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FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in
central governments (top executive functions) and
law enforcement agencies

SECOND COMPLIANCE REPORT

LUXEMBOURG



Adopted by GRECO
at its 92nd Plenary Meeting (Strasbourg, 28 November – 2 December 2022)



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

COUNCIL OF EUROPE



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I. INTRODUCTION

1. GRECO's Fifth Evaluation Round deals with "Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies".
2. This Second Compliance Report assesses the measures taken by the authorities of Luxembourg to implement the recommendations issued in the Fifth Round Evaluation Report on Luxembourg which was adopted at GRECO's 80th Plenary Meeting (22 June 2018) and made public on 27 June 2018, following authorisation by Luxembourg ([GrecoEval5Rep\(2017\)5](#)). It follows on from the Fifth Round Compliance Report on Luxembourg adopted by GRECO at its 86th plenary meeting (29 October 2020) and made public on 6 November 2020 ([GrecoRC5\(2020\)6](#)).
3. As required by GRECO's Rules of Procedure¹, the authorities of Luxembourg submitted a Situation Report on measures taken to implement the recommendations. This report was received on 29 April 2022 and served, together with additional information subsequently provided, as a basis for the Compliance Report.
4. GRECO selected France (with respect to top executive functions in central governments) and Andorra (with respect to law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Vincent FILHOL, on behalf of France, and Ms Eva GARCIA LLUELLES, on behalf of Andorra. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. This Second Compliance Report assesses the implementation of each recommendation contained in the Evaluation Report and regarded as pending (i.e. partly or not implemented) in the first Compliance Report. It also makes an overall appraisal of the level of the member's compliance with these recommendations.

II. ANALYSIS

6. In its Evaluation Report GRECO made 21 recommendations to Luxembourg. In the Compliance Report GRECO held that recommendations iv, xiv, xv, xvii, xviii, xix, xx and xxi had been implemented satisfactorily, recommendations i, ii, iii, vi, vii, viii, ix, xi and xii had been partly implemented, and recommendations v, x, xiii and xvi had not been implemented. Compliance with the 13 pending recommendations is examined below.

¹ The compliance procedure of GRECO's Fifth Evaluation Round is governed by its Rules of Procedure, as amended: Rule 31 revised bis and Rule 32 revised bis.

Preventing corruption and promoting integrity in central governments (top executive functions)

Recommendation i

7. *GRECO recommended that a framework be provided to govern the direct recruitment of senior civil servants appointed to political positions, particularly in view of the risks private functions carried out before their appointment could cause to the impartiality and independence of public office.*
8. GRECO points out that this recommendation was considered partly implemented in the Compliance Report. A Grand Ducal Order establishing the ethical rules applicable to government advisers was adopted on 20 December 2019, but its entry into force was postponed so as to be able to take GRECO's conclusions into account. GRECO considered that the list of information to be provided by a candidate for the post of adviser, the opinion of the Ethics Committee and the final decision to be taken by the Prime Minister provided an adequate control framework. However, GRECO also took the view that the fact that the Ethics Committee's opinion was not supposed to be made public was a shortcoming, as the Prime Minister could decide to ignore a negative opinion from the Ethics Committee and appoint an adviser with conflicts of interests. However, in view of the authorities' desire for this opinion not to be made public in order to protect the candidate for the post who, prior to his/her appointment, is not yet a person entrusted with top executive functions (PTEF), GRECO considered that the effectiveness of the mechanism could be enhanced by a clearer assertion of the fact that the Prime Minister is bound by the opinion of the Ethics Committee or by a strengthening of the latter's powers to follow up on its opinions.
9. The Luxembourg authorities state that in the light of GRECO's comments, the government decided to amend Article 2 (1), paragraph 6, of the Grand Ducal Order (in a new order adopted on 14 March 2022, which came into force on 1 May 2022) to clarify that when appointing candidates, the Prime Minister is bound by the Ethics Committee's opinion. The authorities also point out that when candidates have a conflict of interests, the Prime Minister invites them to take the necessary steps to bring a halt to this and provide proof of the measures they have taken, since a candidate may not be appointed until an end has been put to the situation resulting in a conflict of interests.
10. As to advisers who were appointed or whose contracts were renewed after 1 May 2022 and were already occupying a top executive post, the same procedure applies. Where a conflict of interest persists following a finding to this effect by the Ethics Committee and despite the action of the Prime Minister, the disciplinary penalties provided for in the general regulations governing civil servants will apply².

² According to art. 47 of the amended law of 16 April 1979 establishing the general status of civil servants, the possible sanctions are warning, reprimand, fine, displacement, suspension of biennial increments, delay in promotion or advancement in salary, downgrading of functions with or without partial deprivation of remuneration, temporary exclusion from functions, compulsory retirement for professional unfitness or moral qualification and dismissal.

11. GRECO takes note of the amendment to the Grand Ducal Order establishing the ethical rules applicable to government advisers, under which the Prime Minister's choice of advisers must be approved by the Ethics Committee. It also welcomes the entry into force of this Code, whose provisions it welcomed in the Compliance Report.
12. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii

13. *GRECO has recommended that a Code of Conduct applicable to senior civil servants appointed to political positions be adopted.*
14. GRECO points out that it considered this recommendation to have been partly implemented in the previous report. It welcomed the government's adoption, following an inclusive process, of a code of conduct for advisers, whose rules are largely modelled on those applicable to ministers. With regard to the updating of the code, GRECO notes that the Ethics Committee will carry out periodical assessments of the code's application and may, at any time, issue recommendations to the government on adjustments to be made. These recommendations will be published on the government website. GRECO considered that these arrangements and the code itself met the requirements of the recommendation but the fact that the code had not yet entered into force stood in the way of full implementation.
15. The Luxembourg authorities report, as stated above, that the code of conduct for government advisers was adopted on 14 March 2022, published in the Official Bulletin of the Grand-Duchy of Luxembourg on 24 March 2022 and began to apply on 1 May 2022.
16. GRECO welcomes the entry into force of the code of conduct for advisers, whose provisions it welcomed in its previous report.
17. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii

18. *GRECO recommended that efficient internal mechanisms should be developed to promote and raise awareness of integrity matters in the government, including confidential counselling and training at regular intervals for ministers and senior civil servants appointed to political positions.*
19. GRECO points out that it considered this recommendation to have been partly implemented. The codes of conduct for ministers and advisers provided for awareness-raising activities including training and the possibility of asking the Ethics Committee for confidential advice. However, GRECO noted that the wording of Article 3 (2) of the code of conduct for advisers providing for compulsory annual training in ethics was somewhat ambiguous. In addition, the code of conduct for ministers did not provide for any refresher training after the course held shortly after ministers took up their post. Lastly,

the possibility for ministers to ask the Ethics Committee for confidential advice did not seem to have been used in practice, and GRECO had asked for further information on this mechanism.

20. The Luxembourg authorities now explain that Article 3 (2) of the code of conduct for advisers has been clarified. In the version of the Code now in force, candidates appointed as advisers, advisers whose appointment is renewed and advisers appointed to a new post after 30 April 2022 are required to attend, in the five years after their appointment, at least one training course per year on the following themes: the rights and duties of civil servants; ethics and integrity; combating corruption; and team management.
21. The authorities state that advisers in post before the entry into force of the code of conduct, whose career would otherwise be frozen – a rare but nonetheless possible scenario – will not be bound by this training requirement. This choice was made in the light of the potential legal consequences of establishing new in-service training requirements which did not exist when these advisers took up their post. However, it should be emphasised that these people all have long years of service and experience in the civil service and have already had reason to attend training courses during their career, particularly on the themes of team management and civil servants' rights and duties. Furthermore, so as to fill any gap in the sphere of integrity, all advisers, whatever their career situation are required to attend the awareness-raising course on integrity. Awareness training on the rules of the two codes took place on 19 July, 20 September and 29 September 2022, to enable all serving advisers to participate.
22. The Code is also careful to state that any member of the government who leaves office and is appointed or reappointed as an adviser is not required to attend awareness-raising or training courses because they will have already been on the courses they are required to attend under the code of conduct for ministers and it is pointless for them to be given the same training.
23. Under Article 3 (2) of the code of conduct for advisers, attendance certificates are to be sent to the Ethics Committee by the body organising the course. The Ethics Committee is required to make an initial check on the application of the current code of conduct for advisers. It may also grant dispensation if the adviser has already completed one of the courses in question or an equivalent course on one of the themes referred to above.
24. As to awareness raising for ministers, for which only one initial course is provided shortly after they take up their post, a new paragraph 2 has been added to Article 3 of the code of conduct for ministers, which came into force on the same date as the code for advisers. It provides that, following this initial course, ministers should attend at least one course during their term of office on subjects relating to the duties and responsibilities of government members, ethics and integrity, or combating corruption. As with advisers, a mechanism for dispensation by the Ethics Committee has been established for ministers who have already attended one of the training courses set up or an equivalent one.

25. As to the granting of confidential advice to ministers by the Ethics Committee – a possibility which existed already when the Evaluation Report was adopted but had never been used – the authorities specify that in practice recourse by government members to the system of confidential advice from the Ethics Committee has taken the form of referral to the committee by the Prime Minister, as witnessed by opinions given and published on the government website. The authorities believe that the awareness-raising courses introduced following entry into force of the orders will provide an opportunity to draw attention to the Ethics Committee’s role and remind participants of the existence of this mechanism.
26. GRECO welcomes the training arrangements made for ministers’ advisers, which provide for a compulsory annual course on themes linked to professional standards and ethics, as well as the fact that several training sessions already took place. With regard to training for ministers, it understands the need to make more flexible arrangements given their busy diaries and considers that the obligation to attend at least one course during their term of office meets the requirements of the recommendation.
27. With regard to the possibility for ministers and advisers to seek confidential advice from the Ethics Committee, the authorities do not really provide any more information. They merely hope that training courses will provide an opportunity for the Ethics Committee to remind participants of the existence and benefits of the confidential advice mechanism. GRECO concedes that it is for the people most directly concerned, namely the persons entrusted with top executive functions (PTEFs) and the Ethics Committee, to establish a practice in keeping with the recommendation. Pending this, GRECO can only repeat that the mechanism provided for by both codes of conduct complies with the recommendation and invite the committee to encourage the PTEFs to make use of it without necessarily resorting to a referral by the Prime Minister.
28. GRECO concludes that recommendation iii has been implemented satisfactorily.

Recommendation v

29. *GRECO recommended (i) that detailed rules be introduced on the way in which ministers and senior civil servants appointed to political positions interact with lobbyists and other third parties seeking to influence the government’s legislative and other activities; and (ii) that sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion.*
30. GRECO points out that this recommendation was considered not to have been implemented in the previous report. It was planned to set up registers of interviews between ministers or advisers and representatives of interest groups, to be published online. However, these registers had certain flaws, which made them less comprehensive and useful than they should be. For instance, only interviews requested by representatives of interest groups were to be included, and meetings held at the initiative of a minister or adviser were not expected to be made public. Furthermore, merely mentioning the sphere of activity referred to by the representative of an interest

group during an interview appeared to GRECO to be too vague in relation to the aim of the recommendation and it considered that the definition of representatives of interest groups excluded a whole host of third parties who could also seek to influence the decisions of ministers or advisers, such as lawyers, company heads or other individuals wishing to further their own interests. In addition, the codes of conduct did not make it clear who was responsible for filling in the registers, and the commentaries on the articles of these codes on the communication of information from the registers after their archiving were not compatible with the amended Law of 14 September 2018 on transparent and open administration. Lastly, neither of the codes contained any rules governing how ministers and their advisers should maintain contact with representatives of interest groups and other third parties seeking to influence their decisions.

31. The Luxembourg authorities report that the government has taken note of GRECO's comments and amended both the Grand Ducal Order setting out the rules of conduct for members of the government and that setting out the rules for advisers. In the final version of these orders (Article 5, paragraph 1 of each), it is stated that interviews between members of the government or advisers and representatives of interest groups or third parties are entered in the register of interviews whether they have been requested by a member of the government or adviser or a representative of an interest group or third party, provided that their purpose is to influence the government's legislative or regulatory activities.
32. Some interviews are not covered by the disclosure requirement. This is the case with those relating to individual administrative decisions. Enforceable decisions before administrative courts which identify a person by name and grant or refuse them an advantage are individual in nature and form part of the implementation of the existing laws and regulations, which does not afford any room for manoeuvre in one direction or another for a member of government.
33. Other types of interviews which are not included in the register are those relating to participation as parties in conciliation and mediation activities. These are quasi-judicial interviews referred by one of the parties to a "mediator" and confidential in nature because of the presumption that all the parties in attendance are finding it difficult to agree on a compromise. It is easier to reach a joint solution if both parties can speak freely and without restraint.
34. In addition, interviews are excluded if they are held in the context of social dialogue, particularly involving the Economic Committee, the Social and Economic Committee, the Tripartite Co-ordinating Committee, the Standing Labour and Employment Committee or sectoral committees and conferences. These are meetings which take place in a "tripartite" format, a model like no other in Europe, which was set up in the 1970s in the context of the crisis in the steel-making industry with a view to guaranteeing Luxembourg's economic, financial and social stability. The reason for the exclusion is that this consultation forum is a platform for confidential exchange in which the government consults the social partners on subjects or at moments which are crucial to the national economic, financial and social situation. The meetings help to ascertain and pool all the parties' positions so that agreements can be negotiated which represent the

social consensus. Following the meetings, it is customary to notify the parliament of the decisions taken and inform the general public through the press. As the final outcome of these interviews is already presented, announced and covered by the press as the result of a discussion between all those involved, the government opted to exclude exceptional meetings of this type from the new body of rules so as to fully preserve its political room for manoeuvre during the stage in which it is seeking a social compromise that will be accepted by all the parties.

35. As to the subject of interviews, representatives of interest groups or third parties must provide a summary of their opinion on legislative or regulatory activities and, if applicable, adopted or draft laws or regulations to which the discussions related.
36. A definition of representatives of interest groups and third parties has been included in a new paragraph 2 added to Article 5 of each order. A “representative of an interest group” is defined as anyone who states that they are acting: 1) in the interest of another person, under paid instruction; 2) in the interest of another person engaged in an economic activity, under paid instruction; 3) in the interest of an association, a trade union, a professional body, a non-governmental organisation, a think tank, a research body, a university institution, a religious community, a municipality or a public body performing its activity in a competitive sector under private law rules. A “third party” is defined as anyone other than the representative of an interest group who states that they are acting either on their own behalf or to defend their own interests or in the interests of another person but not having been instructed to do so.
37. As to filling in registers, this duty lies with the advisers who were present at the interview themselves. For interviews with ministers, this duty lies with their respective secretariats. Furthermore, the requirement to have an interest in the matter to be entitled to consult the data in the register once they have been archived – three months after the end of the legislature – has been removed.
38. Lastly, in response to the criticism that there were no rules governing how ministers and their advisers maintain contact with representatives of interest groups and other third parties seeking to influence their decisions, the codes of conduct have also been added to. Under Article 5, paragraph 11, of the code of conduct for advisers, the latter “shall act with the impartiality, integrity, diligence and circumspection required during contacts and interviews with representatives of interest groups and other third parties, even if the interview is not of the type that must be entered in the register”. The same clarification is made in paragraph 11 of the code for ministers and is supplemented by the general principles of behaviour set out in Article 1, which have been fleshed out (integrity, disinterestedness, transparency, diligence, honesty, responsibility and impartiality).
39. GRECO takes note of the information provided, which takes account of all the shortcomings highlighted in its previous report. It is satisfied with the amendments made to the two Grand Ducal Orders (to Article 5 of each) with regard to the public register of interviews between ministers and their advisers and representatives of interest groups or third parties, particularly because most interviews are now covered, even those held at the initiative of PTEFs. Interviews not covered by the disclosure

requirement do not seem to GRECO to pose any problem vis-à-vis the requirements of the recommendation. The level of detail provided on the discussions concerned also seems satisfactory as well as the definitions of representatives of interest groups and third parties. These are now broad enough to cover all those persons liable to seek to influence the decisions of ministers or advisers in the course of their legislative or regulatory activities. It has been clarified which persons are responsible for collecting information on interviews and the requirement to have an interest in the matter to be entitled to consult information contained in registers after it has been archived at the end of the legislature has been removed. Lastly, besides disclosure of information on interviews between PTEFs and lobbyists or third parties, certain principles now govern contacts between these persons.

40. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi

41. *GRECO recommended that the rules on abstention by senior civil servants appointed to political positions be defined more clearly by including specific criteria, in particular marital and family ties.*
42. GRECO points out that it considered this recommendation to have been partly implemented in the previous report. Article 4(2) of the code of conduct for advisers, stipulating criteria relating to family, marital and other ties obliging an adviser to step back from a given matter, adequately fulfilled the aims of the recommendation. Once the code had entered into force, this recommendation could be considered to have been fully implemented.
43. The Luxembourg authorities point out that the code of conduct for advisers was adopted on 14 March 2022 and came into force on 1 May 2022.
44. GRECO welcomes the entry into force of the code of conduct for advisers, whose provisions it approved in its previous report.
45. GRECO concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii

46. *GRECO recommended (i) that the rules on gifts applicable to ministers be improved and (ii) that the rules on gifts applicable to senior civil servants appointed to political positions be clarified.*
47. GRECO points out that it found that both parts of this recommendation had been partly implemented in the previous report. The rules applicable to ministers on gifts had been tightened up in certain respects, notably through an obligation to declare gifts received from the same donor in a single calendar year if their total value was in excess of 100€. This was a positive step, as was the obligation to hand over gifts that could not be refused to the Prime Minister's secretariat. GRECO considered that, when combined with the prohibition on accepting gifts of any value and from any donor where there was

a risk they could influence ministers and the right to request an opinion from the Ethics Committee, the rules on accepting gifts were satisfactory. As the rules for accepting gifts applicable to advisers were closely modelled on those for ministers, GRECO also found them to be satisfactory, and concluded that both parts of the recommendation could be considered to have been fully implemented once both codes had entered into force.

48. The Luxembourg authorities point out that the codes of conduct for ministers and for advisers were adopted on 14 March 2022 and came into force on 1 May 2022.
49. GRECO welcomes the entry into force of the codes of conduct for ministers and for advisers, whose new rules on gifts it approved in its previous report.
50. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii

51. *GRECO recommended (i) that an obligation to inform, during a set period, an appropriate body of any new professional activity undertaken should be established for all former members of the government and former senior civil servants appointed to political positions and (ii) that all such activity should be studied and, if appropriate, supervised or prohibited to allay any suspicion of a conflict of interest, when the activity in question was subject to a system of authorisation or supervision by the entity that the former member of government or former senior civil servant had just left.*
52. GRECO points out that each part of this recommendation was considered to have been partly implemented in the previous report, as was the recommendation as a whole. The codes of conduct for ministers and for advisers established an obligation to notify the Ethics Committee of any new professional activity in the private sector for two years after the end of the term of office for ministers and one year for senior officials. The reasons put forward for these differing situations seemed satisfactory so GRECO found that the first part of the recommendation could be considered to have been fully implemented once the codes had entered into force.
53. With regard to the second part of the recommendation, GRECO appreciated the fact that the Ethics Committee could make recommendations for restricting activities it deemed incompatible. However, the provisions set out in the codes fell short of the recommendation's requirements in two respects. Firstly, the fact that the Committee's recommendations would remain confidential and, secondly, the fact that it could not recommend in the most obvious cases of conflict of interest, that the former senior official concerned should not be allowed to engage in the intended activity, in line with the recommendation. GRECO calls on the Luxembourg authorities to revise the provisions of the codes of conduct relating to these two aspects. Pending this, it found that the second part of the recommendation had only been partly implemented.
54. As far as the first part of the recommendation is concerned, the Luxembourg authorities point out that the two codes of conduct came into force on 1 May 2022. As to the second part of the recommendation, they state that Article 15 of the code of conduct for members of the government and Article 12 of that for advisers have been substantially

amended in anticipation of increased transparency and the strengthening of the role and means of action of the Ethics Committee.

55. Former ministers and ministers in office must now inform the Ethics Committee as soon as they are contemplating taking up a new job in the private sector, whereas under the previous wording of Article 15 of the code, the Committee only had to be informed when the person concerned actually started such a job. For former members of government this requirement extends for two years after the end of their term of office. For transparency purposes, the Ethics Committee has a press release describing the former minister's new professional activity published on the Government website.
56. When a minister is contemplating taking up a professional activity in a sector subject to a system of authorisation or supervision by the department for which they are responsible, they must notify the Ethics Committee of this at least one month before beginning the activity being contemplated. The Ethics Committee issues an opinion, in which it may make recommendations for restricting the activity for a maximum of two years. If it considers that a restriction of this type will not be enough, it may recommend that the minister should not perform the activity in question at all for two years. If the former minister fails to comply with the Committee's opinion, the Committee may publish all or part of its opinion. Publication is regarded as a penalty and draws its justification in particular from the fact that ministers receive a temporary salary for the two years post office.
57. The rules on leaving office that apply to ministers' advisers (Article 12 of their code of conduct) are similar, although there are some differences owing to their differing status. For instance, the Ethics Committee does not publish a press release on their new activity. It may issue recommendations for restrictions on these activities but they last only one year and are confidential. According to the authorities, these differences are justified by the need to protect advisers' privacy since they are not elected representatives. Unlike ministers they do not receive a temporary salary after they have left office. Lastly, it was the government's wish to align itself with the non-competition clause established by the Labour Code for contractual relationships in the private sector, which lasts one year.
58. GRECO takes note of the entry into force of the two codes of conduct, which makes it possible to consider the first part of the recommendation, which it approved in its previous report, to have been fully implemented.
59. With regard to the second part of the recommendation, GRECO considers that the measures which apply to ministers, as set out in Article 15 of the code of conduct for members of government, properly address the objections expressed in its previous report. This means that they meet the requirements of the recommendation. By contrast, the measures which apply to advisers, deriving from Article 12 of their code of conduct, fall short of these requirements. While GRECO understands the reasons for the compromises reached, particularly the need to protect privacy, the arrangements do not enable it to be entirely ruled out that advisers will engage in private activities related to their former sphere of duties. The second part of the recommendation is therefore still only partly implemented, as is the recommendation as a whole.

60. GRECO concludes that recommendation viii remains partly implemented.

Recommendation ix

61. *GRECO recommended (i) widening the scope of the disclosure and publication obligations of ministers to include speculative and income-generating property assets and significant debts, as well as considering providing information on their spouses and dependent family members (it being understood that such information would not necessarily need to be made public) and (ii) introducing a system of disclosure for senior civil servants appointed to political positions similar to that which is binding on ministers.*

62. GRECO points out that it considered this recommendation to have been partly implemented in its previous report. It welcomed the extension of reporting obligations for ministers and the creation of an identical reporting system for their advisers. These provisions met the recommendation's requirements but the codes of conduct for ministers and for advisers were not yet in force. With regard to spouses and dependent family members, GRECO regretted that the government had not acted on its suggestion to include information relating to them in the reporting requirements for ministers. However, it noted that the question had been duly considered, in line with the recommendation which had asked that such an extension be envisaged.

63. The Luxembourg authorities point out that the codes of conduct for members of the government and for advisers came into force on 1 May 2022.

64. GRECO welcomes the entry into force of the codes of conduct, which make it possible to fully implement the two parts of the recommendation, which it approved in its previous report.

65. GRECO concludes that recommendation ix has been implemented satisfactorily.

Recommendation x

66. *GRECO recommended that the powers of prosecution and jurisdiction in matters involving ministers be assigned to a judicial authority.*

67. GRECO points out that this recommendation was found not to have been implemented. The government had shown a desire to implement it, but given the progress of work to produce a draft revision of the Constitution on the date of the previous report, it was not possible to consider that the recommendation had been implemented, even partly.

68. The Luxembourg authorities report that the provisions on the criminal liability of members of government contained in the proposed amendments to Chapters I, II, III, V, VII, VIII, IX, X, XI and XII of the Constitution (PPR 7700) were adopted in the first constitutional vote on 25 January 2022. Article 83, paragraphs 3 and 4, of the proposed amendments are worded as follows:

“(3) The members of the government are liable under criminal law for the acts committed by them in the exercise of their duties. Only the public prosecutor may instigate and conduct criminal proceedings against a member of government for such acts, even when they are no longer in office.

(4) Save in cases of flagrante delicto the arrest of any member of the government shall require the prior authorisation of the Chamber of Deputies. Authorisation shall not be required for the enforcement of sentences against government members, even those entailing deprivation of liberty”.

69. This new system brings an end both to prosecutorial privilege, which was formerly assigned solely to Parliament, and to jurisdictional privilege, which was assigned to a court specially appointed for the purpose.
70. To protect members of the government from spurious proceedings for political gain, the power to initiate criminal proceedings will lie exclusively with the public prosecutor’s office, which is independent from the executive. Following the outright abandonment of the jurisdictional privilege initially planned by the authors of the constitutional amendments, it will now be for the ordinary law courts to try members of government.
71. Under Article 114 of the Constitution, amendments to the Constitution must be adopted in the Chamber of Deputies by two successive votes separated by at least three months and each requiring at least two-thirds of the members to cast a vote. It is also provided that the text adopted at first reading may be submitted to a referendum, which then replaces the second vote in the Chamber, if in the two months following the first vote, this is requested by more than a quarter of the Chamber members or by 25 000 voters. In this case the constitutional amendment is adopted by a majority of the votes cast.
72. A request for a referendum to be held was presented to the Prime Minister by an initiative committee and declared admissible on 7 February 2022. The process of collecting the signatures to support this request took place between 2 and 25 March 2022, but the required number of signatures was not reached and a second constitutional vote by the Chamber of Deputies may thus be held after 25 April 2022. The date of this second vote has not yet been fixed.
73. GRECO takes note of the information provided. It welcomes the first vote by the Chamber of Deputies on the proposed constitutional amendment. Article 83 of this proposal, which abolishes the prosecutorial and jurisdictional privileges which were formerly enjoyed by ministers, meets the requirements of the recommendation. Under this provision, current and former ministers will be prosecuted by the public prosecutor’s office and tried by the ordinary courts.
74. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi

75. *GRECO recommended the establishment of a reliable and effective monitoring and enforcement mechanism for breaches of the rules of the code of conduct applicable to*

members of the government and breaches of any future code of conduct applicable to senior civil servants appointed to political positions.

76. GRECO points out that it considered this recommendation to have been partly implemented in its previous report. It welcomed the Ethics Committee's extended role and powers in supervising compliance with the codes of conduct for members of government and for advisers. However, it also believed that the mechanism could be further improved to gain in effectiveness and credibility. Firstly, it said that it would have been advisable for the Ethics Committee, whose composition and resources had not been changed, to be assisted by a secretariat with sufficient expertise and resources to carry out its tasks, particularly regarding the checking of ministers' and advisers' reporting obligations. Secondly, it considered it important to ensure that the government or a minister could not postpone or oppose the publication of the press release describing breaches of the code of conduct.
77. The Luxembourg authorities explain that Article 26 of the code of conduct for members of government has been amended to address GRECO's concern about the Ethics Committee's resources. The article now provides that the Committee should be made up of at least three members and that it will be assisted by a secretariat made up of state officials. The number of additional members of the Ethics Committee and secretariat members is not specified so as to afford the Committee the necessary flexibility to act according to the specific circumstances.
78. The Ethics Committee, composed of three persons, has been provided with a specific secretariat comprising three lawyers in charge of deontology, integrity and ethical issues. The Ethics Committee also uses a secure computer platform specially designed and dedicated to the processing of declarations and opinions, and its members have been trained in the use of this application and provided with the necessary computer equipment. The government has introduced compensation for the members of the Ethics Committee through an amendment dated 27 May 2022 to the Grand Ducal Decree of 14 March 2022 on the Code of Ethics for Ministers. The amounts of this indemnity have been fixed by decree of the government in council and the indemnity is now in place. Two new sections have been created on the government's website, entitled "Ethics Committee" and "Deontology" respectively, where any interested party can freely consult the rules, declarations, registers, opinions etc. in complete transparency.
79. As to the publication of the Ethics Committee's opinions, it is provided in the code of conduct for ministers that the Committee may publish all or part of its opinions and that neither the government nor any of its ministers can oppose this.
80. GRECO welcomes the information provided. It is positive that neither the government nor any minister may oppose publication of an opinion of the Ethics Committee reporting breaches of the rules of conduct and that the government's website now includes sections dealing with the Ethics Committee and deontology, providing public access to all relevant information. The human, technical and financial resources at the disposal of the Committee also appear to be adequate to GRECO.

81. GRECO concludes that recommendation xi has been implemented satisfactorily.

Preventing corruption as regards the law enforcement agencies

Recommendation xii

82. *GRECO recommended (i) that the General Police Inspectorate be given the necessary resources to perform its tasks and (ii) that appropriate methods be established for recruiting qualified staff of integrity, and training them.*
83. GRECO points out that it considered this recommendation to have been partly implemented in the previous report. The entry into force of the Law on the General Police Inspectorate (IGP), establishing the institutional and functional independence of this body and an increase in its human and budgetary resources, enabled the partial implementation of the first part of the recommendation. However, GRECO wished to monitor the practical functioning of the IGP before confirming that this aspect had been fully implemented. It wished in particular to ensure that the increase in staff numbers was sufficient to take on board the IGP's new powers in the area of disciplinary investigations and to check it was taking a proactive approach to exercising its ex officio powers.
84. The second part of the recommendation was also considered to have been partly implemented. GRECO welcomed the planned recruitment and training procedures for the IGP's policing and civilian staff but asked for further information on the training actually provided and the number of staff trained.
85. With regard to the first part of the recommendation, the Luxembourg authorities report that the IGP is now equipped with the budgetary and human resources needed to perform the tasks assigned to it in the legislation. Among these, the initial training of young police officers and in-service police training are increasingly important. Widescale recruitment of trainee police officers has made it necessary to set up a specialised service in the sphere. In addition, establishing this service has made it possible for the IGP to establish an internal structure based on the training plan enabling it to improve the training for its own staff in terms both of courses for trainees and in-service training for existing staff. Lastly, the IGP has introduced a code of conduct for its staff which will be covered by in-service training courses.
86. The growth in the staff of the IGP has continued, with an increase from 28 people in 2018 (the date on which the evaluation report was adopted) to 41 in 2021. Recruitment will continue in 2022, bringing total staff numbers up to 46. This means that the ratio of IGP staff to police staff is 2% if we take into account only policing staff (1 994) and 1.6% if we add on civilian staff (595). This ratio was 0.83% in 2015.
87. The increase in budgetary resources is set out in the following table:

	<u>2019*</u>	<u>2020*</u>	<u>2021*</u>	<u>2022**</u>	<u>Change</u> <u>2019-</u> <u>2022</u>	<u>Change</u> <u>2021-</u> <u>2022</u>
Basic pay	3 271 756.86	4 225 491.34	4 739 133.31	5 121 226	+56.5%	+ 8.1 %
Operating costs	122 327.35	107 205.33	134 763.20	152 040.00	+24.3%	+12.8 %
Total current expenditure	3 394 084.27	4 332 696.67	4 873 896.51	5 273 266.00	+55.4 %	+8.2 %
Vehicle purchases	24 999.52	49 899.04	26 926.36	0		
Equipment costs and miscellaneous purchases	35 182.44	11 587.76	10 231.55	13 200.00		+29 %
Total capital expenditure	60 181.96	61 486.80	37 157.91	13 200.00	-78.1 %	-64.5 %

*= Provisional accounts (funds actually used)

**= adopted budget (budget funds)

88. As the above figures show, the 2022 budget for current expenditure increased by 8% compared to the funds actually used in 2021. This change stems both from an increase in basic salary payments and from the instability of operating expenses. Conversely, there has been a major drop in capital expenditure. This is accounted for by the fact that the figures for 2019 for equipment costs other than vehicle purchases were very high because substantial investments were made in computer software used in the sphere of criminal investigations. A feature of the years 2019, 2020 and 2021 was the purchase of new hybrid and electric vehicles. Once these purchases had been made, the budget in this area in 2022 was more modest. These figures show that the budgetary resources placed at the IGP's disposal since the entry into force of the law establishing it in 2018 have increased consistently – with the exception of 2020.
89. In addition, the IGP's "administrative and judicial investigations" department has been restructured to increase its proactive potential. It has been divided into a judicial unit in charge of criminal investigations and an administrative unit. This has made it possible to homogenise the work of the two units – which previously dealt with all types of investigation regardless of their nature – so that they can more readily pursue the goals that are peculiar to the type of investigation assigned to them.
90. With regard to the second part of the recommendation, the authorities state that the IGP has a dual training role. Under the law by which it was established, it gives courses at the police training college and trains its own staff. The Grand Ducal Regulation of 29 November 2021 sets out the training for civilian trainees at the IGP, in which ethical

standards and the values of the IGP are accorded particular importance. In addition, the IGP provides basic training and in-service training for all its trainees and members on “corruption prevention measures in keeping with its status as a monitoring body”.

91. In 2021, 10 members of the IGP attended a two-and-a-half-day “teach the teachers” course designed to help them support their colleagues in the enormous task of disseminating the code of conduct of the Grand Ducal Police Force among the ranks of its law enforcement officers. Between 1500 and 1900 police officers will be expected to attend these training courses in groups of 20 to 25, enabling them to understand the various aspects of the code.
92. As a result the IGP’s training activities have expanded rapidly, prompting a decision to set up a training department, which will be run by a university academic. He will contribute to the training provided at the police training college in the areas of ethical standards, human rights, prevention of corruption and constitutional law as well as co-ordinating all the IGP’s training courses and harmonising course content.
93. Lastly, the authorities state that a code of conduct for the members of the IGP is being finalised. It will be based on the key values of legality, integrity and quality and will also be covered by in-service training. It will be set out in an office circular and all new recruits will be expected to familiarise themselves with it before taking up their post. This requirement has been added to the recruitment procedures for both the civilian and the police staff of the IGP.
94. GRECO welcomes the very comprehensive information provided by the authorities relating firstly to the human and financial resources available to the IGP and secondly to the training it provides and its own staff training programmes. It points that it already expressed its satisfaction with the procedures for the recruitment of IGP staff in the previous report. All of this leads to the conclusion that the IGP now has the financial and human resources it needs to perform the tasks arising from the law by which it was established.
95. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii

96. *GRECO recommended that risk management be improved within the police force, by devising a plan for gathering intelligence which will help identify problems, new trends in corruption and breaches of integrity, combined with a mechanism of regular assessment with a view to reducing or eliminating the risks identified.*
97. GRECO points out that this recommendation was found not to have been implemented in the previous report as the measures described were no substitute for a preventive and systematic analysis of risks of corruption within the police, highlighting the situations or departments most at risk, combined with a mechanism of regular assessment with a view to reducing those risks.

98. The Luxembourg authorities now state that a risk analysis has been conducted in the Grand Ducal Police (PGD). Since there is no standard definition of corruption and the concept of breaches of integrity, the analysis was based on the offences defined in Title IV, Chapter III, of the Criminal Code;³ a distinction was also made between risk areas and risk processes. A typology of risks of corruption and of breaches of integrity was drawn up at a workshop in April 2021, attended by representatives of all the areas in which the PGD works. Particular risks were identified in the fields of narcotics, vice, organised crime and procurement processes (procedures involving proposals for the commitment of funds); lesser risks were identified in relation to data protection (confidential data during a judicial investigation), traffic regulation, procurement (public procurement procedures) and requisitioning. The authorities stress that drawing up this typology of corruption risks is an ongoing process, which will be regularly reviewed.
99. As part of its risk analysis activities, the PGD also carried out an anonymous online voluntary staff survey. 15.2% of the PGD staff took part, resulting in the following general conclusions:
- 37% of the participants had already been faced with a risk of corruption or breaches of integrity;
 - 30% of the participants stated that there were situations which were difficult to judge;
 - 28% said that they did not have enough information on the subject of corruption and breaches of integrity;
 - 57% were prepared to take part in online training;
 - Based on their response to illustrated case studies, it can be said that staff's interpretations of given critical situations vary and some have difficulty refusing gestures of courtesy (the offer of a cup of coffee or a box of chocolates) because they do not want to offend members of the public.
100. On the basis of the risk analysis and the staff survey, several measures have been taken in the area of training and risk management. Firstly a six-hour course on personal data protection was incorporated into police trainees' basic training in November 2020 to explain the legal provisions to them and raise their awareness about the matter. A similar course was held for members of the Criminal Investigations Department in 2019 and 2020.
101. Several workshops have been held with departments and units which work daily in areas identified as posing the greatest risk. In total 15 workshops, attended by 136 staff members were held with the following departments and units:
- Narcotics unit of the Criminal Investigations Department (5 sessions);
 - Organised crime unit of the Criminal Investigations Department (2 sessions);
 - Luxembourg Station police station (3 sessions);
 - Esch-sur-Alzette police station (4 sessions);

³ Criminal conspiracy between civil servants, interference by administrative and judicial authorities, bribery, embezzlement, extortion by a public official, destruction of deeds and documents, trading in influence, abuse of authority, unlawful taking of an interest, breach of professional confidentiality.

- Members of the Directorate of finances, the Directorate of Police Technology, the ICT strategy unit and the Project Management Office who are involved in the PGD's procurement procedures (1 session).

102. The aims of these workshops were as follows:

- to raise PGD staff members' awareness about the problem of corruption and breaches of integrity;
- to highlight the values laid down in the code of conduct through a practical exercise and convey the key message that a PGD member's integrity goes hand in hand with their identification with the organisation's values;
- to pool experiences and identify best practices in order to incorporate them into an online training course;
- to give co-workers the tools to identify and manage risk situations (self-tests, tangible examples, etc.);
- to present factors liable to increase the risk of adopting dishonest behaviour;
- to present preventive measures already in place (confidential advice, psychological support, etc.).

103. A leaflet on "shared vigilance" vis-à-vis risks of corruption and breaches of integrity was published on 15 March 2022 to alert PGD members to this concept, action to be taken in the event of suspicion, and signs and red flags indicating dishonest behaviour. It also includes a list of internal and external support services.

104. Lastly, at the time of Luxembourg's report, the PGD was in the process of setting up an online professional ethics course entitled "*Kompass fir en integert Handelen bei der Police*". The preparatory work, particularly the conceptualisation and preparation of the content of the course, were complete. However, given that a Learning Management System (LMS) was being implemented by the PGD and this would only be operational from June 2022, the online course could only begin after this date. The course was intended for the entire staff of the PGD.

105. Furthermore, for risk management purposes, a revision of the processes identified in the course of the risk analysis, namely the "lost property" process and the "traffic fines" process, were carried out with the managers and operators and completed at the end of 2021. Overall, the analysis did not identify any major flaws, just some minor deficiencies. Discussions are under way to seek the best means of remedying the problems identified.

106. With a view to promoting continuous improvement, the Planning and Improvement Directorate, which is in charge of drawing up and updating internal departmental rules, will systematically conduct a risk analysis prior to any future changes so as to prevent procedural flaws. This is of course an ongoing process. With the same goal in mind, it was decided to hold an annual consultation between the PGD and GRECO's national co-ordinator to better identify trends at national and European level in the sphere of corruption. An initial meeting of this type was held on 3 December 2021.

107. GRECO welcomes all the measures described by the Luxembourg authorities. A full analysis of activities and processes exposed to the risk of corruption and breaches of integrity has been carried out within the PGD and it is planned for this to be updated regularly. A series of targeted activities was carried out to deal with identified risks, including specific training on certain subjects and for certain departments, more general awareness raising on integrity and “shared vigilance”, and a revision of processes identified as being at risk. This revision is also designed to be repeated at regular intervals. Lastly, annual meetings have been introduced between the PGD and GRECO’s national co-ordinator to exchange information on trends at national and European level in the sphere of corruption. These measures take full account of all the aspects of the recommendation.
108. GRECO concludes that recommendation xiii has been implemented satisfactorily.

Recommendation xvi

109. *GRECO recommended that integrity checks be introduced not only in the case of promotion decisions but also at regular intervals throughout police careers.*
110. GRECO points out that it considered this recommendation not to have been implemented in its previous report because no new measures had been taken to follow up on it. The authorities had reported that the procedure to deal with over-indebtedness had been formalised and integrity checks were carried out on staff joining the Criminal Investigations Department. However, GRECO noted that these arrangements were no different to those described in the Evaluation Report.
111. The Luxembourg authorities now report that several meetings have been held between the heads of the Planning and Improvement Directorate, the Human Resources Directorate and the Training Directorate and the psychologist working in the Well-being at Work Department, chaired by the General Director for Strategy and Performance, to devise further courses of action to meet the requirements of the recommendation. The heads of the PGD also met the national co-ordinator to investigate further lines of enquiry.
112. However, the PGD would like to point out, as was already noted in the Compliance Report, that bearing in mind the legislation currently in force (particularly the civil service staff regulations and the legislation on personal data protection), it is impossible to carry out systematic checks on the worthiness or integrity of PGD staff. Consequently, the PGD’s scope for action to meet this recommendation has been very limited.
113. The authorities also report that the concept of shared responsibility and further training established makes it possible detect any unusual behaviour throughout police officers’ careers. In addition, checks by outside stakeholders, such as the public and the IGP are a guarantee that wrongful conduct will be detected whenever it occurs.
114. Within the framework of this limited scope of action, the PGD has drawn up a guide, whose aim is to standardise motivational interviews when calling for candidates. This

guide includes a section on ethics, showing the PGD's desire to place considerable emphasis on ethical values during internal recruitment.

115. GRECO takes note of the information provided. It is aware of the constraints posed by the legal framework but considers that some solutions could be found, nonetheless. The guide for the standardisation of interviews with candidates for posts within the PGD makes it possible to take certain ethical and integrity-related factors into account in relation to career moves. This is a positive measure, but it is not enough. In addition, it applies only to PGD members who are changing post. Therefore, GRECO encourages the authorities to continue to consider the possibility of introducing regular integrity checks for the police, as advocated in the recommendation.
116. GRECO concludes that recommendation xvi has still not been implemented.

III. CONCLUSIONS

117. **In view of the foregoing, GRECO concludes that Luxembourg has implemented satisfactorily or dealt with in a satisfactory manner eighteen of the twenty-one recommendations in the Fifth Round Evaluation Report.** Of the remaining recommendations, two have been partly implemented and one has still not been implemented.
118. More specifically, recommendations i, ii, iii, iv, v, vi, vii, ix, xi, xii, xiii, xiv, xv, xvii, xviii, xix, xx and xxi have been implemented satisfactorily, recommendations viii and x have been partly implemented and recommendation xvi has still not been implemented.
119. As to top executive functions, GRECO welcomes the approach adopted and the determined efforts resulting in substantial progress from the stage of the first Compliance Report of 2020 on, in establishing an ethics system for ministers and their advisers. A general right of public access to administrative documents has been enshrined in law. A code of conduct for members of government and another for advisers were adopted by the government on 20 December 2019, but their entry into force was delayed to take GRECO's conclusions into account.
120. All the shortcomings highlighted by GRECO have been the focus of extra work which has now given Luxembourg a robust framework. Codes of conduct for ministers and their advisers were adopted by a Grand Ducal Order of 14 March 2022 and came into force on 1 May 2022. Training in integrity has been set up for these persons, lobbying activities are much more transparent and the requirement to declare assets and interests has been extended. Post-government employment rules have been tightened up and those on ministers now comply with GRECO's requirements while those on advisers still fall somewhat short. A monitoring and sanctioning mechanism for breaches of the code of conduct has been set up and is assisted by a secretariat specialising in the verification of statements. Lastly, the constitutional revision currently under way should result in the powers of prosecution and jurisdiction for offences committed by ministers being assigned to a judicial authority.

121. With regard to the Grand Ducal Police (PGD), GRECO welcomes the major work that has been done throughout the compliance process, which has made it possible for all the recommendations concerned save one to be fully implemented. A Law on the General Police Inspectorate (IGP) came into force in 2018, establishing this body's independence from the police force it oversees. The IGP was assigned new powers and tasks by this law, and its material and human resources have now been raised to the level needed to perform these tasks. Its staff recruitment and training arrangements were also improved.
122. A new full code of conduct for the PGD, illustrated by comments, has come into force. It is binding and the supervision of its application has been assigned to the IGP. Initial and in-service training for police officers on ethics has been enhanced and a system for seeking confidential advice on ethical dilemmas has been set up. A full analysis of activities and processes exposed to the risk of corruption and breaches of integrity was carried out within the PGD and a series of targeted measures were taken to deal with the risks identified. Interviews with internal candidates for posts within the PGD were standardised and aspects relating to ethics and integrity were included so that they would be taken into account when decisions on promotion were taken. However, monitoring of the integrity of police officers during their careers has yet to be introduced. Lastly, a unique identification number has been introduced so that uniformed police officers can be identified and the protection of whistleblowers within the police has been strengthened.
123. Pursuant to Rule 31 revised bis, paragraph 10, of GRECO's Rules of Procedure, the adoption of this Second Compliance Report terminates the Fifth Round compliance procedure in respect of Luxembourg. The Luxembourg authorities may, however, wish to inform GRECO of any change in the situation with regard to the implementation of recommendations viii, x and xvi, which is still incomplete.
124. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.