Macedonian+Parliament+Resumes+rd+Session>

² Eventually, in 2015, officials were charged with election fraud, media manipulation, judicial corruption, and murder cover-up all of which were purportedly revealed in thousands of illegally recorded phone conversations. A new special prosecutor was appointed to investigate the Prime Minister and government ministers. On 12 April 2016, the President announced the end of the investigation and pardoned the main suspects in the wiretappings which caused further unrest, but withdrew part of these, and subsequently on 6 June 2016 all of the 56 controversial pardons. See for instance: <http://uk.reuters.com/article/uk-macedonia-politics-idUKKCN0YS22F>

connection with the EU's Instrument for Pre-Accession Assistance – IPA Twinning Project "Support to efficient prevention and fight against corruption"), workshops were organised on 18 and 19 May 2015 and attended by 44 MPs representing the various political groups. These contributed to raising the awareness on subjects such as the prevention of corruption, conflict of interests; international standards, obligations with regards to declarations of assets and interests, gifts and other ethical issues, incompatibilities, lobbying and cooperation with the SCPC. Further similar initiatives were implemented on 9-10 June 2016, in relation to the recommendations contained in the Fourth Round evaluation report, on conflict of interests, codes of ethics and other ethical issues and lobbying of legislative authority holders. The SCPC is playing an active role in this regard.

11. GRECO takes note of the above information. Concerning the first part of the recommendation, GRECO is of course pleased to see that the country is taking into account foreign experience for the preparation of a Code of conduct for parliamentarians. That said, the drafting work was interrupted at an early stage and there is significant uncertainty as to whether work on a code of conduct can be completed before new elections are held. As for the second part of the recommendation, the reported cooperation activities of May 2014, May 2015 and June 2016 certainly contribute to making MPs aware of the importance of integrity-related mechanisms in general, and some of their obligations already in place (incompatibilities, declarations of assets and interest). But GRECO will need to re-examine the situation once standards of conduct have actually been adopted, in order to assess whether adequate implementing measures (promotion, awareness-raising, enforcement mechanism) have been taken in their respect. For the time being, given the lack of sufficiently tangible and pertinent developments, GRECO cannot conclude that this recommendation has been implemented even partly.

12. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

13. *GRECO recommended that internal mechanisms and guidance be further developed within the Assembly on the prevention of conflicts of interest and the acceptance of gifts, hospitality and other advantages and that compliance by parliamentarians with these rules be properly monitored.*
14. The authorities indicate that this subject-matter will be further regulated in the future Code of Ethics for parliamentarians mentioned earlier (see the first recommendation). A Manual on Integrity and Conflict of Interests produced by the SCPC, was distributed to the 44 MPs who attended the training in May 2015. It constitutes a framework which covers the various aspects of the present recommendation and will be used in the future Code of ethics for MPs.
15. GRECO takes note of the above and regrets that for the time being, the Assembly itself has taken no measures responding to the present recommendations. As pointed out under the previous recommendation, the elaboration of a code of conduct for parliamentarians stopped at an early stage. The authorities refer to a manual adopted by the SCPC, which can be found in English on-line³. GRECO notes that being published in 2013, it coincides at best with the adoption of the Evaluation Report (December 2013). The manual mostly refers to, or just quotes the provisions of the Law on Prevention of Conflicts of Interest – LPCI of 2007, and the Law on Use and Disposal with Objects of State Bodies of 2005 as revised in 2015. It thus perpetuates the gaps underlined in paragraph 48 of the Evaluation Report without adding value along the lines of the present recommendation. As

³ http://www.dksk.org.mk/en/images/banners/manual_integrity_coi_f.pdf

regards gifts and other advantages, for instance, the manual (page 24) quotes the applicable legal provisions but does not spell out how to deal with gifts and different forms of hospitality which would not constitute a bribe.

16. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

17. *GRECO recommended introducing rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*
18. The authorities indicate that the implementation of the Law on Lobbying of 2011, and especially the rules on relations of MPs with lobbyists and third parties seeking to influence the legislative process was one of the topics of discussion of the workshop held on 9-10 June 2016 (see also paragraph 10). In the context of the twinning project mentioned in paragraph 10 (see item b) the expert hired has made an analysis of the above law and made recommendations for improvement and more effective implementation. The improved normative framework will serve as a basis also for further provisions to be included in the future Code of Ethics for MPs.
19. GRECO recalls that the Evaluation Report had identified serious weaknesses as regards the current arrangements on lobbying based *inter alia* on the Law on Lobbying of 2011. The country had announced its intention to proceed with a number of changes (introducing a Code for lobbyists, amending the above Law, among others) and GRECO had pointed to the need to combine these initiatives "with a greater transparency on MPs' contacts with lobbyists and other third parties in connection with on-going legislative proposals outside the meetings of the Assembly and its commissions". GRECO welcomes that discussions are being held and that an expert analysis was done. But it is clear that the process for the implementation of the present recommendation is only at a very early stage.
20. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

21. *GRECO recommended ensuring (i) that sanctions are provided in the relevant laws for all infringements they contain and (ii) that appropriate enforcement action is taken in all cases of misconduct by Members of Parliament.*
22. The authorities indicate that with a view to implementing the first part of this recommendation, in the framework of the EU-supported IPA 2010 twinning project "Support for efficient prevention and fight against corruption" (see also paragraph 10 item b)), activities are undertaken to analyse the legal and institutional framework, including the Law on prevention of corruption (LPC) and the Law on prevention of conflict of interests (LPCI). In that context, a Working Group responsible for analysing and preparing amendments to the above-mentioned laws was established on 28 August 2015 by the ministry of justice. It is chaired by the President of the State Commission for the Prevention of Corruption and composed of representatives from institutions which have a competence in the area of anti-corruption policies. It will take into consideration all the recommendations for improvement issued by external experts hired within the IPA project, by the European Commission in the reports on progress of the country in the EU pre-accession process and, of course, the findings and recommendations of GRECO.
23. GRECO notes that some analytical work has been undertaken to implement this particularly important recommendation and it would appear that the process is at a very early stage of preparation concerning this recommendation in particular.

GRECO can only conclude that no tangible progress has been achieved to date and it urges the country to take more determined action to address the concerns expressed in the Evaluation Report (paragraph 80 and other related sections of the report).

24. GRECO concludes that recommendation iv has not been implemented.

Corruption prevention in respect of judges

Recommendation v.

25. *GRECO recommended that, in order to strengthen the independence of the judiciary from undue political influence, the ex officio membership of the Minister of Justice in the Judicial Council be abolished.*

26. The authorities indicate that in order to implement the present recommendation, an amendment to the Constitution was prepared, as part of a package of Constitutional amendments, which are currently in parliament for adoption in the final phase. As indicated in paragraphs 7 and 8, the adoption process is currently blocked. The proposed amendment determines the composition of the Judicial Council in a way that does not include the Minister of justice. The Council would be composed of 15 members, out of whom: 10 members would be elected by the judges from among their ranks, three members would be elected by the Parliament and two members would of proposed by the President of the Republic and subsequently elected by the Parliament (these would be selected among the university professors of law, lawyers and other distinguished jurists:

„AMENDMENT XXXVIII

1. The judicial Council of the Republic of Macedonia is an autonomous and independent body of the judiciary.

The Council secures and guarantees the autonomy and independence of the judicial branch of power.

The Council consists of fifteen (15) members.

Ten (10) members of the Council are elected by the judges, out of their ranks. Three (3) of the elected members belong to the communities which do not compose the majority of the population of Republic of Macedonia, thus ensuring the appropriate and equitable representation of the citizens belonging to all communities.

Three (3) members of the Council are elected by the Assembly of the Republic of Macedonia with the vote of a majority of the total number of representatives, which shall also include a majority of the votes of the total number of representatives who belong to the communities which do not compose the majority of the population of Republic of Macedonia.

Two (2) members of the Council are elected by the Assembly of Republic of Macedonia upon a proposal from the President of the Republic of Macedonia which shall include a member of the communities which do not compose the majority of the population of Republic of Macedonia.

The members of the Council elected by the Assembly of the Republic of Macedonia upon a proposal of the President of the Republic of Macedonia shall be university professors of law, lawyers and other eminent jurists.

The members of the Council elected by the Assembly of the Republic of Macedonia upon a proposal of the President of Republic of Macedonia may not be elected judges.

The mandate of the elected members of the Council shall be for a term of six years, non-renewable.

The conditions and the procedure for election as well as the bases and the procedure for termination of the function and the dismissal of the members of the Council are regulated by law.

The function of elected member of the Council is incompatible with membership in political party or with execution of other public functions and professions determined by law.

2. This Amendment replaces Amendment XXVIII of the Constitution of the Republic of Macedonia”.

27. The authorities underline that the composition is meant to reflect the need for independence of the Judicial council and a balanced approach that would limit risks of judicial corporatism and nepotism. Once adopted, the content of this constitutional amendment will also be reflected and implemented in the Law on the Judicial Council of the Republic of Macedonia, through amendments which are also currently in the adoption procedure. These changes will also exclude the Minister of justice and the President of the Supreme Court as members of the Judicial Council.
28. The authorities reiterate that the Minister of justice has de facto no influence on the election, promotion and dismissal of judges, since s/he does not attend in practice the meetings of the Judicial Council.
29. GRECO takes note of the above and it is pleased to see draft amendments – including concerning the Constitution – have been prepared that would address the underlying concerns of the present recommendation. GRECO is aware of the high risk that the current proposals are not be adopted before the end of the current legislature but it cannot ignore the concrete steps already undertaken up to now. It encourages the country to rapidly fulfil the reform also with the necessary changes to be made to the legislation governing the Judicial Council.
30. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

31. *GRECO recommended that the authorities of "the former Yugoslav Republic of Macedonia" ensure that the legal criteria and rules for the appointment of judges of first instance courts are effectively implemented in practice, in particular as regards the requirement that all new judges be graduates of the Academy for Training of Judges and Public Prosecutors.*
32. The authorities indicate that in the last three years, starting on 1st January 2013, efforts have been made to implement effectively the amendments to the Law on courts. According to these amendments, the judges in the first instance courts can only be elected from among the ranks of the candidates who graduated at the Academy for the training of judges and public prosecutors (Law amending the Law on courts – Official Gazette of the Republic of Macedonia No 150/2010). The new measures taken are the following: a) starting on 1st January 2013, the Judicial Council carries out the election of new judges for the first instance courts only from among the ranks of candidates who graduated at the Academy for judges and public prosecutors – this change started to produce its full effects as from 2014, after the adoption of the Evaluation Report (all young recruits had terminated their training and could be appointed to vacant posts); b) in this direction, a record of appointments in the courts has been established and it has been submitted to the European Commission. This practice of keeping such a track record will continue and it will be included in charts showing the selection of judges and the implementation of the merit-based system.
33. The salary of trainees of the Academy was also increased significantly and made more attractive in order to avoid that the lack of candidates would lead again to the hiring of lay judges. In 2016, there were 84 applicants for 30 posts open to competition. New integrity checks have also been introduced to replace those cancelled by the Constitutional Court (see paragraph 109 of the Evaluation Report). The authorities point out that lay judges cannot be hired to fill vacant posts in appellate courts – vacancies can only be filled on the basis of promotions (and a merit-based approach) of first instance court judges.

34. GRECO takes note of the above. It recalls the concerns expressed in paragraphs 110 and 111 of the Evaluation report, especially the fact that the implementation of the reform of 1st January 2013 had been problematic in practice. It welcomes the steps taken to ensure – as from 2014 – that all new judges be graduates of the Academy for Training of Judges and Public Prosecutors, as well as the assurances given by the authorities that there are at present enough new candidate-judges to avoid resorting to lay judges.

35. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

36. *GRECO recommended that appropriate measures be taken with a view to strengthening the independence, impartiality and integrity of lay judges, inter alia, by introducing specific guidelines and training on questions of ethics, expected conduct, corruption prevention and conflicts of interest and related matters.*

37. The authorities provide a long inventory of all the measures taken in the period 2014-2016 as regards training and awareness raising measures for judges and prosecutors concerning ethics, conflicts of interest, anti-corruption measures and the like. They point out that efforts are being made to involve also the lay judges in those activities. The authorities also indicate in the latest information submitted that in 2014 and 2015, for the first time a series of five seminars were organised specifically for lay judges on ethics, conflicts of interest and related subjects. A total of 130 lay judges attended these events. The Judicial Council is also preparing a series of measures including the re-appointment – as from 2016 – of all lay judges in order to comply with the upcoming amended requirements of the Law on Courts (see paragraph 6). In particular, all lay judges will therefore need to have a high-degree diploma, psychological and integrity tests will be performed and so on. Starting in September 2016, a first batch of lay judges (given their high number, the process can only be done step by step) will thus have to attend an intensive training programme which was adopted by the Academy. Moreover, the Association of Judges – which is fully resuming work after its Chairman came back from a long sick leave in April 2016 – will amend the Code of judicial ethics so that it also applies to lay judges.

38. GRECO takes note of the above. It welcomes the first initiatives reported in respect of training on integrity for lay judges and it is looking forward to the effective implementation of the various additional measures announced by the authorities. GRECO will need to reassess the situation once the process is more advanced.

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

Recommendation viii.

40. *GRECO recommended that decisions of the Judicial Council on the promotion of judges be accompanied by a statement of reasons and be subject to judicial review.*

41. The authorities provide the following information. As of 2015, decisions concerning the selection and promotion of judges as well as those on the election of presidents of the courts must be motivated (see link: www.ssrn.mk). So far, 22 motivated decisions have thus been published on-line. There is still no possibility to appeal these Decisions. This situation will be remedied with the constitutional amendment No. XXXIX paragraph 2, which extends the competence of the Constitutional Court so as to examine appeals against Decisions of the Judicial Council:

AMENDMENT XXXIX

(...)

2. It decides upon the appeals on the decisions of the Judicial council of the Republic of Macedonia for election, dismissal or other performed disciplinary sanction to a judge or president of the court.

42. As mentioned previously (see paragraphs 6 and 7), this amendment is part of a package of constitutional amendments, which was in the adoption procedure in the Assembly of the Republic of Macedonia until the process was blocked.
43. GRECO takes note of the above. It is pleased to see that as from 2015 all decisions of the Judicial Council on appointments and promotions must be motivated and that a draft amendment to the constitution was prepared to introduce a mechanism of appeal against such decisions. GRECO understands that with the current political situation, there is a risk that this draft amendment is not adopted during the current legislature but it cannot ignore the concrete steps already undertaken up to now.
44. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

45. *GRECO recommended that, with due regard to the principle of judicial independence, the system of appraisal of judges' performance be reviewed to (i) introduce more qualitative criteria and (ii) remove any automatic lowering of a judge's grade resulting from the reversal of his/her decisions.*
46. The authorities indicate that in the framework of an EU-IPA (Instrument for Pre-Accession) project for the judiciary, an ongoing analysis is being made of comparative domestic experiences based on Opinion 17 of the CCJE⁴ and all the possible options are being considered to address the present recommendation.
47. GRECO is pleased to see that an analysis is being conducted on ways to implement this recommendation. It is clear from the information submitted that implementing measures are at an early stage of consideration. At the time of discussion of the present report, the authorities refer to the draft amendments to the Law on courts but it remains unclear whether and how the present recommendation is being addressed in that context. Therefore, this recommendation cannot be considered as implemented even partly.
48. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

49. *GRECO recommended that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all judges.*
50. The authorities provide the following information. In 2014, the Association of judges adopted and published a Code of judicial ethics⁵ which establishes some core principles to guide the work and overall conduct of judges. These principles are the following: a) Independence; b) Impartiality; c) Integrity; d) Decency; e) Equality; f) Professionalism and conscientiousness.

⁴ Note by the Secretariat: for further information see http://www.coe.int/t/dqhl/cooperation/ccje/textes/avis_EN.asp?

⁵ <http://www.mja.org.mk/Upload/Content/Documents/KodeksNaSudskaEtika13102014.pdf>

51. The Code also provides for the establishment of an advisory body by the Association of judges. Acting upon requests from judges or the Association of judges, the body can issue opinions on one or more questions related to the ethical conduct or (in)appropriate performance of judicial functions, and on the prevention of conflicts of interest concerning judges. The preventive nature of the work of this body and the transparency of procedures concerning the implementation of the Code aim to strengthening public trust in the judiciary and the autonomy of the judiciary. In its first composition, the Advisory body consisted of a President and 14 members, elected by the Steering Board of the Association of judges but it was subsequently decided, in May 2016, to reduce the composition to a President and six members for reasons of functional efficiency and financial savings.
52. The Steering Board of the Association of judges further decided on 17 September 2014 that the Code applies to all judges, regardless of their membership with the association.
53. In 2016, under the EU-supported IPA Project 2010, the Judicial Academy in cooperation with the Association of Judges and foreign experts issued a "Guide for trainers on judicial ethics". This Guide contains practical guidelines for the implementation of the Code including translations of pertinent judgements of the European Court of Human Rights. A pool of new trainers will be created and a series of events have been scheduled in June and July 2016, organised jointly by the Judicial Academy and the Association judges in order to widely communicate the guidelines to the judges, lawyers, notaries, NGOs and the broader public In the framework of the aforementioned IPA project, additional activities will take place for the further development of the Guidelines in joint cooperation between the Academy and the Association of the judges.
54. Until the end of 2016, there will be further training events on ethics and conflict of interests as part of the regular obligatory trainings for the judges and prosecutors, as well for the lay judges, and the administrative employees of the courts and prosecution services.
55. GRECO is pleased to see that a new Code of judicial ethics was adopted in 2014 and that it now applies to all judges in the country, as it was recommended. GRECO recalls that this is the third such document since 1994⁶. The content of these codes has progressively expanded over the years but it would appear that this new version (an English copy of which was not made available) is still not a "living" document which would illustrate the theoretical principles with regularly updated practical guidance through explanatory comments and examples. It would appear that the country prefers to provide explanations *ad hoc* through opinions to be rendered in future by the newly established advisory body, and by means of training based on the recently adopted "Guide for trainers on judicial ethics". GRECO would have preferred that some guidance be also available directly and on-goingly to all judges, thus providing for an institutional memory of the concrete implications of these standards. But overall, GRECO concludes that the country has established measures which meet in a different way the underlying concerns of the present recommendation.
56. GRECO concludes that recommendation x has been dealt with in a satisfactory manner.

⁶ The text in English of the version of 2006 as well as of the previous version of 1994 can be found at <http://www.legislationline.org/topics/country/31/topic/9>

Recommendation xi.

57. *GRECO recommended that rules and guidance be developed for judges on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.*
58. The authorities indicate that as mentioned under the previous recommendation above, the Code of judicial ethics adopted in 2014 refers to the principle of integrity. In that context, it states that: "the judge and the members of his/her family, may not receive nor request presents, loans or other favours for something that the judge would do or omit to do in the performance of judicial functions, except appropriate gifts of a value not above the exact value determined by law". The authorities also draw attention to the training activities for judges and prosecutors mentioned under recommendation vii (see paragraph 37) during which the key message delivered is that all gifts are prohibited in principle, except for honorary gifts given at events where the judge represents the country, in which case the Law on Use and Disposal with Objects of State Bodies of 2005 as updated in 2015 (see paragraph 15 of the present report) is applicable. Finally, the authorities refer to the activities conducted by the Academy for judges and public prosecutors, mentioned in respect of recommendation x and in their latest information, to the fact that there are plans to complement the Code of judicial ethics with further guidelines.
59. GRECO takes note of the new rules on gifts introduced in the Code of judicial Ethics of 2014. It recalls that similar broad rules were already in place in the previous Code of 2006⁷ and that the objective of the present recommendation was to address a number of gaps identified in paragraphs 145-147 of the Evaluation Report concerning: apparent contradictions between the various prohibitions and exceptions in place, the lack of precision of the Law on Use and Disposal with Objects of State Bodies of 2005 as updated in 2015, the modalities for the reporting of gifts, the need to clarify the situation for non-material benefits, the context in which gifts are offered, and proper monitoring of compliance. In itself, the new Code of 2014 does not constitute an improvement to the situation at the time of the evaluation. On the other side, GRECO cannot ignore the efforts deployed in the context of training activities to present and explain to judges and prosecutors the various restrictions in place concerning gifts and other benefits. It encourages the authorities to pursue actively the implementation of the present recommendation and to proceed with the introduction of written guidance, as announced.
60. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

61. *GRECO recommended (i) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in case one of his/her decisions is found to be in violation of the right to a trial within a reasonable time be abolished.*
62. The authorities indicate in their initial submission of information that in order to implement this recommendation, a new draft Law on courts was prepared and submitted to the Government for adoption; when discussing the present report in plenary, the authorities emphasise that the Government has endorsed these

⁷ See above footnote and article 4 of the version of 2006

changes. They aim to introduce new, precise and predictable disciplinary regulations for the disciplinary procedure and it prescribes a broader range of disciplinary sanctions (written reprimand, compulsory participation in trainings, temporary transfer to another court of the same or lower instance, decrease of remuneration, exclusion from promotions for a period up to three years, dismissal). The proposal also regulates the grounds and modalities of disciplinary procedures, dividing them into three groups depending on the seriousness of these violations: minor, basic and serious disciplinary violations. Also, there will be appropriate disciplinary sanctions prescribed for each type of disciplinary violation, and the dismissal of the judges will be possible only for the most serious disciplinary violations, according to the principle of proportionality.

63. In their latest submission of information, the authorities point out that further amendments are being prepared concerning the categories of disciplinary procedures and that these will probably be included in the draft Law on courts mentioned above. Their purpose is to consolidate the disciplinary procedures and to provide for a more precise definition of infringements as well as for a broader range of disciplinary measures.
64. GRECO takes note of the above. It would appear that the draft amendments prepared so far are going in the direction expected by the first part of the recommendation, and to some extent, also the second part of the recommendation. In the absence of more precise information, it cannot be concluded at the moment that all concerns are adequately taken into account by the existing and additional recent proposals, especially as concerns dismissals on the sole ground of certain procedural delays. GRECO will need to re-examine the situation once the final text of the amendments becomes available.
65. GRECO concludes that recommendation xii has been partly implemented.

Recommendation xiii.

66. *GRECO recommended that the disciplinary proceedings applicable to judges be reviewed so that (i) infringements are subject to one single disciplinary procedure and, (ii) with due regard to the principle of judicial independence, the authority to initiate proceedings and to investigate be separated from the authority to decide on sanctions.*
67. The authorities indicate that the first part of the recommendation is directly connected to the previous recommendation xii. They point out that the current Law on courts provides for two different disciplinary proceedings. One is applicable to incompetent and reckless behaviour and the other is applicable to disciplinary breaches. The Draft Law on courts discussed in recommendation xii seeks *inter alia* to maintain this double category of breaches and thus the duality of disciplinary procedures.
68. As regards the second part of the recommendation, the matter was addressed in the context of the adoption of the Law on the Council for the determination of facts and for the initiation of a procedure to determine a judge's liability (Official Gazette of Republic of Macedonia No 20, of 12.02.2015). This Law establishes the "Council for determination of facts and initiation of procedure for liability of judges", a new independent body responsible – in a nutshell – for the following: a) examining petitions and complaints submitted by citizens, legal entities, presidents of courts, concerning delays in the judicial proceedings and any other allegations related to the work of judges; b) collecting information and evidence in relation to the above; c) submitting to the Judicial Council requests for the initiation of a procedure against a judge or president of court and supporting such action before the council.

69. The above reform has thus dissociated the responsibility for initiating disciplinary proceedings from the decision-making on such cases. The authorities further stress that the members of the newly created body are elected by the members of the judicial branch of power and that its interdisciplinary composition (judges, lawyers and professors) offers guarantees against risks of questionable corporatism and nepotism.
70. GRECO takes note of the above and it regrets the absence of measures taken to date to address the first part of the recommendation. With regard to the second one, it is pleased to see that the reform of February 2015 has remedied the problematic situation identified in the Evaluation Report concerning the concentration of all disciplinary responsibilities in the sole Judicial Council and potentially in the hands of the same persons. It encourages the country to pursue its efforts towards the full implementation of the present recommendation.
71. GRECO concludes that recommendation xiii has been partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xiv.

72. *GRECO recommended that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all prosecutors.*
73. The authorities indicate that similarly to what was done for judges, the Association of public prosecutors prepared a Code of ethics for public prosecutors. It was subsequently adopted on 1st December 2014 by a Decision of the Chief Public prosecutor and thus made applicable to all public prosecutors. The Code provides that when exercising their functions public prosecutors shall comply with the following principles in their relations with other State bodies, with the parties, citizens, both in public relations as well as in their mutual relations: a) legality; b) impartiality and independence; c) diligence and professional behaviour; d) honesty and incorruptibility; e) Professionalism; f) dignity and g) self-restraint. Similarly to the code for judges, the code of ethics for public prosecutors prescribes that for purposes of supervising the implementation and interpretation of the content, an Ethical council shall be established, consisting of a president and four members elected by their peers.
74. GRECO takes note of the adoption of a new Code of ethics for prosecutors in December 2014, which apparently repealed the earlier version. The new code is now applicable to all prosecutors and not just the members of the Association of public prosecutors, which meets one of the underlying concerns raised in the Evaluation Report. The Code, which can be found (in Macedonian) on the Internet⁸, comprises about 10 pages and 20 articles, and it appears to be slightly longer and more detailed than the previous version of 2004 which counted 5 pages and 13 articles. From what can be taken from the version published on-line, however, the document remains fairly general and it does not contain explanatory comments and concrete practical examples which would support its implementation in daily practice. As GRECO also pointed out, such a Code needs to be conceived as a living document which can be updated as needed. The country is thus invited to take more determined measures to fully implement the present recommendation.
75. GRECO concludes that recommendation xiv has been partly implemented.

⁸ [Link to the document](#)

Recommendation xv.

76. *GRECO recommended that rules and guidance be developed for prosecutors on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.*
77. The authorities refer to the content of the above Code of ethics for public prosecutors which provides – under the principle of “Honesty and incorruptibility” – that “*public prosecutors must not use their official position and reputation for purposes of gaining property or other benefits for themselves or for somebody else, and should not accept gifts and free favours, if this may prejudice their impartiality and objectivity.*” They also refer to the training and other awareness raising activities mentioned under the above recommendations vii, x and xi. Finally, they state that the above Code will be complemented with further guiding information.
78. GRECO takes note of the above provision contained in article 2 principle 4 in of the Code of ethics. The text does not contain any sort of guidance, as already pointed out in the considerations concerning the Code of ethics as a whole (see above recommendation xiv); it would certainly have been helpful to give some orientation as to what kind of property or benefits could be involved and the cases where these could “prejudice the impartiality and objectivity” of the prosecutor. As it stands, there is not much added value compared to the provision contained in the Code of 2004⁹. GRECO notes that the Code also contains another provision on gifts under article 13, which is specific to relations with parties to proceedings: “*Public prosecutors are obliged to decline the receiving of gifts and services from parties and other participants in the proceedings. If gifts or services cannot be refused, these will be notified in writing to the supervisor as soon as the prosecutor concerned has knowledge about these, stating the circumstances in which a gift or a favour was given. The same shall apply in case of an attempt of giving a gift or favour.*” No guidance is provided in that context either. It remains unclear whether both provisions refer to the same sort of gifts and other advantages, and whether any of the provisions also refers to hospitality. Finally, GRECO notes that as it was pointed out in relation to recommendation xiv, the Code provides for a supervisory mechanism under the responsibility of an Ethical council. This part of the recommendation would thus appear to have been taken into account. But GRECO will need to re-assess the situation when further information becomes available about its functioning and actual monitoring work¹⁰, as it was recommended. The authorities clearly need to take more determined action to implement the present recommendation.
79. GRECO concludes that recommendation xv has been partly implemented.

Recommendation xvi.

80. *GRECO recommended that the disciplinary regime applicable to prosecutors be reviewed so that (i) infringements are clearly defined and that (ii) the range of available sanctions be extended to ensure better proportionality ensuring, in particular, that dismissal of a prosecutor is only possible for the most serious cases of misconduct.*
81. The authorities indicate that this recommendation will be implemented with the new Law on public prosecution, which has been prepared and still needs to be adopted

⁹ Article 6 stated i.a. “that prosecutors shall refuse gifts or donations from those who could hereby influence or affect the resolution of a case, or where this could affect the professional engagement and exercise of official duties”.

¹⁰ During the plenary discussion of the present report, the authorities point out that the members of the council have been appointed in May 2016 and that some cases have already been submitted to this new body.

by the government. It defines clear grounds for the disciplinary liability of public prosecutors, based on the principle of proportionality and it accordingly prescribes disciplinary measures. The draft also establishes a disciplinary procedure articulated around three phases: initiation of proceedings, conducting the investigation and the disciplinary decision-making.

82. GRECO is pleased to see that draft legislation has been prepared to address the present recommendation. The information available at this stage does not allow to conclude that the two elements of the present recommendation are being adequately addressed in the draft. As indicated earlier, the process appears to be at an early stage and the draft has not been adopted/endorsed by the government. Under these various circumstances, GRECO cannot consider that the present recommendation has been implemented even partly.
83. GRECO concludes that recommendation xvi has not been implemented.

Corruption prevention in respect of all categories

Recommendation xvii.

84. *GRECO recommended that further written clarification concerning the notions of "family member" and of "movable property of greater value" be made available in the context of asset declarations.*
85. The authorities refer to the fact that the working group established in August 2015 by the Ministry of justice to prepare amendments to the Law on the prevention of corruption (LPC) and the Law on the prevention of conflict of interests (LPCI) – see paragraph 22 – considered that the best way to implement the present recommendation xvii would be to amend the LPC. They therefore submitted to the Ministry draft definitions for the expressions "family member" and "movable property of greater value". The draft amendments to the LPC subsequently prepared by the Ministry and which is now in the phase which precedes the consultation process and the subsequent submission to the governmental procedure. According to draft amendments, article 7 paragraphs 3 and 4 of the LPC would provide for the following definitions: a) "Family" means the spouse, children, parents, brothers and sisters, foster-parents, foster-child as well as all other persons with whom the person of paragraph (1) of this article is in a family relationship or extra-marital community and lives in a same household"; b) "The term "movable property of greater value" refers to all movable objects which are subject to registration and all other movable objects with a value in excess of 5.000 Euros".
86. Pending the final adoption of the above amendments, the State Commission for the Prevention of Corruption – which is granted by the LPC the authority for prescribing the content and the format of declarations – adopted a resolution on "Additions to the Manual for filling the Declaration of Assets" which explains the terms "family member" and "movable property of greater value" along the lines of the draft legal amendments.
87. GRECO is pleased to see that concrete changes have already been introduced by the State Commission for the Prevention of Corruption. The main underlying concerns of the present recommendation have thus been addressed. GRECO also takes note of the fact that the definitions used by the Commission would also be included in legislation by means of amendments to the Law on the prevention of corruption (LPC).
88. GRECO concludes that recommendation xvii has been implemented satisfactorily.

Recommendation xviii.

89. *GRECO recommended that appropriate legal, institutional and operational measures be put in place to ensure a more in-depth scrutiny of statements of interest and asset declarations submitted by Members of Parliament, judges and prosecutors, in particular by streamlining the verification process under the aegis of the State Commission for the Prevention of Corruption.*
90. The authorities indicate that in June 2015, the Law on Prevention of Corruption (LPC) was amended in order to entrust the State Commission for the Prevention of Corruption (SCPC) with the responsibility to keep a new registry entitled "Registry of elected and appointed persons". This registry defines precisely all the persons who are required to submit declarations of assets and statements of interests. In July 2015, the SCPC also adopted a template for the submission of data on elected and appointed persons subject to registration, accompanied by further instructions for filling in the template and on the content, form and manner of keeping the new registry. Under the EU-supported IPA 2010 Twinning Project "Support to efficient prevention and fight against corruption" involving the SCPC and the Federal Office of Administration of Germany as the twinning partner, software solutions were prepared throughout 2015 and in the beginning of 2016 in order to computerise the above registry. It is expected to become fully operational in the beginning of July 2016.
91. In 2015 and up until now, further activities were undertaken within the above Twinning Project including – under its Component 6 – for the improvement of the system for the management of declarations of assets and statements of interests. In order to establish a consistent supervision of the declarations of assets and statements of interests, a series of activities concerning IT-based solutions are being implemented such as the preparation of technical specifications and organising the tender procedure (currently in progress). It is expected that the system will be operational by the end of July 2016. Simultaneously, a software solution is being prepared for the on-line submission of declarations and statements. This innovation is meant to allow for electronic quick checks of the fulfilment of basic obligations of declarants, and for keeping track of changes in the information submitted throughout their mandate (so-called data history). Furthermore, the interconnection with databases and data registers of competent institutions is in progress, for instance with the Real Estate Cadastre Agency, the Ministry of Interior, the Public Revenue Office, the Office for Management of Registers, the Customs Administration, the Central Securities Depository and so on: it would allow to check promptly the accuracy of data contained in the declarations of assets.
92. GRECO is pleased to see that ambitious measures are being taken progressively to increase the capacity of the State Commission for the Prevention of Corruption (SCPC) to scrutinise the asset declarations and statements of interests, including the introduction of specific IT solutions and a registry of officials required to disclose such information. It encourages the country to pursue the efforts in this direction and to ensure all concerns raised in the Evaluation Report are taken into account. This relates in particular to the identification of third persons (spouses, relatives etc.) who need to be taken into account in the declaration system. It also concerns a) the articulation and coherence of the supervision of the declarations and statements within the SCPC (which was shared inconsistently between two small different departments) and b) between the SCPC and the Public Revenue Office since the latter also carries out checks concerning asset declarations. GRECO will re-examine the situation once the reform process is more advanced and a more consolidated overview of reforms is available.

93. GRECO concludes that recommendation xviii has been partly implemented.

Recommendation xix.

94. *GRECO recommended (i) that the financial and personnel resources of the State Commission for the Prevention of Corruption in the areas of conflicts of interest, lobbying and asset declarations be increased as a matter of priority and that (ii) the Commission demonstrate a more balanced and proactive approach in these areas.*

95. The authorities indicate in relation to the first part of the recommendation that the Budget of the Republic of Macedonia for 2015 increased the funding intended for the State commission for the prevention of corruption from 21.666 million denars (in 2014) to 31.232 million denars – i.e. from approx. 353 000 EUR to 508 000 EUR – which represents an increase of 44%. Staff salaries and allowances also increased by for 12% in the same time-span. In order to strengthen the human capacity of the commission in the areas of asset declaration and conflicts of interest, three new posts have been created in 2015 (of which two have been filled) for the management of data on asset declarations and for follow-up action deriving from the implementation of the State programme for the prevention and reduction of conflicts of interest. At the same time, a request was made to fill the position of Head of the Unit responsible for property information. The authorities indicate that currently, 17 of the 43 positions (in total) of the commission are still vacant.

96. As for the second part of the information, the authorities indicate that throughout 2015 and 2016, the SCPC has undertaken numerous activities to increase its capacities but no specific information is provided on these. The authorities also refer to a series of events un-related to the present recommendation¹¹.

97. GRECO takes note of the efforts accomplished between 2014 and 2015 to increase the financial and personnel resources of the State commission for the prevention of corruption, with the creation of three??? additional posts, bringing the total number of personnel dealing with the declarations of assets and statements of interests to 11, instead of eight at the time of the evaluation. In addition, one vacant position was filled in those sectors, which may explain why salaries had to be increased in parallel. Overall, the first part of the recommendation can be considered as implemented. As for the second part of the recommendation, the authorities refer to general improvements without naming these and to a list of events unrelated to the present recommendation. GRECO cannot conclude that the underlying concerns expressed in the Evaluation Report have been addressed, in particular: the lack of proactivity and prioritised action on the basis of needs assessments for instance, the need to demonstrate an impartial (more “balanced”) approach in the work and existence of opportunities for interference in the SCPC’s work due to the absence of criteria for the dismissal and appointment of members of the Commission itself (not the support staff). More determined action is clearly needed in those areas.

98. GRECO concludes that recommendation xix has been partly implemented.

¹¹ Conference to present the results of investigative action taken in connection with corruption (status as of February 2015); Conference for the promotion of inter-institutional cooperation (in April 2016); Conference for the harmonised management and prevention of corruption in the private sector (March 2016); “Day of Integrity” Conference on the prevention of corruption and conflict of interests in local self-government (May 2016); Conference on the funding of political parties and election campaigns (May 2016); a series of training events to strengthen the capacity of the SCPC to communicate with the public (February and March 2015); a series of training events organised on “Training of Trainers” (May – June 2015 and December 2015); a presentation for SCPC members with an analysis of the Law on Lobbying including recommendations for improvement (May 2015)

III. CONCLUSIONS

99. **In view of the foregoing, GRECO concludes that “the former Yugoslav Republic of Macedonia” has implemented satisfactorily or dealt with in a satisfactory manner only three of the nineteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, ten have been partly implemented and six have not been implemented.
100. More specifically, recommendations vi and xvii have been implemented satisfactorily, recommendation x has been dealt with in a satisfactory manner, recommendations v, vii, viii, xi, xii, xiii, xiv, xv, xviii and xix have been partly implemented and recommendations i, ii, iii, iv, ix and xvi have not been implemented.
101. With respect to members of parliament, none of the improvements recommended have been implemented even partly. Certain initiatives are reported such as the elaboration of a code of conduct for parliamentarians, but this and other reforms have been stalled at an early stage.
102. As far as judges and prosecutors are concerned, “the former Yugoslav Republic of Macedonia” has made some improvements. Only career judges who have passed the competitive examination and who have attended the curriculum of the judicial Academy can now be recruited. A new Code of conduct for judges was adopted in 2014 – which now applies to all career judges – and above all, measures are being put in place to advise members of the judiciary on its concrete implications by means of training and the establishment of a new advisory body which can render opinions ad hoc. A new Code was also adopted in 2014 for prosecutors specifically but for the time being, explanatory comments and guidance are still insufficient to make the Code more easily applicable to situations likely to arise in daily practice. Constitutional amendments have been prepared to abolish the ex officio membership of the Minister of Justice in the Judicial Council and to introduce appeal possibilities (before the constitutional court) against the Council’s decisions on appointments and promotions. At the same time, the Council itself is required – starting in 2015 – to motivate its decisions on promotions. These are some examples of partial achievements. Due to the political crisis, the process of adoption of draft Constitutional amendments, a Draft Law on Courts, a Draft Law on Public Prosecution and a Draft Law on the Prevention of Corruption have stopped sometimes at an early stage. In other cases, the information provided to GRECO is not sufficiently specific or pertinent to demonstrate that actual progress has been achieved.
103. In view of the above, GRECO notes that in the present absence of final achievements, further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. However, bearing in mind that several substantial reforms are underway and on the understanding that the authorities will further pursue their efforts, GRECO concludes that the current low level of compliance with the recommendations is not “globally unsatisfactory” in the meaning of Rule 31, paragraph 8.3 of GRECO’s Rules of Procedure. GRECO invites the Head of delegation of “the former Yugoslav Republic of Macedonia” to submit additional information regarding the implementation of recommendations i to v, vii, viii, ix, xi to xvi, xviii and xix by 31 January 2018.
104. Finally, GRECO invites the authorities of “the former Yugoslav Republic of Macedonia” to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.