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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

ITALY

Adopted by GRECO at its 81st Plenary Meeting
(Strasbourg, 3-7 December 2018)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Italy to implement the recommendations issued in the Fourth Round Evaluation Report on Italy which was adopted at GRECO's 73rd Plenary Meeting (21 October 2016) and made public on 19 January 2017, following authorisation by Italy ([GrecoEval4rep\(2016\)2](#)). 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 Italy submitted a Situation Report on measures taken to implement the recommendations. This report was received on 1st August 2018 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Spain (with respect to parliamentary assemblies) and San Marino (with respect to judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were M. Rafael VAILLO, on behalf of Spain and M. Eros GASPERONI, on behalf of San Marino. 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 12 recommendations to Italy in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

6. The authorities of Italy indicate that, in the referendum held on 4 December 2016, voters rejected the package of constitutional reforms proposed by the incumbent Government, which were reportedly aimed, *inter alia*, at streamlining legislative procedures in Parliament and reshaping the Senate (see Fourth Evaluation Round Report on Italy, paragraph 28, for details). The referendum triggered a Government reshuffle, following the resignation of the Prime Minister. A year later, in December 2017, general elections were scheduled for March 2018 under a new electoral system (a mixed system: 64% proportional – 36% majoritarian)¹. This period of political change, extending from the end of 2016 to mid-2018, has led in turn to delays in implementation of the recommendations made by GRECO in this particular theme, as will be described below.

Recommendation i.

7. *GRECO recommended strengthening the integrity framework for parliamentarians, including through (i) the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies; (ii) its further refinement through detailed guidance on its provisions; and (iii) the establishment of an effective enforcement and accountability regime. The same measures are recommended for the Senate.*

¹ Law No. 165 of 3 November 2017, commonly referred to as *Rosatellum*, comprises changes related to the electoral system, the delineation of constituencies and the abolition of public funding of political campaigns.

8. The authorities of Italy indicate that, although a through revision of the Rules of Procedure had been proposed, it had not been adopted by the outgoing legislature. Even so, the authorities explain that the Code of Conduct is a self-standing instrument whose enforceability has crystallised as a matter of practice and which is independent of its further potential inclusion in the Rules of Procedure (if the latter are amended in the future). A similar code of conduct in the Senate has not yet been introduced.
9. Regarding the provision of guidance, the Advisory Committee on the Conduct of Deputies was established to gather experience and provide support in implementing the Code. Its approach was moderate and constructive during what has been considered the “experimental phase” of the code, where consensus and confidence needed to be built, all the more given that both the adoption of the Code and the institution of the Committee took place “while the train was running” (the term of Parliament had started three years before). An account of the Committee’s activities and its assessment of the Code’s implementation form the basis of a 2017 [report](#) which was published online. One of the key (novel) requirements of the Code that the Committee supported relates to the declaration of posts, professional and entrepreneurial activities held or carried out by deputies. The experience in this field has been quite satisfactory in terms of enhancing transparency: 620 out of 630 deputies of the 2013-2017 legislative term filed the requested declarations (these declarations on posts and activities are publicly available, together with financial declarations, in the personal webpage of each deputy). A [“name and shame” procedure](#) was launched for the remaining ten non-compliant deputies (announcement of non-compliance in the plenary and subsequent publication on the Chamber’s website), following which, seven deputies submitted their declarations (which provides for a de facto compliance rate of 99.5% - 627 out of 630 deputies have complied with the reporting requirement). Other than the “name and shame” procedure explained above, and pending the inclusion of the Code in the Rules of Procedure, there is no other sanction possible. The Advisory Committee on the Conduct of Deputies did not receive any individual request for consultation/interpretation of the provisions of the Code.
10. GRECO welcomes the experience gathered with the Code of Conduct in the Chamber of Deputies. GRECO understands the reasoning provided by the authorities as to the need to build confidence and support in the first implementation phase of the Code and, consequently, it appreciates the positive attitude displayed by the Advisory Committee on the Conduct of Deputies. GRECO understands that the said Committee was re-established in October 2018 and that the new legislature is to advance in implementation of this recommendation, notably, by ensuring an effective enforcement and accountability regime of the Code - a task which can only be accomplished through the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies. In this connection, GRECO recalls its concern as to the need to further develop the range of non-criminal sanctions for unethical behaviour, as suited to the parliamentary mandate (Fourth Evaluation Report, paragraphs 45 and 75). While publicity of eventual breaches (the only possible sanction provided under the Code at present) is a valuable measure, it can prove to be insufficient, in terms of not only its dissuasiveness vis-à-vis potential infringers, but also the perception given to the public as to the effectiveness of the enforcement regime of the integrity policy in-house, particularly, in relation to more serious cases of parliamentary misconduct (including regarding financial disclosure obligations).
11. GRECO further understands that it is only natural that, as experience with implementation of the Code evolves, additional guidance on and refinement of its provisions occurs (see also remarks in connection with recommendation iii

regarding gifts and recommendation vi regarding awareness raising activities on parliamentary integrity). Finally, the Senate has yet to embark on a similar path to promote a strong integrity ethos among its members (this comments applies to all recommendations issued by GRECO in this subject area: corruption prevention in respect of members of parliament, recommendations i to vi, where the Senate clearly lags behind).

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

Recommendation ii.

13. *GRECO recommended that (i) clear and enforceable conflict of interest rules be adopted for parliamentarians, including through a systematisation of the currently dispersed ineligibility and incompatibility regime; and (ii) the process of verification of ineligibility/incompatibility be further streamlined and thereby performed in an effective and timely manner.*
14. The authorities of Italy explain that changes to the current framework for the prevention of conflicts of interest of parliamentarians would require mainly legislative reform. Although concrete initiatives were taken in the previous legislature to systematise and streamline rules and compliance proceedings regarding conflicts of interest (including after leaving public service), none of the tabled proposals managed to succeed. It is now up to the recently elected legislature to decide whether or not to resume, and complete, the work of its predecessor. As regards the process of verification of ineligibility/incompatibility, the authorities reiterate that this is generally completed within the prescribed deadline, i.e. 18 months after elections.
15. GRECO takes note of the information provided which does not substantially change the situation it had assessed in 2016. GRECO recalls its concerns referring not only to shortcomings in the legislation on conflicts of interest, but also in relation to the general lack of consolidation and rationalisation of the existing rules. Their dispersion makes them difficult to understand and navigate for those who are subject to the said rules and for those who are to verify cases of ineligibility/incompatibility, as well as for the general public. GRECO regrets that no tangible results have emerged in this critical area and urges the new legislature to do its utmost to assure both clarity and effectiveness regarding ineligibility and incompatibility rules.
16. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

17. *GRECO recommended establishing a robust set of restrictions concerning donations, gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable.*
18. The authorities of Italy make reference to a proposal put forward by the Advisory Committee on the Conduct of Deputies expanding on the content of the Code of Conduct and laying out detailed rules on donations, gifts, hospitality, favours and other benefits for deputies, including in connection with their obligation to declare travel, accommodation and expenses covered by sponsors. The proposal did not get through the previous legislative term and is now pending before the Presidency Office of the Chamber of Deputies for its completion in the current legislature. The Advisory Committee did also reflect, in its 2017 report of activity, about the need to regulate the enforcement regime applicable to invitations to events organised by third parties (when deputies attend in the performance of their duties). This

reflection has been taken up by the current legislature², which intends to develop specific rules in this domain.

19. The authorities further add that the so-called "Bribe Destroyer" Bill No. 1189, which was prepared by the Government in September 2018 and is currently undergoing discussion in Parliament (see also paragraph 44), includes a specific provision to considerably lower the disclosure threshold for donations to parliamentarians (the disclosure obligation now applies to donations exceeding 5 000 EUR a year, while the aforementioned draft would require the disclosure of any donation higher than 500 EUR a year).
20. GRECO takes note of the update submitted. It would appear that the implementation of this recommendation is still at its very early stages: on the one hand, work is to restart/resume in the Chamber of Deputies regarding the acceptance or refinement of a proposal of the Advisory Committee on the Conduct of Deputies which did not manage to be accepted in the previous legislature; on the other hand, no steps have been taken by the Senate in this domain. GRECO is pleased to note that the new legislature has presented concrete plans to further advance in the regulation of gifts, hospitality, favours and other benefits for deputies, including in connection with their obligation to declare travel, accommodation and expenses covered by sponsors.
21. GRECO recalls that the ban on gifts over 250 EUR included in the Code of Conduct of the Chamber of Deputies (a threshold which is higher than that set in the Code of Conduct for public officials, i.e. 150 EUR) lacked further articulation regarding its exact coverage and possible exceptions. Given the current state of affairs, GRECO can only reiterate its firm view on the importance of having in place a consistent and robust framework on gifts which would not only prevent certain situations from evolving into corrupt relationships, but also protect the impartiality of the public office holder concerned as well as institutional reputation. In this connection, GRECO highlights that many of its member States have opted for a prohibition in principle often associated with a duty to return unacceptable benefits, with exceptions concerning courtesy gifts, and a system of declarations for those few categories of benefits which are permissible (invitations, hospitality, protocol-related and other goods which become the property of Parliament). The Italian authorities could well seize lessons learned from such jurisdictions.
22. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

23. *GRECO recommended that a (i) a study be carried out in order to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interests; and (ii) post-employment restrictions in such cases be introduced, as necessary.*
24. The authorities of Italy refer to the newly introduced rules of lobbying which comprise under their scope the lobbying activities of former parliamentarians and members of the executive, i.e. a lobbying registration requirement, the submission of an annual report on the lobbying activities performed, and a one-year cooling-off period (see also under paragraph 28).
25. GRECO welcomes the establishment of a post-employment ban regarding lobbying activities of former parliamentarians. However, this is only one of the aspects (or activities) that could be performed after the parliamentary mandate. GRECO's

² Sitting of the Advisory Committee on the Conduct of Deputies, dated 21 November 2018

recommendation on revolving doors is broader and also covers situations, other than lobbying, which could bring about conflicts of interest in the performance of the parliamentary function. While it is clear that a parliamentary mandate will not, as a rule, span a whole career, and that parliamentarians should therefore be provided with fair opportunities to seek outside employment, a proportionate approach is needed in order to prevent instances where the parliamentary mandate, and thereby the legislative process, could potentially be misused by an individual member for personal interest purposes to secure outside employment (notably, in the private sector) once s/he leaves office.

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

Recommendation v.

27. *GRECO recommended further developing the applicable rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the parliamentary process, including by developing detailed guidance on the matter and securing its effective monitoring and enforcement. The same measures are recommended for the Senate.*
28. The authorities of Italy report on the adoption of Decision No. 208/2017 on Lobbying in the Chamber of Deputies, which sets in place a mandatory public register of lobbyists for any individual/legal entity representing collective interests (independently of the economic/non-economic, public/private nature of the interests represented)³. Also, former parliamentarians, ministers or members of the executive government, who intend to carry out lobbying activities, will have to register their names, but at least one year must have elapsed from the end of their mandate. The registered individual/entities must also submit an annual report on the activities carried out in the previous year, including information on the names of the deputies lobbied. This report is also public and accessible at the website of the Chamber of Deputies. Failure to meet registering and reporting obligations is sanctioned with temporary suspension up to a maximum term of one year, or the deletion of registration, with a prohibition of a new registration up to a maximum term of five years. Together with the suspension or deletion of registration, entitlement to have access to the parliamentary offices shall be consequently suspended or annulled.
29. Regarding the practical application of the aforementioned rules, as of May 2018, a total of 279 individuals/entities are registered. The *College of Quaestors (Collegio dei deputati Questori)*⁴, the body responsible for overseeing implementation of the rules of lobbying, has proven determination in fulfilling its task; it has provided a series of dedicated advice (case-law) aimed at clarifying disclosure requirements of lobbyists, notably, regarding their intent, beneficiaries and targets. Apart from two cases of suspension for failure to meet registration requirements, no other sanction has been applied in the first year of experience with the said rules. The *College of Quaestors* may put forward possible amendments to the lobbying rules in the light of the experience gathered with implementation.

³ The obligation to register covers all individuals or entities representing collective interests: trade unions and employers' associations, non-governmental organizations, companies, groups of companies and businesses, subjects specialized in the professional representation of third-party interests, professional associations, trade associations or associations for the protection of scattered interests, consumers' associations recognized under Article 137 of the Code of Consumption covered by Legislative Decree of 6 September 2005 no. 206 and subsequent amendments, and for any other body performing such representation activity.

⁴ Quaestors are elected by the members of Parliament among those receiving the highest number of votes at the first ballot. Quaestors are also members of the Bureau and are entrusted with the following responsibilities: (i) efficient administration of Parliament, including by ensuring compliance with the relevant regulations and directives issued by the President of each House; (ii) supervision of expenditure, drawing up of budget and accounts; (iii) protocol matters and House order.

30. The authorities further add that the Senate is currently looking into its own rules on lobbying with a proposal under study (*Nencini* proposal for the establishment of a lobbyist register in the Senate).
31. GRECO acknowledges the important step taken to regulate lobbying in the Chamber of Deputies. GRECO is also pleased to note the insightful action that has followed thereafter to clarify key aspects of the newly adopted rules; the role of the *College of Quaestors* has proven pivotal in this respect. The newly introduced rules deal with the establishment of a lobbyist register and put in place significant transparency requirements vis-à-vis one side of the lobbying equation, i.e. lobbyists themselves. It however says very little about the other side: deputies. In GRECO's view, additional measures can be taken, including through the development of targeted guidance that gives deputies clear directions on how to engage with lobbyists and the expected conduct of behaviour. Furthermore, the Senate is yet to develop its own rules on lobbying. GRECO looks forward to receiving further information in an area that appears to be very topical in the parliamentary agenda.
32. GRECO concludes that recommendation v has been partly implemented.

Recommendation vi.

33. *GRECO recommended that practical measures be put in place to support the implementation of clear parliamentary integrity rules including through the development of dedicated training activities.*
34. The authorities of Italy indicate that the distribution of the Code of Conduct to the deputies, at the beginning of their terms, is in itself a measure aimed to promote awareness of the instrument. It is hoped that the new legislature, and the recently established Advisory Committee on the Conduct of Deputies, which is competent to develop training and, more generally, awareness-raising activities in relation to integrity and ethics in the House, will help advance implementation of this recommendation. The authorities informed GRECO of their intention to hold a training seminar on codes of conduct, which would allow for an exchange of experience with other jurisdictions and the identification of the way forward in the national context.
35. GRECO believes that much more can be done in the Chamber of Deputies to support the implementation of parliamentary integrity rules (the Code and other related tools, as for example, the existing corps of regulation dealing with the prevention of conflicts of interest). The mere distribution of the code to new legislatures does not suffice as a genuinely proactive measure to this aim.
36. GRECO concludes that recommendation vi has not been implemented.

Corruption prevention in respect of judges and prosecutors⁵

Recommendation vii.

37. *GRECO recommended that (i) a deliberate policy for preventing and detecting corruption risks and conflicts of interests be developed within the fiscal jurisdiction; (ii) appropriate measures be taken with a view to enhancing the professional and integrity supervision over members of fiscal courts, inter alia, by introducing a system of periodic assessment and regular training, including on questions of ethics, expected conduct, corruption prevention and related matters; (iii) a set of*

⁵ It is recalled that in Italy prosecutors and judges belong to the same professional order of "magistrates".

clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, is established.

38. The authorities of Italy point at the targeted steps taken by the Presidency Council of Fiscal Courts to strengthen specialisation and professionalism of tax courts, notably through intensive training (in close cooperation with other judicial councils, the Constitutional Court, the Supreme Court of Cassation and selected Faculties of Law and Economics – permanent workshops and tailor-made innovative programmes with a hands-on approach) and the carrying out of regular inspections. Although the current legal framework applicable to fiscal courts (Legislative Decree No. 545/92) does not provide for compulsory and regular training, a decision has been taken to set up a High School of Fiscal Jurisdiction which would *de facto* enable effective meeting of both requirements of the recommendation in the future.
39. Another positive development in this area is the deployment of 50 additional professional magistrates to tax courts⁶; a move that is expected to unclog the current workload (the new magistrates are expected to finalise at least 150 proceedings per year, which in turn would result in 7,500 more cases being solved per year).
40. The law does not require periodic appraisal for members of fiscal courts either. Furthermore, a code of ethics is not yet in place. As for the anticipated reform in this area, i.e. abolishing tax courts and establishing instead specialised divisions on fiscal matters in ordinary courts, a legislative proposal was made but is pending parliamentary discussion in the new legislature.
41. GRECO values the measures taken to boost the professional and integrity supervision in respect of members of fiscal courts, as well as to improve their available resources. GRECO is also pleased to hear about plans underway to create a High School of Fiscal Jurisdiction. While noteworthy, the action taken so far conforms only in part with the second component of recommendation vii; further steps are necessary to ensure that training on integrity related matters is secured as part of a regular rolling programme for all members of fiscal courts (whether magistrates or lay members) and that supervision is carried out in a systematic manner, not only through inspections and discipline, but also by means of periodic appraisals allowing better assessment of the challenges faced by fiscal jurisdiction. Such a goal would, in GRECO's view, be met best through the development of a deliberate anticorruption policy (first component of recommendation vii); a measure which is still pending and so is the matter of common reflection, and subsequent adoption, of a set of clear standards/code of professional conduct for members of tax courts (last component of recommendation viii). The targeted reform which has taken place in the area of honorary justice (see later under paragraph 47) can serve as inspiration in this area too.
42. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

43. *GRECO recommended that (i) the authorities continue in their endeavours to ensure efficiency of the justice system through a prompt adoption of the planned reforms in civil and criminal matters, including the reform of the appeal system and of the statute of limitation; (ii) an analysis be carried out of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial system.*

⁶ Law No. 205/2017, so-called *Stability Law*, Article 1, paragraph 961

44. The authorities of Italy inform GRECO of a multifaceted reform of the justice system aimed at substantially stepping up the efficiency of both civil and criminal law trials (so-called *Orlando* reform). On the criminal law front, with the adoption of Law No. 103/2017, which entered into force in August 2018, a broad range of structural amendments were made to the Criminal Code, the Code of Criminal Procedure and the Penitentiary System. Two key changes were made in relation to corruption offences, notably by increasing limitation periods (from 12 and a half years to 18 and a half years) and by providing for additional grounds for suspension of the limitation period at trial after both a first instance and an appeal decision (the statute of limitations would be suspended for 18 months between an initial conviction and the start of a first appeal, and suspended for another 18 months after a second conviction before the final appeal begins), as well as in the case of a request for mutual legal assistance (up to a maximum of six months). Furthermore, corruption-related investigations are to be prioritised. Since the aforementioned reform (which covers exclusively the criminal offences committed after its entry into force), it is too early to assess its effective impact, including in the anticorruption arena. The authorities further refer to a newly tabled legislative initiative, which could prove to be key in order to further advance in the fight against corruption, i.e. the so-called "Bribe Destroyer" Bill No. 1189 (*Decreto Spazza Corrotti*). Its first part contains important amendments to both the Criminal Code and the Code of Criminal Procedure, aimed at strengthening the prevention, prosecution and punishment of corruption in the public and private sectors. For example, more severe penalties are proposed for the offence of bribery in the exercise of the official functions by increasing the minimum sentence of three years' imprisonment to up to eight years' imprisonment. Accessory sanctions have been significantly reinforced too (e.g. public employment and public contract bans). Likewise, with regards to the statute of limitations, it is proposed to stop the time-limit at the first-instance judgment. Several provisions have also reportedly been introduced to better approximate to the recommendations issued by GRECO in its Third Evaluation Round. The aforementioned Bill was approved by the Committee of Ministers in September 2018 and is currently undergoing parliamentary discussion; it was adopted by the Chamber of Deputies on 22 November 2018.
45. Additionally, Legislative Decree No. 7/2016 has provided for the decriminalisation of minor offences (e.g. defamation, appropriation of lost things, accidental appropriation, etc.) and resorting to civil law remedies instead. Legislative Decree No. 11/2018 reshapes appellate remedies with a triple focus, as per the requirements of the European Court of Human Rights of reasonable length of proceedings and fair trial: (i) limiting the cases in which the accused and the public prosecutor may appeal, (ii) introducing the requirement of agreement on the arguments of the appeal; (ii) renewing the process of evidence-gathering when an appellate court is called upon to examine a case as to the facts and the law and the evidence proved decisive for the pronouncement of the judgment. Further, in order to unclog the Court of Cassation, limitations have been introduced as to the possibilities of appeal regarding justice of the peace decisions (small claims, simplified proceedings) to the highest appeal court. In parallel, the reform extends the list of offences falling in the hands of justices of the peace which were dealt with before by ordinary judges. Some good results are already evident, for example, regarding improvements on the disposition time and the backlog of criminal cases in first instance⁷.
46. On the civil law front, the reform has provided, *inter alia*, for the tightening of admissibility criteria for appeals (Law No. 197/2016), streamlined civil procedures at all instances, widespread application of summary proceedings, new best practices in case management (comprehensive computerisation, e-filing,

⁷ [2018 CEPEJ Report](#)

specialisation and organisational innovation of the judicial system), disincentives against vexatious litigation (no more free appeal proceedings before justices of the peace after administrative sanctions have been imposed), and instruments for out-of-court dispute settlement (e.g. referral to arbitration, negotiation assisted by legal counsel and mediation). Some promising results have already emerged in relation to the average length of civil cases and the backlog in this area⁸. Further developments are expected to occur in this domain with a draft law pending in Parliament since 2016.

47. As anticipated by GRECO's Fourth Round Evaluation Report on Italy, important changes were introduced regarding the matter of honorary judges. In particular, Law No. 57/2016 on "Delegation to Government to undertake a comprehensive reform of lay magistrates and justices of the peace" and its implementing Legislative Decree No. 116/2017 globally reform the discipline of such categories, establishing a single *status* of lay judges and, *inter alia*, enhancing their professional training, supervision and assessment. Specific rules are included in the aforementioned legislative instruments to regulate the temporary nature of these judges (their service is limited to two days a week and two terms of four years each), expanding on their responsibilities and strengthening the applicable regime of incompatibility.
48. As regards the second component of recommendation viii, efforts have been made to recruit additional personnel and thereby tackle the high rate of vacant posts for both judges and court staff. In the period 2017-2018 a total of 3,000 persons have been recruited to fill administrative positions in judicial offices. In 2017, 2,441 lay judges were recruited.
49. GRECO welcomes the comprehensive justice reform package which was launched in 2016 and is now well underway. Moreover, competitions have been organised in the last two years to increase the judicial and administrative personnel of courts and thereby address the shortage of human resources. This measure must be seen in conjunction with other steps taken to better manage scarce resources, as for example, through broader use of IT tools (digitalisation of proceedings). The authorities must be commended for their multifaceted action to comply with the underlying goals of recommendation viii. Time and experience will show whether further adjustments are needed.
50. In this connection, GRECO also welcomes the evolving discussion regarding the recently tabled "Bribe Destroyer" Bill, which is reportedly aimed at further advancing the anticorruption struggle, also by addressing a number of lacunae in the criminalisation of corruption offences and the regulation of political financing – covered under GRECO's Third Evaluation Round. GRECO looks forward to receiving further updates in this respect in the framework of the on-going Third Round Compliance procedure on Italy.
51. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

52. *GRECO recommended that (i) a Code of Judicial Ethics, which covers in scope all magistrates, whether associated or not, is further developed and complemented by explanatory comments and/or practical examples, including guidance on conflicts of interest, gifts, etc.; (ii) the proper application of the rules of conduct is ensured via*

⁸ See [11th Annual Report of the Committee of Ministers of the Council of Europe on Supervision of the Execution of Judgements and Decisions of the European Court of Human Rights 2017](#)

an effective supervisory mechanism and accompanied by dedicated and regular training, advice and counselling for both professional and lay magistrates.

53. The authorities of Italy explain the different measures undertaken to conform to recommendation ix: firstly, the National Association of Magistrates (to which more than 90% of Italian magistrates are associated) has introduced targeted measures to (i) better disseminate the Code of Judicial Ethics to newcomers, (ii) provide for inception and long-term training on ethical matters (several training sessions have been held during the period 2016-2018), (iii) articulate mentoring (presidents of local executive committees), discussion (via regular assemblies of local committees) and experience exchange (case studies) channels through the coordinated action of district sections, the Central Executive Committee and the Board of Auditors (*Collegio dei Probiviri*)⁹.
54. Secondly, and in parallel to the aforementioned reported measures, the High Council of the Judiciary has developed a separate section on its website dedicated to judicial ethics, which gathers and thereby promotes awareness among all magistrates (whether professional or lay magistrates) key materials in this domain, including the Code of Judicial Ethics, as well as judgments and decisions on discipline (grouped on type of wrongdoing). The authorities stress that the discipline provisions laid out by Legislative Decree No. 109/2006 constitute a decisive instrument to understand the expected conduct of magistrates; as a matter of fact, disregard for the principles and rules contained in the Code of Judicial Ethics constitute a breach of duty punishable under the aforementioned Decree. The authorities further give an account of several training sessions organised by the High Judicial School, during the period 2016-2018, on ethics and standards of conduct for both professional and lay magistrates (newcomers as well as more senior staff). Particular mention is made of the corruption prevention sessions organised in coordination with the National Anticorruption Authority (ANAC); a memorandum of understanding is in place between the High Judicial School and the ANAC to ensure a continued programme of activities in this regard. The training modules include general sessions and small group activities and are heavily based on case studies, day to day challenges, open discussions and experience exchange, including through the participation of more senior colleagues.
55. GRECO appreciates the efforts made by both the High Council of the Judiciary and the National Association of Magistrates to set in place an overarching, more focused and developed, scheme on judicial deontology which extends to all magistrates (judges and prosecutors, whether associated or not, whether professional or lay). These coordinated measures are framed under a four-axis system based on (i) dissemination of case-law on discipline and deontology-related provisions; (ii) peer-to-peer discussion and mentoring schemes; (iii) hands-on training on ethics and corruption prevention matters (including, in coordination with the ANAC); (iv) centralisation/supervision of the experience gathered in implementation of the aforementioned components – under the responsibility of the High Council of the Judiciary and the National Association of Magistrates, in combination with devolved activities at district level. All in all the reported initiatives meet the intrinsic goal of recommendation ix, i.e. a more proactive, systematic and concrete approach to the promotion of integrity and the prevention of corruption within the judiciary (Fourth Round Evaluation Report on Italy, paragraph 135).
56. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

⁹ Resolution of the National Association of Magistrates of May 2018

Recommendation x.

57. *GRECO recommended (i) that a restriction on the simultaneous holding of the office of magistrate and that of a member of local government be laid down in law; and more generally, (ii) that the issue of political activity of magistrates be dealt with in all its aspects at legislative level, given its impact on the fundamental principles of independence and impartiality, both real and perceived, of the judiciary.*
58. The authorities of Italy recall the 2015 [Resolution of the High Council of the Judiciary](#) urging the legislative power to strictly regulate this matter. To this end, a [Draft Law on Candidacy, Eligibility and Relocation of Magistrates](#) has undergone consultation at both chambers of Parliament and is awaiting finalisation by the new legislature. The draft tightens the applicable requirements for magistrates to engage in political activity and hold a political mandate, including by establishing a five year ban for the magistrate to be a political candidate in the territory where s/he has held judicial office and a six-month quarantine period to be a candidate. In addition, the draft further regulates the return of magistrates to judicial functions in such instances. In this connection, magistrates who engage in politics - whether in Parliament or in Government - must take special leave; under the terms of special leave, judges/prosecutors continue to contribute to health and pension schemes and acquire seniority in service. Likewise, both territorial and functional restrictions would apply to the return to judicial office. Finally, the draft comprises disciplinary sanctions for infringement of the said rules, including loss of seniority of up to two years. At present, there are only five magistrates holding political roles: one is holding a regional administrative role and four a parliamentary mandate (one of the latter is due to retire at the end of 2018).
59. GRECO takes note of the draft law proposed and is hopeful that work will resume in Parliament in view of a tangible output. GRECO, however, fears that the current draft will not be sufficient to redress concerns over politicisation of the judiciary, a subject which has consistently attracted heated debate in Italy, both from the public and the profession itself. More particularly, while the current draft has some valuable measures to set in place a stricter demarcation between judicial functions and magistrates' direct participation in political or governmental activity, it does not fully meet the requirements of recommendation x, in particular, regarding its first component, i.e. an absolute ban on the simultaneous holding of the office of magistrate and that of a member of local government. Further, the draft still leaves some lacunae regarding the return of magistrates to the bench (e.g. return to high judicial offices), which could raise questions from the point of view of separation of powers and regarding the necessary independence and impartiality of judges in reality and in appearance. The authorities are urged to take these aspects into account as they resume their work on the matter.
60. Given that it is not yet certain whether and how the newly elected legislature will take up the advanced draft undergoing consultation (and submitted to GRECO's purview) in the previous legislature, GRECO can only conclude at this stage that recommendation x has not been implemented.

Recommendation xi.

61. *GRECO recommended strengthening the follow-up of the financial declaration forms filed by magistrates, notably, by ensuring a more in-depth scrutiny of the declarations and subsequently sanctioning the identified violations.*
62. The authorities of Italy indicate that the High Council of the Judiciary initiated a survey in May 2018 aimed at assessing the need to update the existing rules on asset disclosure. In parallel, a written note was sent to all presidents of courts of

appeal and the heads of prosecution offices to remind magistrates on their asset disclosure obligation (including on variations on their financial status and that of their spouse and cohabiting offspring¹⁰); further, a specific reminder of this obligation, along with the text of recommendation xi, has been put on the website of the High Council of the Judiciary. It is recalled that failure to lodge a financial situation is not a disciplinary offence as such, but can trigger a warning. The authorities further stress that the incompatibility clause for magistrates is quite strict: they cannot hold any public or private job and office and they cannot be appointed head of public charitable institutions; nor can they exercise industries and trades, or a freelance profession. The limited catalogue of secondary activities which are allowed (e.g. teaching, training) are further subject to authorisation by the High Council of the Judiciary. It is the view of the authorities that the rather stringent rules on secondary/side activities already establish an important and comprehensive limit, and thereby control, to the possibility of "extra" income that could be earned by magistrates. The authorities add that on 3 December 2018, a decision was taken by the High Council of the Judiciary to establish, from January 2019, a mechanism of systematic control of the asset disclosures submitted by magistrates (through random checks). Likewise, consideration is being paid to the need to review the current accessibility regime for asset disclosures (they are now available upon individual request).

63. GRECO takes note of the commissioned study to advance in the implementation of the recommendation, as well as the steps taken by the High Council of the Judiciary (CSM) to bring back the issue of financial disclosure (and the need to keep those up to date) into magistrates' mind. GRECO also welcomes the recent decision of the CSM to put in place a mechanism of systematic control of the asset disclosures submitted by magistrates; this action is foreseen to commence in 2019. Moreover, the CSM is considering whether it would be appropriate to review the current system for public accessibility of the submitted declarations. These are all positive developments which demonstrate the attention paid to GRECO's concerns; however, given that the decisions taken (and those under consideration) still need to be effectively developed in practice, GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

64. *GRECO recommended that the supervisory role of the High Council of the Judiciary over organisational programmes of prosecutorial offices is strengthened with the aim of enhancing transparency and objectivity in case management.*
65. The authorities of Italy report that the High Council of the Judiciary adopted, on 16 November 2017, a [Decision on the Organisation of Public Prosecution Offices](#). It includes a set of rules, and provides guidance, on the *rationae* of the working relationships that must govern prosecution offices, including by better articulating the principle of hierarchy with that of fairness, objectivity and collegial working procedures. It reportedly represents a forward-looking model striking a balance between the powers of the chief prosecutor and the autonomy of the individual prosecutors working in the office, including by (i) better defining the responsibilities of the chief prosecutor and the corresponding accountability system (not only in the event of misconduct, but also in cases of poor managerial performance); (ii) clarifying the applicable rules on case assignment (automated designation as a rule and only self-assignment in sufficiently reasoned circumstances), as well as on existing mechanisms for conflict resolution; (iii) detailing the supervisory role of the High Council of the Judiciary over organisational programmes (and their changes

¹⁰ The financial situation of the magistrate's spouse and cohabiting children is to be reported to the High Council of the Judiciary if the aforementioned individuals give their consent.

over time) of prosecutorial offices, as well as the information channels (to the chief prosecutor, the Prosecutor General of the relevant Court of Appeal, and the Prosecutor General at the Court of Cassation) that follow thereafter.

66. GRECO welcomes the guidance provided by the High Council of the Judiciary, and the supervisory role the latter displays, regarding the organisation of work in prosecutorial offices. The newly developed rules bring further light to the issue of organisational programmes and introduce important clarifications and adjustments, which are ultimately geared towards conciliating the principles of efficiency and uniformity through hierarchical management, with those of transparency, objectivity and fairness of work assignment, as well as that of autonomy of work of the individual prosecutors in their respective files. The authorities must be praised for their thoughtful and balanced approach in implementing this recommendation.
67. GRECO concludes that recommendation xii has been implemented satisfactorily.

III. CONCLUSIONS

68. **In view of the foregoing, GRECO concludes that Italy has implemented satisfactorily or dealt with in a satisfactory manner only three of the twelve recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, five have been partly implemented and four have not been implemented.
69. More specifically, recommendations viii and xii have been implemented satisfactorily, recommendation ix has been dealt with in a satisfactory manner, recommendations i, iv, v, vii and xi have been partly implemented and recommendations ii, iii, vi and x have not been implemented.
70. A period of political change, extending from the end of 2016 to mid-2018, has reportedly resulted in delays in implementation of the recommendations made by GRECO regarding the development of corruption prevention tools in Parliament. In the previous legislature, the establishment of the Advisory Committee on the Conduct of Deputies in May 2016 led to proposals to further advance in the implementation of the Code of Conduct of the Chamber of Deputies, notably, in relation to its reporting and enforcement requirements. Some initiatives were also tabled to systematise and streamline rules and compliance proceedings regarding conflicts of interest. However, the aforementioned submissions could not be concluded and now await resumption by the newly elected legislature (i.e. XVIII Legislature: 2018-2023). The development of a mandatory lobbyist register in the Chamber of Deputies is a notable move, but additional measures should be taken to better focus on the parliamentary side of the lobbying equation. The Senate has yet to embark on a similar path to promote a robust integrity ethos among its members. Regrettably, overall, the results in this domain are rather disappointing.
71. Implementation records regarding the recommendations made to the judiciary are much more positive. The triennium 2016-2018 has witnessed a much awaited reform of the justice sector to substantially improve the efficiency of both civil and criminal law trials, efforts for which the Italian authorities must clearly be commended. The reform has operated on different fronts regarding for example, appellate remedies, decriminalisation of minor offences and expedited procedures, alternative dispute mechanisms, organisation of courts, digitalisation of case management, etc. Time and experience with the newly introduced changes will show whether further adjustments are still necessary to accomplish the ambitious and multifaceted underlying goals of the justice reform. A new Bill has been recently tabled, which is reportedly aimed at further advancing the anticorruption struggle, also by addressing a number of lacunae in the criminalisation of

corruption offences and the regulation of political financing – covered under GRECO's Third Evaluation Round.

72. Good effort has been made to establish dedicated mechanisms to open up channels for the discussion of ethical dilemmas shared by magistrates and to deliver advisory tools in relation to integrity-related matters. Action has been initiated to strengthen the current financial disclosure regime of magistrates. Positive steps have been taken to strike the necessary balance between hierarchical organisation of prosecution offices and internal autonomy of individual prosecutors. Important changes have also been introduced regarding the matter of honorary judges, notably, by enhancing their professional training, supervision and assessment. A similar comprehensive approach is yet to follow in fiscal jurisdiction. Finally, the adoption of stricter regulation regarding the participation of magistrates in political life - a particularly sensitive issue in Italy – requires support in the newly elected Parliament.
73. In view of the above, GRECO notes that further significant material progress is necessary to demonstrate that an acceptable level of compliance with the recommendations within the next 18 months can be achieved. However, bearing in mind the notable action already taken by the authorities in the justice sector and on the understanding that the Italian authorities will further pursue their efforts to meet GRECO's outstanding recommendations in the newly started legislature, GRECO concludes that the current low level of compliance with the recommendations is not "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO invites the Head of delegation of Italy to submit additional information regarding the implementation of recommendations i to vii, x and xi by 30 June 2020.
74. Finally, GRECO invites the authorities of Italy to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.