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Groupe d'États contre la corruption

COUNCIL OF EUROPE



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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

CROATIA

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

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of Croatia to implement the recommendations issued in the Fourth Round Evaluation Report on Croatia (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Croatia was adopted at GRECO's 64th Plenary Meeting (20 June 2014) and made public on 25 June 2014, following authorisation by Croatia ([Greco Eval IV Rep \(2013\) 7E](#)).
3. The Compliance Report was adopted by GRECO at its 73rd Plenary Meeting (21 October 2016) and made public on 9 November 2016, following authorisation by Croatia ([GrecoRC4\(2016\)5](#)). As required by GRECO's Rules of Procedure, the authorities of Croatia submitted a Situation Report on further measures taken to implement the pending recommendations. This report was received on 28 June 2018 and served, together with the information submitted subsequently, as a basis for the Second Compliance Report.
4. GRECO selected San Marino (with respect to parliamentary assemblies) and Latvia (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were M. Eros GASPERONI, on behalf of San Marino and Ms Sandra KAIRE, on behalf of Latvia. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.

II. ANALYSIS

5. In its Evaluation Report, GRECO had addressed 11 recommendations to Croatia. In the Compliance Report, GRECO concluded that recommendations v, vi and x had been implemented satisfactorily. Recommendations ii, vii, ix and xi had been partly implemented. Lastly, recommendations i, iii, iv and viii had not been implemented. Compliance with the eight pending recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendations i and iii.

6. *GRECO recommended:*
 - *(i) that a code of conduct for members of Parliament be developed and adopted with the participation of MPs themselves and be made easily accessible to the public (comprising detailed guidance on e.g. prevention of conflicts of interest when developing the parliamentary function, ad-hoc disclosure and self-recusal possibilities with respect to specific conflict of interest situations, gifts and other advantages, third party contacts, deontology of dual mandate, etc.); (ii) that it be coupled with a credible supervision and enforcement mechanism (recommendation i); and*
 - *that efficient internal mechanisms be developed to promote, raise awareness and thereby safeguard integrity in Parliament, including on an individual basis (confidential counselling) and on an institutional level (training, institutional discussions on ethical issues related to parliamentary conduct, etc.) (recommendation iii).*

7. GRECO recalls that these recommendations were considered not implemented in the Compliance Report: no steps had been made to adopt a code of conduct for parliamentarians and the corresponding advisory, supervisory and enforcement arrangements.
8. The authorities of Croatia report some progress regarding the preparation of a draft code of conduct and ethics for parliamentarians, which is in the hands of the Committee on the Constitution, Standing Orders and Political System.
9. GRECO regrets that over four years after the adoption of the Fourth Evaluation Round Report on Croatia, the Parliament has not yet managed to adopt a code of conduct (and the relevant enforcement machinery) of its own. While the Anticorruption Strategy 2015-2020 fixed the last quarter of 2015 as the implementation deadline for the adoption of such a code, the draft has been lingering in Parliament. GRECO expects resolute action in this domain.
10. GRECO concludes that recommendations i and iii remain not implemented.

Recommendation ii.

11. *GRECO recommended (i) that the technical and personnel resources of the Commission for the Prevention of Conflicts of Interest be reassessed, and that measures be taken as necessary thereafter, with a view to ensuring their adequacy and effectiveness; (ii) that the Commission displays a more proactive approach in its preventive role with members of Parliament, notably by further developing communication and advisory channels with Parliament and, in close coordination with the latter, preparing tailored guidance on conflicts of interest that may emerge in carrying out parliamentary functions.*
12. GRECO, in its Compliance Report, acknowledged the efforts made to ameliorate the resources of the Commission for the Prevention of Conflicts of Interest (hereinafter the Commission), and considered recommendation ii (i) as met. GRECO, however, requested additional information concerning the guidance provided by the Commission to parliamentarians on the challenging issue of conflicts of interest, as per recommendation ii (ii). Pending the latter, this recommendation was assessed as partly implemented.
13. The authorities of Croatia indicate that the Commission has continued to provide targeted guidance and support to parliamentarians as they fulfil their reporting obligations under the Act on Prevention of Conflict of Interest (hereinafter LCI). [Guidelines](#) have been issued regarding the itemisation of expenditure (notably, lump sum allocated for material expenses) with a view to improving transparency of the public moneys provided for parliamentary activity. [Guidelines](#) were also issued, prior to the 2018 World Football Cup, in connection with travel, accommodation and ticket related expenses. The Commission has also been engaged in the drafting process of the code of conduct and ethics for parliamentarians, namely on information exchange and coordination procedures for violations of the code which may also constitute infringements of the LCI.
14. GRECO welcomes the proactive role taken by the Commission in supporting and advising parliamentarians on the fulfilment of their obligations under the LCI, as per recommendation ii (ii). GRECO was made aware of the Government's initiative to draft amendments to the Act on Prevention of Conflict of Interest and the concerns expressed thereafter by the Commission for the Prevention of Conflicts of Interest,

notably, regarding potential drawbacks of the current proposal¹. The authorities of Croatia may wish to keep GRECO informed of the extent and breadth of the reform underway.

15. GRECO concludes that recommendation ii has been implemented satisfactorily.

Corruption prevention in respect of judges and prosecutors

Recommendation iv.

16. *GRECO recommended that the Croatian authorities review the procedures of selection, appointment and mandate renewal of the President of the Supreme Court in order to increase their transparency and minimise risks of improper political influence.*
17. GRECO considered this recommendation as not implemented in the Compliance Report since the issues it raised were still at early consideration stages.
18. The authorities of Croatia now report on amendments to the Courts Act laying out, *inter alia*, procedures for the selection, appointment and mandate renewal of the President of the Supreme Court (Articles 44, 44a, 44b, 44c and 44d); the amendments were adopted on 25 July 2018 with a deferred entry into force on 1 January 2019. More particularly, pursuant to the amendments, the State Judicial Council initiates an upgraded selection procedure which follows greater transparency requirements: a public call is published in the Official Gazette; candidates send their CVs and their work programme, which are published online at the website of the State Judicial Council. It is recalled that any person may be elected to the position of president of the Supreme Court provided s/he fulfils the general and special conditions for the position of Supreme Court judge; candidates do not have to be judges of the Supreme Court already.
19. The candidate applications received by the State Judicial Council are then forwarded to the Office of the President, which in turn will ask for the (non-binding) prior opinion of the General session of the Supreme Court and the Judiciary Committee of the Parliament (the latter two take their decisions by majority of their respective members; the advice of the Judiciary Committee of Parliament is publicly announced). At the proposal of the President, the president of the Supreme Court is then elected by Parliament. Parliament could in theory reject the President's choice (in which case the President is then to choose another person from the pre-established list of candidates), but this has never happened in practice.
20. The President of the Supreme Court is elected for a four-year term, upon expiration of which s/he may be re-elected to the same position once. The authorities recognise that additional retuning/further implementing regulations may well be needed in this domain once experience with the new rules is gathered.
21. GRECO takes note of the changes introduced which are reportedly geared towards enhancing objectivity and transparency of the selection process of the President of the Supreme Court. GRECO notes that these changes will only enter into force on 1 January 2019. In its Fourth Round Evaluation Report, GRECO called for decisive involvement of the State Judicial Council in the relevant selection and appointment processes, thereby minimising political intervention. In this connection, GRECO notes that the role given to the State Judicial Council is restricted to the pre-selection process where it fulfils a merely depositary role: it is to announce the

¹ GRECO High-Level Conference on Strengthening transparency and accountability to ensure integrity: United against corruption. Šibenik (Croatia), 15-16 October 2018.

public call, gather the submitted CVs and submit the list of candidates – in no order or ranking – to the President. The actual selection and appointment procedures are the same as those described at the time of the evaluation visit, with the executive and the legislative having the real say in the selection and appointment of the President of the Supreme Court and no single requirement on the establishment of a predetermined appointment methodology/procedure, nor having decisions reasoned. GRECO understands that co-responsibility in appointment is designed in the Constitution to allow for a system of checks and balances among the three branches of power (executive, legislative and judicial), but GRECO considers that additional measures are still required to preserve the objectivity and transparency of such a system, and to further prevent improper political considerations or the perception of unfairness or bias being factored into the appointment of the highest position in the judiciary.

22. Regarding the issue of mandate renewal, GRECO is pleased to note that the adopted amendments establish a limitation of the number of mandates that a President of the Supreme Court can hold (two terms, i.e. maximum of 4+4=8 years of presidency). In GRECO's view, such a change has the potential to allow for an adequate balance between the requirements of continuity and dynamism in the leadership of the highest court.

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

Recommendations vii and xi.

24. *GRECO recommended:*

- *that the authorities continue in their endeavours to strengthen the scrutiny of judges' financial declarations (recommendation vii); and*
- *that the authorities continue in their endeavours to strengthen the scrutiny of prosecutors' financial declarations (recommendation xi).*

25. GRECO deemed these recommendations as partly implemented in the Compliance Report since, although some steps had been taken to step up the reviewing process of financial declaration forms, the most pivotal tool anticipated by the authorities to fulfil this aim, i.e. software enabling the automated verification of data, was still under development.

26. The authorities of Croatia report on new rules harmonising the financial reporting regime for judges and prosecutors, including by providing for public access to asset declaration forms (with due respect for privacy requirements) and by refining enforcement requirements, as well as to launch the automated verification of the reported data. The reported amendments to the State Judicial Council Act and the new State Attorney's Council Act were adopted on 25 July 2018 and entered into force on 1 September 2018. The material operability of the IT system allowing for automated cross checks of financial declarations and information exchange among different authorities is expected in 2019.

27. GRECO is pleased to note the developments reported to substantially step up the scrutiny and accessibility of financial declaration forms of both judges and prosecutors. However, pending their effective operability in practice, GRECO concludes that recommendations vii and xi remain partly implemented.

Recommendation viii.

28. *GRECO recommended that a communication policy, including general standards and rules of conduct as to how to communicate with the press, is developed for the judicial system (judges and prosecutors) with the aim of enhancing transparency and accountability.*
29. GRECO considered in the Compliance Report that recommendation viii as not implemented in the absence of concrete results.
30. The authorities of Croatia recount several measures included in the draft 2019-2020 Anticorruption Action Plan (the adoption of which is foreseen in December 2018): the issuing of a communication strategy/guidance for courts and the Ministry of Justice on communicating with the public, the development of targeted training modules for judges and judicial counsels on public relations. The responsible authority is the Judicial Academy, in cooperation with the Ministry of Justice and the Croatian Judges' Association; funding is yet to be secured through the European Social Fund. In addition, the Supreme Court has proposed the development of a communication policy for the judiciary, including general standards and rules of conduct for communication with the media aimed at increasing transparency and responsibility through (i) training of spokespersons, (ii) uniform proceedings and rules of conduct when communicating with the media, and (iii) development of courts' websites.
31. GRECO appreciates the attention paid by the authorities to this recommendation, the reflection process developed to this effect and the concrete set of actions proposed thereafter to effectively meet GRECO demands. While all the anticipated measures have the potential to shape a notable outreach strategy, they need to materialise in practice and funding must yet be secured.
32. GRECO concludes that recommendation viii remains not implemented.

Recommendation ix.

33. *GRECO recommended that the Croatian authorities consider reviewing the procedures of selection, appointment and mandate renewal of the Prosecutor General in order to increase their transparency and minimise risks of improper political influence.*
34. GRECO took note of the proposed reforms in this area tabled by a working group of the Ministry of Justice, but in view of the change of government and potential policy shifts/reconsideration assessed recommendation ix as partly implemented in the Compliance Report.
35. The authorities of Croatia refer to the new Act on the State Attorney's Office (Articles 22 to 28) geared towards increasing the transparency of the selection process by putting in place fixed deadlines, uniform procedural stages and publication requirements, as well as involving the State Prosecutorial Council in this process. In particular, the State Prosecutorial Council is responsible for making a public call for candidatures and gathering thereafter the received CVs and proposed work programmes of each individual candidate. It subsequently sends to the Government the list of candidates (in no ranking order). The Government is then to make its choice; it may consult the Judiciary Committee of Parliament for a prior non-binding opinion (the opinion is publicly announced). Formal appointment of the Prosecutor General is referred to Parliament on the basis of the Government's proposal. Parliament could in theory reject the Government's choice (and the Government should then choose another person from the pre-established list of

candidates), but has never done so to date. No one can be elected to the position of Prosecutor General more than twice. The Act on the State Attorney's Office was adopted on 25 July 2018 and entered into force on 1 September 2018. The authorities recognise that additional retuning/further implementing regulations may well be needed in this domain once experience with the new rules is gathered.

36. GRECO takes note of the new Act on the State Attorney's Office establishing additional transparency requirements in the system of selection of the Prosecutor General, as well as limiting mandate renewal. In light of the above, GRECO accepts that the issue at stake has been considered with legislative changes occurring thereafter. Consequently, recommendation ix is to be regarded as complied with.
37. Having said that, GRECO is, however, of the view that further transparency and objectivity assurances are to be infused in the system of selection and appointment of the Prosecutor General. While GRECO recognised that the participation of the executive/legislative in the appointment process of a Prosecutor General is not uncommon in Europe, it also stressed its preference for a selection procedure where professional/non-political expertise is involved with a view to preventing risks of improper political influence or pressure. In this connection, GRECO specifically called for decisive involvement of the State Prosecutorial Council. With the new law, the State Prosecutorial Council is merely given a depositary role: it is to announce the public call, gather the submitted CVs and submit the list of candidates – in no order or ranking – to Government. The subsequent selection and appointment procedures in the hands of Parliament and the Government remain as they were during the on-site evaluation visit. At the time, GRECO already expressed its misgivings regarding the need for greater clarity of the Government proposal and the criteria upon which it is based. In light of the foregoing considerations, GRECO can only encourage the authorities to further advance in their efforts to increase the transparency and minimise risks of improper political influence in the appointment of the Prosecutor General.
38. GRECO concludes that recommendation ix has been dealt with in a satisfactory manner.

III. CONCLUSIONS

39. **In view of the foregoing, GRECO concludes that Croatia has implemented satisfactorily or dealt with in a satisfactory manner five of the eleven recommendations contained in the Fourth Round Evaluation Report. Out of the remaining recommendations, three have been partly implemented and three not implemented.**
40. More specifically, recommendations ii, v, vi and x have been implemented satisfactorily; recommendation ix has been dealt with in a satisfactory manner; recommendations iv, vii and xi have been partly implemented; recommendations i, iii and viii have not been implemented.
41. With respect to members of parliament, GRECO regrets that more than four years have lapsed since the adoption of the Fourth Evaluation Round Report on Croatia and yet the Parliament has not managed to adopt a code of conduct (and the relevant enforcement machinery) of its own. Regarding the judiciary, a legislative package was adopted in July 2018 to enhance its transparency and accountability. The laws refer, *inter alia*, to the systems of selection of the President of the Supreme Court and the Prosecutor General, now incorporating fixed deadlines, uniform procedural stages and publication requirements, as well as involving the respective State Judicial Council and State Prosecutorial Council in such processes (albeit in a merely depositary role of candidatures). It is unfortunate that the

articulation of the subsequent selection and appointment procedures in the hands of Parliament and the Government lacks a comparable degree of clarity in regulation. GRECO considers that further transparency and objectivity assurances are to be infused in the system of selection and appointment of these two key positions in the judiciary. A targeted communication strategy for the judiciary is in the offing, but needs to materialise in practice for which funding has yet to be secured. Likewise, additional developments are expected to occur regarding the scrutiny of and public access to financial declarations of both judges and prosecutors: the legal basis for a harmonised reporting regime for both judges and prosecutors is now in place and provides for public access to asset declaration forms; however, the effective operability of the IT system allowing for automated cross checks and information exchange among different authorities is pending and foreseen to materialise in 2019.

42. GRECO further acknowledges the proactive role played in recent years by the Commission for the Prevention of Conflicts of Interest. GRECO was made aware of the Government's initiative to draft amendments to the Act on Prevention of Conflict of Interest and the concerns expressed thereafter by the Commission for the Prevention of Conflicts of Interest, notably, regarding potential drawbacks of the current proposal. The authorities of Croatia may wish to keep GRECO informed of the extent and breadth of the intended reform and provide assurance that this move does not represent a backward step in the prevention of corruption.
43. In view of the fact that six (out of eleven) recommendations are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of Croatia to submit additional information, namely regarding the implementation of recommendations i, iii, iv, vii, viii and xi by 30 September 2019, pursuant to paragraph 2(i) of that Rule.
44. Finally, GRECO invites the authorities of Croatia to authorise, as soon as possible, the publication of the report, to translate the report into the national language and to make this translation public.