



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



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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT LUXEMBOURG

Adopted by GRECO at its 82nd Plenary Meeting
(Strasbourg, 18-22 March 2019)

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I. INTRODUCTION

1. This Interim Compliance Report assesses the measures taken by the authorities of Luxembourg to implement the recommendations issued in the Fourth Round Evaluation Report on that country (see paragraph 2) dealing with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Luxembourg was adopted at GRECO's 60th Plenary Meeting (21 June 2013) and made public on 1 July 2013, following authorisation by Luxembourg ([Greco Eval IV Rep \(2012\) 9F](#)). The corresponding First Compliance Report was adopted at GRECO's 68th Plenary Meeting (19 June 2015) and made public on 1 July 2015 ([Greco RC-IV \(2015\) 5F](#)).
3. In the Second Compliance Report ([GrecoRC4\(2017\)17](#)) adopted by GRECO at its 77th Plenary Meeting (18 October 2017) and made public on 20 October 2017, following authorisation by Luxembourg, it was concluded that Luxembourg had satisfactorily implemented or dealt with only four (recommendations iii, viii, xi and xii) of the fourteen recommendations contained in the Fourth Round Evaluation Report. In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 paragraph 2.i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the Head of the Delegation of Luxembourg to provide a report on the progress in implementing the pending recommendations (namely recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv) by 31 October 2018, with the deadline subsequently extended to 30 November 2018. This report was received on 29 November 2018 and served as a basis for this Interim Compliance Report.
4. GRECO selected Switzerland and Bulgaria to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Ernst GNAEGI, on behalf of Switzerland, and Mr Georgi ROUPCHEV, on behalf of Bulgaria. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. This Interim Compliance Report assesses the further implementation of the ten recommendations pending since the adoption of the Second Compliance Report and performs an overall appraisal of the level of Luxembourg's compliance with these recommendations.

II. ANALYSIS

6. It is recalled that in its Evaluation Report GRECO addressed 14 recommendations to Luxembourg. In the subsequent Compliance Reports, GRECO concluded that recommendations iii, viii, xi and xii had been implemented satisfactorily. Recommendations i, ii, iv, v, vii and ix had been partly implemented, and recommendations vi, x, xiii and xiv had not been implemented. Compliance with the 10 outstanding recommendations is therefore assessed below.

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that i) as intended with the current draft Code of Conduct, a set of ethical rules and standards is adopted with the aim of preventing corruption and safeguarding integrity in general; ii) these rules be supplemented by an implementing instrument providing the necessary clarifications.*

8. It is recalled that this recommendation had been partly implemented. The first part of the recommendation had been implemented through the adoption and entry into force in 2014 of the Code of Conduct relating to financial interests and conflicts of interest for the members of the Chamber of Deputies¹. As for the second part of the recommendation, the Chamber of Deputies had decided to draw up an implementing instrument in order to provide further clarification of the Code of Conduct.
9. The Luxembourg authorities now indicate that the Bureau of the Chamber of Deputies adopted an implementing instrument for the Code of Conduct for members of the Chamber of Deputies in order to provide further clarification of certain provisions of the Code on 26 April 2018.
10. GRECO welcomes the adoption of an implementing instrument for the Code of Conduct providing certain clarifications regarding declarations of financial interest and gifts or similar advantages. GRECO nonetheless considers that the implementing instrument should be more illustrative in nature, providing concrete, and above all fuller, examples to explain all the Code's provisions, including those relating to conflicts of interest and lobbying.
11. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

12. *GRECO recommended that the declaration system be further developed in particular i) by including data which are sufficiently precise and pertinent, for instance on financial assets, debts and resources of parliamentarians; ii) by considering including information on assets of spouses and dependent family (it being understood that such information would not necessarily need to be made public).*
13. GRECO notes that this recommendation had been partly implemented. Notwithstanding the introduction of a declaration system applicable to all parliamentarians under the Code of Conduct for MPs and the introduction of an obligation to declare the special pension or temporary salary, the data to be declared regarding interests, assets and income are still largely vague and incomplete. The parliamentarians had opted to stick with the declaratory system modelled on that of the European Parliament and not revise and broaden their declaration system. Regarding the second part of this recommendation, it had been taken into account following a series of consultations and discussions run since 2014, although GRECO had regretted the parliamentarians' decision not to extend the declaratory obligations to close relatives.
14. The Luxembourg authorities have not reported any progress in implementing the recommendation.
15. GRECO deplors the lack of progress in implementing this recommendation. It reiterates the observations made in the evaluation report and the two compliance reports regarding the inadequacy and vagueness of the information that has to be provided on financial interests, assets and income. GRECO calls on the Luxembourg authorities to take the necessary steps to implement this recommendation.
16. GRECO concludes that recommendation ii remains partly implemented.

¹ www.legilux.public.lu/leg/a/archives/2014/0201/a201.pdf#page=2

Recommendation iv.

17. *GRECO recommended the introduction in the Code of Conduct of rules on the way in which MPs should conduct themselves with third parties seeking to influence the work of the legislature.*
18. GRECO notes that this recommendation had been partly implemented. The Code of conduct devotes one of its rules to lobbying (rule 5), stipulating that contact with third parties, other than at committee meetings, must take place outside the Chamber. Deputies must disclose contact they have with lobbyists, during debates in committee meetings or in writing, but only where such contact has a direct impact on a legislative text being discussed. The competent committee may decide to publish an opinion of an interest group. GRECO had deemed these improvements insufficient to render MPs' contact with third parties more transparent and more able to withstand influences driven by various interests. Successive efforts to regulate unofficial contact with third parties which does not directly concern the legislative process had not borne fruit.
19. The Luxembourg authorities report no new measures to implement the recommendation.
20. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

21. *GRECO recommended the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of Conduct for parliamentarians.*
22. GRECO notes that this recommendation was considered partly implemented. A new monitoring and sanctioning mechanism had been introduced in July 2014 to ensure compliance with the different provisions of the Code of Conduct. It involved an independent advisory committee issuing recommendations on shortcomings reported by MPs and on the powers of the President of the Chamber to take reasoned decisions and decide on sanctions². It provided for a range of sanctions and also the possibility of appeal. But GRECO had found that the measures taken, while positive developments, were still insufficient, in particular because the Code did not entrust the monitoring bodies with responsibility for checking the accuracy of declarations and no details were given regarding the means of parliamentary oversight. The Institutions and Constitutional Review Committee had recommended that the Chamber of Deputies be given the necessary means of oversight to detect false or inaccurate declarations but its recommendations had not yet been followed up.
23. The Luxembourg authorities indicate that on 24 July 2018 the Chamber of Deputies adopted amendments to its Rules of Procedure and rule 8 now stipulates that any citizen finding irregularities in an MP's declaration of financial interests may refer the matter to the Speaker of the Chamber. Likewise, any irregularities in a declaration made by the Speaker of the Chamber may be referred to the Conference of committee chairs. Furthermore, an MP whose declaration of financial interests is examined by the advisory committee must now provide the committee with all the necessary documentation.

² The Conference of committee chairs initiates the disciplinary procedure against the Speaker of the Chamber and imposes sanctions for any wrongdoing.

24. GRECO takes note of the information provided. GRECO welcomes the recent changes made to rule 8 of the Rules of Procedure of the Chamber of Deputies. GRECO appreciates the fact that any citizen finding irregularities in an MP's declaration of financial interests may now refer the matter to the Speaker of the Chamber (or to the Conference of committee chairs if the irregularities concern the Speaker's declaration). Furthermore, it is a positive development that an MP whose declaration of financial interests is examined must now provide the advisory committee with all the documentation demanded. Despite this progress, the mechanism for monitoring MPs' declarations remains incomplete. It relies on reports by citizens and does not provide for any proactive mechanism for monitoring by the Chamber of Deputies itself, which is the only way of guaranteeing full and effective oversight. In this context, the shortcomings of the declaration system applicable to MPs analysed under recommendation ii could usefully be reiterated.
25. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

26. By way of introduction, the Luxembourg authorities indicate that the pending recommendations all relate to the setting up of the Supreme Judicial Council. The authorities report developments in this area, pointing out that on 15 June 2018 the Minister of Justice tabled a bill on the organisation of the Supreme Judicial Council (parliamentary document no. 7323) in the Chamber of Deputies. The draft law was published on the website of the Chamber of Deputies and is accessible to the public.

Recommendation vi.

27. *GRECO recommended that under the rules of the future National Judicial Council, the procedures for the promotion of the various categories of judges and public prosecutors, including access to senior functions of president or vice-president of a court and Principal State Prosecutor, should be reviewed and made more transparent, particularly through the use of objective criteria and periodic appraisal.*
28. GRECO notes that this recommendation was considered not to have been implemented. The prerequisite for doing so was the setting up of the National Judicial Council. Despite the decision to separate the judicial reform from the constitutional reform and the drawing up of preliminary draft legislation at the level of the Ministry of Justice aimed at setting up a Supreme Judicial Council (CSJ), there has still been no tangible progress. Furthermore, GRECO had noted that the preliminary drafts provided for only one of the seven members of the future CSJ to be appointed by his or her peers. GRECO had stressed that this was contrary to the standards of the Consultative Council of European Judges (CCJE) and GRECO's practice with respect to Fourth Round evaluations, which required at least half of the members of such a body to be elected or appointed by their peers.
29. The Luxembourg authorities report that the draft law on the Supreme Judicial Council tabled by the Minister of Justice in the Chamber of Deputies on 15 June 2018 revises the rules for the appointment, promotion and secondment of members of the judiciary (judges and prosecutors). The same system is proposed for first appointments and promotions, with any member of the judiciary able to apply for a vacant post. The criteria for appointment would be the acquired experience and competences, merits and the person's seniority in the judiciary. Under this law the CSJ would publish judicial vacancy notices and, following a possible interview and the issuing of the reasoned opinion of the head of the professional category from which the candidate comes, submit the reasoned decision appointing/promoting a

single candidate to the Grand Duke (Articles 21 – 24). The Grand Duke would have a right of reasoned veto but not the option of putting forward a new candidate, who may be submitted only by the Supreme Judicial Council. The list of candidates is public. The CSJ's decision is accessible to all candidates and can be appealed in the Administrative Tribunal.

30. GRECO notes that the government's draft law on the Supreme Judicial Council revises the procedures for appointing and promoting judges and prosecutors in the various categories. This draft contains positive features, such as the harmonisation of procedures and criteria for appointing and promoting judges and prosecutors under the aegis of the Supreme Judicial Council, the publication of vacancy notices, the inclusion of competencies and merit in the selection criteria and the requirement to state reasons for appointment/promotion decisions. However, it remains to be specified how the different criteria are to be assessed, taken into account and weighted, as there is no periodic appraisal system for the judiciary or apparently any plans for one, which GRECO finds disappointing. GRECO wonders, therefore, how merit will be taken into account, and all the more so as candidate interviews are only optional under the arrangements envisaged.
31. Finally, regarding the composition of the Supreme Judicial Council, under the draft law only three of its members would be appointed by their peers, which is still below the threshold of half or more stipulated by the Council of Europe's standards. GRECO therefore invites the authorities of Luxembourg to revise and refine the draft law regarding these different points.
32. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

33. *GRECO recommended that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits the risks for the general integrity of judges.*
34. It is recalled that this recommendation was classified as having been partly implemented. GRECO had taken a positive view of the e-mail of 11 May 2015 reminding judges of some of the provisions of the law on the organisation of the courts, notably concerning the supervisory role of the High Court of Justice in respect of the two district courts and the magistrates' courts and the responsibility of the presidents of those courts for ensuring compliance with the professional rules of conduct. The establishment of a self-governing body for the justice system seemed to be a key prerequisite for any more ambitious reform. GRECO had taken the view that the fact that the High Court of Justice had imposed a disciplinary sanction, for serious misconduct, was not in itself the sign of a new court management policy.
35. The Luxembourg authorities indicate that the draft law on the Supreme Judicial Council supplements the existing machinery with the aim of more harmonised and transparent management of the courts (and the prosecutor's office). The authorities refer *inter alia* to the provisions of the draft law stipulating that the "Council shall ensure the smooth running of justice" (Article 3), that "the Council shall run and monitor the in-service training of members of the judiciary" (Article 20) and that "anyone may lodge a complaint concerning the functioning of justice with the Council" (Article 33). It is additionally stipulated that, in the event of a malfunction of justice, the Council shall "order an investigation of the department concerned" (Article 37) or "issue an injunction to the head of the professional category concerned" (Article 38). Finally, the Council would have the option of proactive intervention for proposing improvements with a view to the harmonisation and

smooth running of the judiciary (Articles 39-42). The authorities specify that all the procedures before the CSJ and their outcomes would be public.

36. GRECO takes note of the above information. The draft law on the Supreme Judicial Council appears to be in line with the recommendation overall but a more in-depth review will be required of the situation and the practice developed in due course by the Supreme Judicial Council once the text has been adopted.
37. GRECO concludes that recommendation vii remains partly implemented.

Recommendation ix.

38. *GRECO recommended that it be clarified which of the provisions of the General Civil Service Regulations – on management of conflicts of interest or other matters relevant for the purposes of preventing corruption – are in force at present and in respect of which categories of justice posts, with a view to enforcing the applicable clauses of the regulations.*
39. GRECO notes that this recommendation was considered to have been partly implemented. During the evaluation visit it had not been clear to what extent the 1979 General Civil Service Regulations, and in particular the provisions on managing conflicts of interest and systematically declaring certain secondary activities or interests (Articles 14 and 15 of the Regulations) applied to members of the judiciary (judges and prosecutors). There had been a partial improvement in March 2015 through the adoption of amendments to the amended law of 1979 laying down the General Civil Service Regulations, which expressly included members of the judiciary in the scope of the Regulations. The authorities had then confirmed that Articles 14 and 15 of the Regulations did apply to judges and prosecutors and to judicial assistants. However, GRECO considered that it remained to be seen what consequences (for example in the field of training and the content of amendments) would be drawn from the fact that Articles 14 and 15 of the General Civil Service Regulations were applicable to judges, prosecutors and judicial assistants.
40. The Luxembourg authorities reiterate that Article 14 of the Civil Service Regulations (imposing the duty to inform one's line manager of certain interests and secondary activities) is indeed applicable to members of the judiciary (judges and prosecutors) and judicial assistants. The authorities point out that failure to fulfil this obligation would incur disciplinary proceedings. It is envisaged that the draft law on the Supreme Judicial Council will amend the amended law of 7 March 1980 on the organisation of the courts (Article 155) which states that "A disciplinary infringement shall be: 1° any act committed by a member of the judiciary in the exercise or outside the exercise of their duties which may compromise the serving of justice; 2° any failure by a member of the judiciary to fulfil the duties of their office or to uphold honour, discretion or dignity". In addition, the draft law (Article 26) stipulates that "3. All members of the judiciary and judicial assistants may apply to the Council for an opinion on a question of ethics", and that "1. The Council shall lay down rules on ethics and monitor their application by members of the judiciary". Article 33 further states that "anyone may lodge a complaint concerning the functioning of justice with the Council". Finally, the authorities indicate that the topics of fighting and preventing corruption form part of the training for judicial assistants and members of the judiciary throughout their career.
41. GRECO takes note of the above information. Once passed, the draft law on the Supreme Judicial Council (CSJ) should contribute to the implementation of this recommendation. GRECO welcomes in particular the provisions asserting the Council's power to lay down the rules on ethics and monitor their application, as

well as the provisions on the disciplinary responsibility of members of the judiciary. GRECO hopes that future detailed rules/explanations will provide the clarifications required for the practical application of Articles 14 and 15 of the Civil Service Regulations to judges, prosecutors and judicial assistants. Furthermore, the key role of the CSJ regarding advice and in-service training for members of the judiciary should contribute to the application of the rules governing conflicts of interest and prevention of corruption. GRECO expects the introduction of the CSJ, the drawing up of the relevant detailed rules/explanations and the setting up of CSJ advisory and training activities in this area.

42. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

43. *GRECO recommended that the rules on incompatibilities and secondary activities be clarified and made more coherent in respect of all persons required to sit as judges or act as prosecutors.*
44. It is recalled that this recommendation was considered not to have been implemented. The Evaluation Report had originally pointed out that the rules on incompatibilities and secondary activities remained "quite diverse" and "difficult to decipher because of the vague concepts and the interconnection of the provisions". GRECO stressed in the Compliance Reports that the rules had to be clear, consistent and comprehensible. Once, introduced, the future CSJ was supposed to ensure a coherent approach. At the time of the previous report, the text of the draft law on the CSJ had been an internal document and not communicated to GRECO.
45. The Luxembourg authorities assert that rules on incompatibilities and secondary activities are provided for in texts applicable to members of the judiciary, and that the future CSJ will supervise compliance with those rules and non-compliance will be sanctioned.
46. The authorities point out in particular that the amendments made to the Civil Service Regulations in March 2015 apply to members of the judiciary. The authorities refer to Article 14 of the Regulations, which contains provisions on incompatibilities, prohibiting civil servants, including members of the judiciary, from engaging in secondary activities irreconcilable with their duties or acquiring any kind of interest whatsoever in an enterprise subject to the supervision of or linked to the official's administration or department. Civil servants are banned from engaging in commercial, craft or industrial activities, a self-employed profession or remunerated activity in the private sector and from participating in the management, administration or supervision of a commercial enterprise or an industrial or financial concern with prior permission from the competent minister. They are also prohibited from exercising remunerated public sector activity, national or international, without prior permission from the competent minister. Failure to fulfil these obligations incurs disciplinary sanctions.
47. The authorities further point out that the provisions of the draft law on the Supreme Judicial Council mentioned under recommendation ix define disciplinary infringements (amendments to the amended law of 7 March 1980 on the organisation of the courts, Article 155), specify the role of the CSJ regarding ethics (supervisory and advisory, Article 26) and entitle litigants to directly lodge a complaint concerning the functioning of justice with the CSJ (Article 33).
48. GRECO notes that the amendments to the Civil Service Regulations of March 2015 were already mentioned in the first Compliance Report and it is not specified how these combine with the rules of the law on the organisation of the courts referred to

in the Evaluation Report and the previous Compliance Reports. Accordingly, there do not appear to have been any new developments regarding this issue, other than the tabling in Parliament of the draft law on the organisation of the Supreme Judicial Council. As mentioned under the previous recommendation, GRECO considers that the CSJ might ensure a more coherent approach in this area, but this remains to be confirmed in practice. It urges the authorities to pursue their efforts to clarify the rules applicable in the area of incompatibilities and secondary activities.

49. GRECO concludes that recommendation x has been partly implemented.

Corruption prevention in respect of prosecutors

Recommendation xiii.

50. *GRECO recommended that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service's decisions be completed.*
51. GRECO notes that this recommendation has not been implemented. It had initially been planned to reform the Public Prosecution Service in the context of the constitutional review of 2009³ and the governmental agreement of December 2013. This reform, intended to guarantee the Public Prosecution Service's independence, had then been carried out separately from the constitutional reform. The Ministry of Justice had drawn up preliminary draft laws on the judiciary. In particular, provision had been made for the Public Prosecution Service to be less subject to the authority of the Minister of Justice while remaining a hierarchical organisation (the Principal State Prosecutor would maintain authority over all the prosecutors of the Public Prosecution Service). On the whole, these preliminary drafts appeared to be in line with the recommendation but were to be re-examined after being passed. GRECO also considered that certain positive practices as regards instructions within the prosecution service deserved to be enshrined in the texts (such as submitting instructions in writing, the possibility of challenging the instruction etc).
52. The Luxembourg authorities point out that the Public Prosecution Service has always enjoyed *de facto* independence but this was not adequately reflected in legislation. The authorities state that the draft law on the Supreme Judicial Council, tabled by the government in parliament, now contains provisions intended to enshrine the independence of the Public Prosecution Service in legislation⁴. The Supreme Judicial Council would be the guarantor of the Public Prosecution Service's independence from the Ministry, while also guaranteeing the independence of judges. It would ensure the smooth running of justice and the prosecutor general's office. The reform provides for the abolition of the authority of the Minister of Justice over the Public Prosecution Service, *inter alia* by doing away with the power of the Minister of Justice to order the Principal State Prosecutor to start legal proceedings or refer relevant written submissions to the competent court. The reform also relates to the internal functioning of the Public Prosecution Service, allowing only written instructions to be issued by the Principal State Prosecutor to public prosecutors. In accordance with the positive right of instruction, these instructions may concern the starting of legal proceedings or referral to the competent court but may not be issued with the aim of preventing a prosecution.

³ For the full legislative file, see:

<http://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=6030>

⁴ In particular, this draft law amends the Code of Criminal Procedure, the Law on the organisation of the courts (LOJ), the Law on the organisation of administrative law courts (LOJA) and the Law on the organisation of the Constitutional Court.

53. GRECO welcomes the reform initiated, which appears to meet the requirements of this recommendation on the whole and is worthy of support. GRECO appreciates both the provisions establishing the independence of the Public Prosecution Service⁵ and those intended to tangibly transpose that independence in the functioning of the prosecution service. In this respect, it is particularly encouraging to see that it is intended that the Public Prosecution Service will no longer exercise its powers under the authority of the Minister of Justice and that the Minister would not be able to order prosecutions or intervene in Public Prosecution Service disciplinary matters. GRECO also notes with satisfaction that the Principal State Prosecutor would be able to issue only written instructions to public prosecutors within the hierarchical framework, specifically to start legal proceedings or make referrals to the competent court and that these will be placed on file. The fact that the Principal State Prosecutor will not be able to order prosecutors to refrain from instituting proceedings is also a positive. That said, while the draft law on the Supreme Judicial Council appears to be in line with GRECO's expectations, its content will have to be re-examined in detail once passed.

54. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

55. *GRECO recommended that i) the future collegial body for the judiciary be involved in supervision and in disciplinary decisions concerning prosecutors; ii) that the disciplinary arrangements applicable to prosecutors, including the applicable sanctions, be defined more clearly.*

56. GRECO notes that this recommendation had not been implemented. Its implementation hinged on the setting up of the Supreme Judicial Council (CSJ). The preliminary draft legislation of the Ministry of Justice seemed to be in line with the recommendation but was at too early a stage to conclude that the recommendation had been implemented, even partly.

57. Where the first part of the recommendation is concerned, the Luxembourg authorities once again refer to the government's draft law on the CSJ, tabled in Parliament. This text makes provision for the disciplinary regime applying to prosecutors to be aligned with that of judges, under the authority of the CSJ. This would place the CSJ in charge of monitoring compliance with ethics rules on the part of members of the judiciary, judges and prosecutors included. It could carry out an investigation within the prosecution services or the services coming under the courts. In addition, the CSJ would have sole competence for initiating disciplinary proceedings and bringing the official allegedly at fault before the competent disciplinary tribunal. Furthermore, the CSJ could temporarily suspend the Principal State Prosecutor⁶ in the event of disciplinary or criminal proceedings against the latter. The Minister of Justice would no longer be able to intervene in Public Prosecution Service disciplinary matters. However, in contrast to judges, the prosecutors of the Prosecution Service would continue to be part of a hierarchical structure.

58. With regard to the second part of the recommendation, the Luxembourg authorities state that, as pointed out above, under the draft law on the CSJ, the prosecutors of the Prosecution Service would be subject to the same disciplinary regime as judges.

⁵ "The public prosecution service shall be independent in the exercise of public prosecutions and the making of a case for the application of the law" (Article 75 of the amended law of 7 mars 1980 on the organisation of the courts). Only administrative and financial management will be exercised under the responsibility of the Minister of Justice.

⁶ Like the president of the Supreme Court of Justice and the president of the Administrative Court.

The draft legislation would introduce a new definition of disciplinary misconduct and broaden the spectrum of disciplinary sanctions, going from a reprimand to dismissal and introducing a new sanction of demotion. After the initiation of proceedings by the Supreme Judicial Council, the investigation of the disciplinary case would be entrusted to an investigating judge who would be independent of the Council and the disciplinary tribunals and would have extended investigative powers. The prosecutor standing accused would enjoy reinforced rights of defence.

59. At the level of the case judgment phase, the draft law provides for the creation of two disciplinary tribunals, comprising solely members of the judiciary elected by their peers. The Disciplinary Tribunal would be the first-instance court and the Disciplinary Court the appeal court. The draft law also provides for a right of appeal and an appeals procedure.
60. With regard to the first part of the recommendation, GRECO notes that the same disciplinary regime would apply to Prosecution Service prosecutors and judges. The CSJ would therefore be clearly tasked with supervision and involved in disciplinary decisions concerning prosecutors, as required by the recommendation. At this stage, therefore, the first part of the recommendation is partly implemented, and the text will have to be re-examined once it has been passed.
61. Where the second part of the recommendation is concerned, GRECO welcomes the fact that the draft law on the Supreme Judicial Council clarifies the disciplinary regime applicable to prosecutors. Handing over the investigation to an independent judge and judgment of the case to collegial courts whose members are elected by peers, and also specifying and broadening the spectrum of sanctions are in keeping with GRECO's recommendation and expectations. Pending the passing of this law, the second part of the recommendation is partly implemented.
62. GRECO concludes that recommendation xiv has been partly implemented.

III. CONCLUSIONS

63. **Luxembourg has made some progress since the second Compliance Report of October 2017, although that progress has had no impact on the number of fully implemented recommendations. In total, still only four of the fourteen recommendations contained in the Evaluation Report have been satisfactorily implemented.** With the upgrading of four other recommendations, the number of partly implemented recommendations now stands at ten.
64. More specifically, recommendations iii, viii, xi and xii have been implemented satisfactorily. Recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv have been partly implemented.
65. With regard to parliamentarians, GRECO welcomes the adoption of an implementing instrument for the Code of Conduct which provides certain clarifications but should be more comprehensive and illustrative in nature. GRECO deplores the lack of progress in remedying the inadequacy and vagueness of the system of declarations by MPs and, despite some progress, the incompleteness of the related monitoring and sanctions machinery. Furthermore, the regulation of MPs' contact with third parties still falls short of GRECO's expectations.
66. Concerning judges and prosecutors, GRECO notes that the progress registered is in all cases due to the tabling of the draft law on the Supreme Judicial Council in Parliament. So far, this text is in line with GRECO's recommendations as a whole but, once passed, its content will have to be re-examined. The issues covered include the promotion of members of the judiciary, management of the courts (and

the prosecution service), the role of the Supreme Judicial Council in determining and monitoring rules on ethics, the disciplinary liability of members of the judiciary and the operational independence of the Public Prosecution Service from the Minister of Justice.

67. In the light of the above, GRECO concludes that the current level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure.
68. Pursuant to Rule 32, paragraph 2(i) of the Rules of Procedure, GRECO requests the Head of Delegation of Luxembourg to provide a report on the measures taken to implement the outstanding recommendations (i.e. recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv as soon as possible but by 31 March 2020 at the latest.
69. In addition, in accordance with Rule 32, paragraph 2(ii)(a), GRECO invites its President to send a letter – with a copy to the President of the Statutory Committee – to the Head of Delegation of Luxembourg, drawing attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.
70. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.