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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

MALTA

Adopted by GRECO at its 75th Plenary Meeting
(Strasbourg, 20-24 March 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Malta to implement the recommendations issued in the Fourth Round Evaluation Report on Malta which was adopted at GRECO's 66th Plenary Meeting (8-12 December 2014) and made public on 23 June 2015, following authorisation by Malta ([Greco Eval IV Rep \(2014\) 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 Malta submitted a Situation Report on measures taken to implement the recommendations. This report was received on 12 October 2016 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected the United States of America (with respect to parliamentary assemblies) and Bosnia and Herzegovina (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Jane LEY, on behalf of the United States of America and Adnan DLAKIĆ, on behalf of Bosnia and Herzegovina. 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 nine recommendations to Malta in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendations i. ii. and iii.

6. *GRECO recommended*
 - *that a thorough review of the current provisions of the Code of Ethics for members of parliament and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest be undertaken with a view to adopting improvements that will provide more subject matter coverage, consistency and clarity, as well as guidance (recommendation i);*
 - *that measures be taken to ensure there is appropriate supervision and enforcement of (i) the rules on the declaration of assets, financial interests and outside activities, and (ii) the standards of ethics and conflicts of interest provisions applicable to members of parliament. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available (recommendation ii);*
 - *(i) establishing a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest in relation to their legislative duties, as well as financial declaration obligations; and (ii) providing regular awareness raising activities for members of*

parliament covering issues, such as ethics, conflicts of interest, acceptance of gifts, honoraria, hospitality and other advantages, outside employment and activities, declarations of financial/activity interests, as well as other activities related to the prevention of corruption and the promotion of the integrity within the Parliament (recommendation iii).

7. The authorities of Malta indicate that the draft Bill on Standards in Public Life, which was originally tabled in March 2014, is currently undergoing its third reading in Parliament; it is expected to be adopted by the end of 2017. The authorities further confirm their intention to take into account the comments made in GRECO's Fourth Round Evaluation Report and the results of this RC-IV in the second reading phase of the draft as well as in all necessary discussion and preparatory work involved at parliamentary committee level.
8. The draft does set in place a fairly comprehensive integrity package, taking inspiration from the UK model, which is based on the following elements:
 - Broad scope: applies not only to MPs, ministers, parliamentary secretaries and parliamentary assistants, but also to persons of trusts employed in their entourage.
 - Codes of Ethics: appended to the draft Bill, for (i) parliamentarians and ministers, and (ii) parliamentary secretaries and parliamentary assistants, respectively.
 - Commissioner for Standards in Public Life: a key institution in the reform, with a wide catalogue of responsibilities, including
 - examining and, if need be, verifying declarations relating to income or assets or other interest or benefits of whatever nature of persons who are duty-bound to file such declarations;
 - investigating on his/her own initiative or on the written allegation of any person, any matter allegedly in breach of any statutory or any ethical duty;
 - giving recommendations, when requested, on whether an action or conduct intended by a person to whom the Bill applies, falls to be prohibited by the applicable Code of Ethics and no liability shall attach if such person acts in conformity with any such recommendations;
 - making recommendations for the improvement of the Code of Ethics and its related provisions on gifts, the misuse of confidential information and post-employment bans, as well as further developing guidance on the above, as necessary, and making the latter accessible and comprehensible to the general public;
 - scrutinising the register with all details of absentee MPs;
 - ensuring that every month, the administrative penalty due by every MP according to Standing Order 159¹ is calculated, after identifying those MPs who have been absent throughout a whole session without permission; and informing, thereafter, in writing every MP owing an administrative penalty of the amount due and the reasons for such penalty;
 - if deciding not to investigate an allegation of an ethical breach, informing the complainant stating the reasons thereof;

¹ Standing Order 159 by Resolution 368 of 2016 stipulates that if a member is absent during the whole of a parliamentary day without leave of absence, s/he shall be liable to an administrative penalty of 50 € and shall apply to all MP's including Ministers and Parliamentary Secretaries. The administrative penalties due shall be paid to the Clerk of the House within six months from when they become due and after the lapse of that period the Clerk of the House may demand the payment of the said penalty as a civil debt.

- occasionally requiring any person to give any information related to an on-going investigation and to furnish any available documentation, as required;
- summoning witnesses and administering an oath to any witness and any other person concerned in the investigation unless such documents if disclosed affect the security or defence of Malta or relations and/or dealings with other States or an international organisation of States or governments or is likely to damage seriously the national economy or involves the disclosure of proceedings of the Cabinet. In such case the Commissioner shall not require the information or document to be produced; whatever information gathered shall not be disclosed except for the purposes of the investigation;
- sending reports to the Standing Committee on Standards in Public Life on the performance of its activity.

The Commissioner cannot be a member of the House of Representatives, member a local council or a public officer or a person who holds an office or position which is subject to this proposed act and who shall not be treated as a member of the House. In the exercise of his/her functions the Commissioner shall not be subject to the direction or control of any other person or authority. The Commissioner, or any member of his/her staff, are granted immunity from any civil or criminal proceedings in respect of the exercise of their functions unless it is proven that they have acted in bad faith.

- Standing Committee on Standards in Public Life: composed of the Speaker of the House and two members nominated by the Prime Minister and two members nominated by the leader of the opposition. The Committee is empowered to oversee and scrutinise the work of the Commissioner and has a final say in the conclusions and recommendations issued in the Commissioner's regular reports; the Committee can also request that additional investigations of ethical breaches be carried forward, with the assistance of the Commissioner. If the Committee decides to reject the Commissioner's conclusions, it must give reasons for such decision. The subject person is always granted the right to make his/her submissions.
 - Sanctions for ethical breaches in respect of MPs: The Committee may apply one or more than the following sanctions (i) admonish the person investigated; (ii) recommend that the matter be reported to the Commissioner of Police or the Permanent Commission against Corruption, as the case may be, for further investigation; (iii) recommend that the House direct the MP to rectify any breach; (iv) demand an apology in writing to be made to the Committee; (v) demand an apology by way to a personal statement of the floor of the House; (vi) demand the repayment for resources improperly used; (vii) recommend that the House take any other measure it may deem fit.
9. With regard to recommendation i, GRECO notes that the Code of Conduct appended to the draft Bill, and subject to review in this RC-Report, is the same document that was in existence at the time of the Fourth Round Evaluation Report in 2014. GRECO already stressed at the time that, although the current draft may, if enacted, meet some of the concerns raised, it may not meet others. The authorities have reported no review or discussions on the substance as required by recommendation (i) and have not made any changes. As underscored by GRECO in its Fourth Round Evaluation Report, the Code of Conduct for Members of the House of Representatives is due for thorough revision and update: it does not sufficiently cover some topics that one might expect to see in such code (e.g. rules on gifts, misuse of public resources, misuse of confidential information, revolving doors,

third party contacts, etc.) and several of its provisions raise substantial questions and ambiguities with regard to their application, including measures to be taken in case of infringement.

10. The draft Standards on Public Life Bill establishes, as one of the attributions of the Commissioner, further development and refinement of the current Code of Conduct. Until the actual review and improvements occur, GRECO concludes that recommendation i has not been implemented.
11. With regard to recommendations ii and iii, GRECO acknowledges the rather progressive advisory, monitoring and enforcement system proposed by the draft Standards on Public Life Bill. GRECO notes, however, that the proposed amendments to the draft Bill provided by the authorities for purposes of this RC-IV do not address the primarily concerns expressed in the Fourth Round Evaluation Report. More particularly, Section 28 of the draft Bill is still confusing and does not include the sanctions one might expect to see, for example, the possibility of expulsion. Nor does the Bill give the Commissioner, the Committee or the House specific authority to fine a member for late filing, false filing, or failure to file the required financial reports under the Code of Conduct, typically an important tool for effective systems of this nature.
12. Further, more than two years have passed since the introduction of the draft Bill about which the authorities have reported and it is still pending in the House. Without adoption of these types of provisions or other related provisions, GRECO cannot evaluate their implementation in practice. It urges the authorities to proceed with adopting appropriate legislation, so that the necessary multifaceted measures and institutions can materialise in practice. Then, it will be crucial that this system is rendered both effective and efficient.
13. GRECO takes note that the draft Bill gives the Commissioner a role to make recommendations to the Committee with regard to possible changes to the code of conduct that s/he believes over time from experience might appropriately be considered by the House. In this connection, GRECO recalls the considerations it already made in this respect in the Fourth Round Evaluation Report on Malta (paragraphs 31, 34, 36, 37, 39 and 42).
14. GRECO concludes that recommendations ii and iii have been partly implemented.

Corruption prevention in respect of judges

Recommendation iv.

15. *GRECO recommended that formalised, objective criteria and evaluation procedures be introduced for judicial appointments with guarantees of due independence, impartiality and transparency. The same guarantees of independence, impartiality and transparency are to apply in the appointment of boards and tribunals exercising judicial functions.*
16. The authorities of Malta indicate that by virtue of Act XLIV of 2016, which came into force on 5 August 2016, amendments to the Constitution of Malta in this regard were affected. A new Article 96A was added to the Constitution which establishes a Judicial Appointments Committee which is a subcommittee of the Commission for the Administration of Justice composed of the Chief Justice, the Attorney General, the Auditor General, the Commissioner for Administrative Investigations (Ombudsman) and the President of the Chamber of Advocates. Provisions are also in place to ban political affiliation of the members of the Committee. The Committee has the following functions:

- a) receives and examines expressions of interest from persons interested in being appointed to the office of judge or magistrate;
 - b) keeps a permanent register of a restricted nature and only accessible to the members of the Judicial Appointments Committee, to the Prime Minister and to the Minister responsible for Justice;
 - c) conducts interviews and evaluations of candidates;
 - d) gives advice to the Prime Minister on the eligibility and merit of such candidates;
 - e) when requested by the Prime Minister, to give advice on the eligibility and merit of persons who already occupy the offices of Attorney General, Auditor General, Commissioner for Administrative Investigations (Ombudsman) or of magistrates of the inferior courts to be appointed in the judiciary or, in the case of magistrates, to the office of judge. The Prime Minister is entitled not to follow the advice of the Committee provided that the Minister for Justice (i) publishes within 5 days a declaration in the official Gazette announcing the decision to use the said power, giving reasons which led to the said decision; (ii) make a statement in the House about the said decision explaining the reasons upon which the decision was based by not later than the second sitting of the House;
 - f) gives advice on appointment to any other judicial office or office in the courts (such as boards and tribunals);
 - g) regulates its own procedure and shall be obliged to publish the criteria on which its evaluations are made with the concurrence of the Minister for Justice.
17. GRECO takes note of the constitutional amendments geared towards reinforcing the independence, impartiality and transparency of judicial appointments; the improved framework also applies to members of boards and tribunals exercising judicial functions. The establishment of a Judicial Appointments Committee is a welcome development. It must be recalled that, at the time of the evaluation visit in 2014, the appointment procedures were unclear: there was no formal appointment process, and there were elements of a “tap on the shoulder” system, since, contrary to other European countries, not many were interested in the conditions of employment in the judiciary in Malta. Furthermore, while GRECO recommended in its First Evaluation Round that the Commission for the Administration of Justice was consulted prior to formal appointment by the Prime Minister, this had only happened once. The constitutional amendments now give full responsibility for selection procedures to an independent Judicial Appointments Committee and condition the rejection of a proposed candidate by the Prime Minister, if justified in a public statement of the Minister of Justice.
18. GRECO is pleased to note that the adoption of secondary regulation is underway, for example, regarding evaluation criteria. This is all work in progress, and as appointment procedures are further articulated, due attention must be paid to the need to introduce greater transparency mechanisms in the evaluation process. For example, the Fourth Round Evaluation Report (paragraph 68) indicates that whilst individual applicant names, where not appointed, should not be disclosed, statistical data about numbers of applicants and diversity information, could be publicly available and used to inform decisions about whether employment terms and conditions are sufficiently attractive to enable quality appointments to the judiciary.
19. GRECO concludes that recommendation iv has been implemented satisfactorily.
- Recommendation v.**
20. *GRECO recommended that the system of judicial accountability be significantly strengthened, notably by extending the range of disciplinary sanctions to ensure better proportionality and by improving the transparency of complaints processes.*

21. The authorities of Malta make reference to the latest constitutional amendments which establish a Disciplinary Committee, consisting of three members of the judiciary, who are not members of the Commission for the Administration of Justice, and who are elected from amongst judges and magistrates, so that in disciplinary proceedings, against a magistrate, two of the three members shall be magistrates and the same procedure follows with respect to judges. Any member of the Committee may be challenged and shall abstain in the same circumstances as a judge of the superior courts may be challenged or may abstain. Where a member has been challenged or has abstained, the Commission for the Administration of Justice shall appoint a substitute member.
22. Disciplinary proceedings against a judge or magistrate commence upon a complaint in writing and contain definite charges made to the Committee by the Chief Justice or by the Minister responsible for Justice, for disciplinary breaches (including from the Code of Ethics). The complaint must also include the grounds upon which each charge is based. Upon receipt of such complaint, the Committee notifies the said complaint to the judge or magistrate against whom it is made, granting him/her a reasonable time to reply. If, following *prima facie* consideration of the complaint and of the reply, the Committee considers that there are not sufficient grounds to commence disciplinary proceedings, the Committee refrains from further consideration of the case. If, following the consideration of the complaint and of the reply, the Committee considers that there are sufficient grounds to continue the disciplinary proceedings the Committee appoints a date for the hearing.
23. Proceedings before the Committee are held *in camera* unless the judge or magistrate against whom the proceedings are taken requests otherwise. The complainant or his/her representative and the judge or magistrate against whom the proceedings are taken have a right to be present during the whole of the proceedings, to produce witnesses in support or in defence of the charges set in the complaint, and to be assisted by an advocate or a legal procurator. The Commission for the Administration of Justice may also appoint an advocate to act as a special independent prosecutor in the disciplinary proceedings.
24. If the Committee finds that the judge or magistrate has breached the Code of Ethics it may:
 - (a) if it considers that the breach is of a minor nature, either issue a warning or impose a pecuniary penalty recoverable as a civil debt payable to the Secretary of the Commission for the Administration of Justice, not exceeding ten per centum of the annual salary of the judge or magistrate as at the time established according to law;
 - (b) if it considers that the breach is of a serious nature it may suspend the judge or magistrate from the exercise of his/her duties for a period of not more than six months on half of his/her salary and allowances, as receivable at the time;
 - (c) if it considers that the breach is of such a serious nature that it merits the removal of the judge or magistrate from office, it shall report its findings to the Commission for the Administration of Justice, which then considers whether the evidence constitutes *prima facie* proof and, if it considers that such degree of proof exists, the Commission suspends the judge or the magistrate concerned for a period not exceeding six months. It then refers the matter to the Speaker of the House of Representatives and to the Prime Minister, who may then move for the impeachment of the judge or magistrate by Parliament.
25. During the period of suspension, a judge or a magistrate in accordance with abovementioned paragraph (c), shall be entitled to half the salary and allowances appertaining to his office and after the lapse of the said period of six (6) months he shall again start receiving his salary and all the allowances of his office irrespective of whether the case referred has been concluded or otherwise. In the event that the

proceedings before the House of Representatives do not lead to the removal from office of the member of the judiciary then s/he shall be paid the salary and allowances which shall have been withheld from him during all the period of his suspension. The Committee may also, upon request of the Chief Justice, order that a judge or a magistrate be suspended from the performance of his/her duties on serious medical grounds for a definite period, during which the said judge or magistrate shall continue to receive his full salary and allowances.

26. There is a right of appeal to the Commission for the Administration of Justice. The filing of an appeal suspends the execution of the decision of the Committee. The appeal is to be filed with the Secretary of the Commission for the Administration of Justice by not later than 20 days from when the Committee delivers its decision. In deciding such appeal the Commission for the Administration of Justice does not include the President of Malta. Proceedings before the Commission must be concluded within a period of one year and appeal proceedings within a further period of six months.
27. In the exercise of their disciplinary functions, the Commission and the Committee enjoy the same powers assigned to the First Hall of the Civil Court by the Code of Organisation and Civil Procedure, or by any law from time to time regulating the powers of courts of civil jurisdiction.
28. With respect to the role of Parliament in cases of dismissal, the authorities of Malta underscore that the House can only remove a magistrate and/or judge after the motion for impeachment is analysed by the Commission for the Administration of Justice with the rights of defence of the judge or magistrate being respected. If the Disciplinary Committee considers that a breach of discipline merits removal from office it cannot order removal from office itself, but has to refer the matter to Parliament. Hence it is never possible for a judge or magistrate to be removed from office solely on the basis of a vote in Parliament and without due process. This procedure is deemed as necessary in Malta given that in such a small country it could be risky to entrust the power to remove a member of the judiciary exclusively to the judiciary itself with no further checks and reviews by a separate organ.
29. As to the last component of recommendation v, legally speaking, information on complaints received is not in the public domain. Information on the outcome of disciplinary proceedings, if those proceedings were held in camera, would also not be in the public domain. Information on the outcome if impeachment is proposed would reach the public domain once the case is re-examined and discussed in Parliament. It is relevant that all parliamentary plenaries are broadcast on Parliament's own TV channel and that committee meetings are broadcast over the internet. That being said, the experience so far has shown that the outcome of disciplinary proceedings before the Commission for the Administration of Justice has however, in practice, ended in the public domain, according to the authorities.
30. GRECO welcomes the reform introduced to adjust, and thereby reinforce the disciplinary framework against judges, so that it is entrusted to an independent authority operating procedures encompassing full rights of defence and appeal mechanisms. GRECO also welcomes that the range of disciplinary sanctions has been reviewed to ameliorate their previously limited efficiency and proportionality (the only sanctions available in the past being two polarised extremes, i.e. either warning or impeachment).
31. GRECO takes note of the remarks made by the authorities clarifying that the impeachment role of Parliament only comes to play after a reasoned decision by the Commission for the Administration of Justice, on the basis of disciplinary proceedings with due rights of defence and appeal channels. Referral to Parliament

is therefore made so as to ensure that the most severe disciplinary measure, i.e. removal, is carried out effectively and not marred by undue peer restraint. GRECO accepts this explanation, which is not uncommon in other systems; however, GRECO comments that there are other ways to strike a balance between judicial independence on the one side, and accountability on the other, in order to avoid negative effects of corporatism within the judiciary. The European Charter on the Statute of Judges indicates that in those cases where recommendations on termination of office are further referred to a political or administrative authority, the latter should, at the very least, be obliged to make known the reasons for its refusal so to do².

32. In GRECO's view, risks - or public perceptions - of corporatism may well also be mitigated through greater transparency of complaints processes and disciplinary outcomes, with due respect to the required guarantees of privacy of the individuals concerned (e.g. published statistics on complaints received, types of breaches and sanctions), as recommended. The circulation of information in matters of discipline can also be a valuable tool for judicial practice, thus serving a double purpose: helping identify and further promote corruption prevention within the judiciary and raise public awareness of the action that is taken. No new development has been signalled in this respect.
33. In view of the above, GRECO salutes the decisive action taken by Malta to strengthen its system of judicial accountability; it nevertheless considers that additional steps must be taken to improve the transparency of complaints processes.
34. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

35. *GRECO recommended that (i) a compulsory induction training programme, including consideration of judicial ethics, be developed; (ii) that mentoring arrangements for new judges, exploring the ethical implications of appointment, be formalised; and (iii) that a regular programme of in-service training be provided along with targeted guidance and counselling on corruption prevention topics and judicial ethics for the various persons required to sit in court (judges, magistrates, and adjudicators of boards and tribunals).*
36. The authorities of Malta report on the efforts of the Judicial Studies Committee (JSC) to improve the training curricula of judges. It makes reference to several tools at its disposal in this respect: local training (details were provided on courses running from 2014 to 2016; a module on judicial ethics was included in the catalogue of courses offered), training abroad, training organised by other domestic institutions (e.g. Chamber of Advocates, University of Malta, Chamber of Commerce, etc.), newsletters and mentoring schemes.
37. The authorities further indicate that neither initial nor continuous training are compulsory; yet attendance is monitored through registration. It is still a fact that there are three or four judges and magistrates who do not consider training necessary, worse, a loss of time, but, in general, most members of the judiciary are cooperative and do attend and participate in training sessions (the ratio of attendance is high: between 35 to 38 delegates out of the 43 members of the judiciary have participated in training events). The authorities trust that the new disciplinary framework, which *inter alia* sanctions ethical breaches (training is an

² [European Charter on the Status of Judges](#), Explanatory Memorandum by reference to Article 1.3. DAJ/DOC(98)23.

obligation under the Code of Ethics), will help to address the situation of that minority of judges that are reluctant to enrol in regular training.

38. Mentorship arrangements continue to be of primary importance for new recruits, who, in consultation with the Chief Justice, are placed with a senior Judge or Magistrate and are given tips and advice whilst assisting their mentor during his/her work. The JSC is currently exploring the possibility of starting to offer compulsory initial training to all new recruits, which would essentially entail mentorship and a short training course. That said, the authorities stress that the budget of the JSC continues to be very tight; it amounts to merely 9 000 € per year; unless more funds and more resources are allocated for training purposes the plans of the JSC to improve the current situation are nothing more than wastepaper.
39. GRECO takes note of the struggle between plans and resources against which the Judicial Studies Committee (JSC) is confronted, and for this reason, acknowledges that some, albeit very limited, action has followed to meet recommendation vi. The refinement of mentoring arrangements is a positive development in line with the second item of recommendation vi. However, GRECO reiterates its concern as to the necessity of reinforcing training and advisory opportunities for judges on judicial ethics. This is important not only for new appointees at the start of their judicial career, but for the entire judicial body, particularly in the light of past experience of unethical behaviour of some of its senior members. Due account should be taken in all training to underscore the Maltese social context and ethical challenges that may result from this, including issues of recusal.
40. GRECO concludes that recommendation vi has been partly implemented.

Corruption prevention in respect of prosecutors

Recommendations vii. viii. and ix

41. *GRECO recommended*
 - *that measures be taken to further strengthen the role of prosecutors in written law, notably by (i) ensuring appropriate formalised arrangements for impartial, objective and transparent systems of appointment, discipline and dismissal of prosecutors; (ii) developing clear mechanisms and working procedures in order to ensure that hierarchical decisions/instructions are made with adequate guarantees of transparency and equity; and (iii) introducing measures to help guarantee greater independence and impartiality of prosecutorial decisions (recommendation vii);*
 - *that (i) a code of ethics, accompanied by explanatory comments and/or practical examples, be developed for prosecutors and properly enforced; and (ii) that training on ethics and integrity matters be offered on induction and at regular intervals thereafter.*
 - *that formalised rules on recusal be developed, including (i) by providing for an explicit obligation for a prosecutor to withdraw in cases where impartiality can be an issue, (ii) adequately defining the grounds for withdrawal, and, finally, (iii) setting in place appropriate measures to address a prosecutor's failure to adhere to these standards (recommendation ix).*
42. The authorities of Malta, explain that, as described in the Fourth Round Evaluation Report, prosecution in Malta is carried out by the Police and the Attorney General's Office (AG Office); with around 80% of cases being prosecuted by the Police. The authorities state that, following recent amendments to the Criminal Code intended to reduce delays in the hearing of criminal proceedings, the Court of Magistrates is

now competent to hear and decide, and thus the Police are competent to prosecute cases where the defendant can be liable to up to 12 years' imprisonment. This means that, without further intervention, the prosecutorial workload of the Police should yet again increase³. In view of the increasing workload of the Police, a fundamental change in the system, starting from a shift to prosecution led by the Attorney General rather than police inspectors, is currently under debate. The implementation of such a reform will require a significant increase in the number of prosecutors at the AG Office as the workload would increase drastically; until now, the project has been gradually implemented to better allow existing structures to adapt to change.

43. The principle of independence applies not only to the Attorney General, but also to the officials of the AG Office acting on his/her behalf (Attorney General Ordinance, Article 2(4)). The AG Office has separate units dealing with Criminal Law and with Civil, Constitutional and Administrative law and a person acting as a prosecutor would in practice not be giving advice to Government on Civil or Constitutional matters at the same time. The Criminal Law Unit effectively functions as an independent prosecution service under the supervision of the Attorney General who, according to law, has to approve and be involved in certain specific decisions. Prosecutors of the AG Office have an initial three-year probationary period, after which their contract becomes indefinite.
44. As for employment, discipline and dismissal of prosecutors in Malta, they are subject to ordinary employment law, which is ultimately enforced, in the case of a dispute or an unfair dismissal, by the Industrial Tribunal established under the Employment and Industrial Relations Act. Amendments to the governing law of the latter were adopted in June 2016, in respect of its appointment and composition, in order to strengthen its independence and impartiality and to grant a full right of appeal from its decisions to the Court of Appeal.
45. The AG Office is hierarchically structured, but decisions must be documented. In this regard, over the last months, a written procedure has been introduced with regard to the evaluation and conclusion of sentence bargains which go through three tiers of decision making which are all documented⁴. Other examples of such documentation are found in the cases where a decision is taken to refer a case, which was originally earmarked for trial before the Criminal Court, to the Court of Magistrates and cases where it is decided to discontinue criminal proceedings or to drop certain charges in a Bill of Indictment.
46. Another positive development since the adoption of the Fourth Round Evaluation Report is the adoption, on 27 January 2017, of a Code of Ethics for the advocates and legal procurators working in the AG Office. It further enshrines the principle of independence, autonomy and transparency of the prosecution service, and develops specific provisions to fulfil these aims, e.g. on conflict of interest and recusal, order of work, disagreement and hierarchical orders (always justified and in written form), case assignment, unacceptable behaviour, discretion, etc. Breaches of the Code give rise to disciplinary action. Additionally, the advocates and legal procurators employed with the AG Office fall under the Code of Ethics for

³ Corruption prevention in this extremely significant role of the Police will be subject to review in the upcoming Fifth Evaluation Round.

⁴ A plea bargaining process involves three levels of review which are all documented under the same document. In particular, the defence counsel puts forward its proposal to the lawyer from the AG Office. Such proposal is documented together with all the reasoning behind it, reasons can vary in that the person charged would be willing to plea guilty or willing to assist the police in their investigation. The AG lawyer needs to indicate his/her views on such document for a review by the Head of the Criminal Section. The views of the Head of Unit are also registered and transmitted to the AG himself/herself for another review. The process then follows to the negotiation stage where a potential deal can be agreed between the defence counsel and the lawyer from the AG Office.

Advocates and Legal Procurators and, in the event of an ethical breach, they are subject to the discipline of the Commission for the Administration of Justice; the Attorney General is also subject to the powers of Commission for the Administration of Justice. Training of the staff of the AG Office commonly takes place through mentoring, but the authorities recognise that more formalised and elaborated training can be beneficial; the Code refers to both a right and an obligation for advocates and legal prosecutors of the AG Office to enrol in training courses dealing with ethics and integrity.

47. GRECO recalls, first of all, that it underscored, in its Fourth Round Evaluation Report, the track record of independence of the Attorney General's Office (AG Office) and the fact that it is a trusted institution among Maltese citizens. GRECO, however, asked for targeted improvements in the AG Office in line with Council of Europe standards, and more generally international standards, regarding formalisation of the working protocols of the prosecution service to prevent potential instances of misconduct, conflicts of interests and arbitrariness in the hierarchical and centralised decision-making under which the prosecution service operates. For this reason, GRECO particularly welcomes the adoption of the Code of Ethics for advocates and legal procurators of the AG Office; GRECO deems it to be a notable effort to better regulate the day-to-day functioning of the AG Office, and the specific role of the advocates and legal prosecutors employed in it. GRECO encourages the authorities to pursue in their efforts to provide adequate opportunities for training and advice on conflict of interest prevention and other related integrity matters for the prosecutors of the AG Office.
48. GRECO concludes that recommendations vii, viii and ix have been implemented satisfactorily.

III. CONCLUSIONS

49. **In view of the foregoing, GRECO concludes that four of the nine recommendations contained in the Fourth Round Evaluation Report have been implemented satisfactorily by Malta.** Four recommendations have been partly implemented; only one recommendation has not been implemented.
50. More specifically, recommendations iv, vii, viii and ix have been implemented satisfactorily; recommendations ii, iii, v and vi have been partly implemented; recommendation i has not been implemented.
51. The reinforcement of ethical conduct and accountability of parliamentarians would significantly benefit from the adoption of the draft Bill on Standards in Public Life, which proposes a fairly progressive advisory, monitoring and enforcement system for corruption prevention and integrity related matters in the House. However, more than two years have elapsed since this draft was tabled and it still awaits adoption, which the authorities now foresee will take place by the end of 2017. Even if the current draft may, if enacted, meet some of the concerns raised by GRECO, it may not meet others. For example, the Code of Conduct for Members of the House of Representatives is due for thorough revision and update: it does not sufficiently cover some topics that one might expect to see in such a code (e.g. rules on gifts, misuse of public resources, misuse of confidential information, revolving doors, third party contacts, etc.) and several of its provisions raise substantial questions and ambiguities with regard to their application, including measures to be taken in case of infringement.
52. GRECO commends Malta for the formidable task it embarked upon, when it initiated a broad multi-stakeholder consultation for justice reform culminating in key

changes to the Constitution, in August 2016, by which the independence, impartiality and transparency of the judicial system, as well as self-responsibility within the profession, are substantially strengthened. The establishment of two independent committees for appointment and disciplinary procedures are key achievements in this respect. Further action is required to improve the transparency of judicial complaints processes.

53. GRECO is pleased to note the efforts made by the Attorney General's Office to address all its recommendations. GRECO already acknowledged, at the time of adoption of the Fourth Round Evaluation Report, the good reputation the institution enjoyed among Maltese citizens and its track record of independence. A Code of Ethics for the advocates and legal procurators of the AG Office has been adopted; it includes provisions on the prevention of conflicts of interest, recusal, assignment of cases, misconduct, etc. which formalise on paper, and better articulate, the working procedures of the institution, many of which have been informally followed in the past, to preserve the autonomy and impartiality of the prosecution service.
54. Finally, for all categories of persons covered by this report, training, advisory and counselling opportunities on conflict of interest prevention and other related integrity matters need to be stepped up. This is all the more important in the Maltese social context where personal and professional relationships are inevitably intertwined, and therefore, addressing real or potential conflicts of interest emanating from such situations is a critical challenge.
55. GRECO invites the Head of delegation of Malta to submit additional information regarding the implementation of recommendations i, ii, iii, v and vi by 30 September 2018.
56. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.