



Adoption: 6 December 2019
Publication: 17 February 2020

Public
GrecoRC4(2019)20

FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

MONACO

Adopted by GRECO at its 84th Plenary Meeting
(Strasbourg, 2-6 December 2019)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Monaco to implement the recommendations issued in the Fourth Round Evaluation Report on Monaco which was adopted at GRECO's 64th Plenary Meeting (19-23 June 2017) and made public on 13 July 2017, following authorisation by Monaco ([GrecoEval4Rep\(2017\)1](#)). 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 Monaco submitted a Situation Report containing information on measures taken to implement the recommendations. This report was received on 28 June 2019 and served as a basis for this Compliance Report.
3. GRECO selected Andorra (in respect of parliamentary assemblies) and Belgium (in respect of judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Eva Garcia Lluelles, on behalf of Andorra, and Mr Ricardo Parrondo Ramos, on behalf of Belgium. 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 recommendation which has not yet been followed up on (partly 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 made 16 recommendations to Monaco in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that a series of significant measures be taken to enhance the transparency of the legislative process, including with regard to easy public access to adequate information on consultations held, and with regard to reasonable deadlines for submitting draft texts, amendments and working documents.*
7. The authorities of Monaco state that civil society, from which members of parliament come (and which therefore represent them, according to them), is regularly involved in the work of the National Council. They add that the commissions regularly invite members of civil society within the framework of the legislative process, and that civil society stakeholders regularly solicit parliamentarians to share their views on a draft text. They point out that parliamentary activities are reflected on social networks and the National Council website, and that public sessions are televised. It is specified that the work of committees is mentioned in the public report drawn up by the rapporteur on the draft text concerned and debates are published in the Monaco Gazette (*Journal de Monaco*), which is accessible on line. The National Council has proposed unanimously to set up public current affairs sessions to improve public information on the Government's main policy lines and subjects relating to people's day-to-day lives. For the time being no follow up has been given to this proposal by the Government. It has specified that there are many possibilities for exchanges, especially through public budget meetings during which current topics are discussed,

as well as during Plenary Study Committees or specialized meetings or committees. It considers that this practice is likely to allow a regular public debate on current topics and that the introduction of additional public meetings would not have any real added value. With regard to debates at committee level, the authorities of Monaco state that it is essential for these to be confidential so that every useful piece of information can be gathered, including on confidential matters.

8. However, the authorities of Monaco are ready to examine measures aimed at improving the visibility of the work done in the Commission, and in particular to include additional information on the situation of the legislative process on the National Council's website. The National Council is not opposed to indicate on its website the agenda of the public sessions, and already publishes the agenda of the commissions and the list of the entities consulted as part of this process - it has already, since 2019, put online advisory opinions regarding institutional issues. The authorities of Monaco recall that the National Council publishes on line the amended versions of the bills and draft laws, as well as the subsequent reports. A specific timeframe starting from a fixed point, such as the communication of amendments to the Government, could be formalized.
9. With regard to the reasonable deadlines recommended by GRECO for submitting draft texts, the authorities of Monaco indicate that measures could be taken to improve the work of elected representatives in the Commission, by introducing timeframes for the submission of amendments and other preparatory working documents, in the spirit of what is currently planned for the internal transmission of the commissions' reports. However, they emphasize that the resources and staff of the National Council do not allow for too much anticipation, and that it is almost systematic that exchanges between the Assembly and the Government take place very closely to the public meetings devoted to the text examination. This would argue for flexible timeframes, so that the adoption of essential draft laws is not hampered.
10. GRECO notes that the measures taken are not sufficient to enhance in a significant way the transparency of the legislative process. It takes note of the proposals made in order to improve the visibility of the parliamentary works on the website of the National Council but regrets that the National Council's unanimous proposal to set up public current affairs sessions has not been taken up by the executive. It points out that these measures which work towards making preliminary discussions in the legislative process more open seem necessary to it to enhance transparency on the sources of information and ideas to which parliamentarians have access when preparing legislation. It also notes the proposals made to set deadlines for communicating the amendments and other preparatory texts but stresses that these proposals had not been implemented to date. It points out that, in this framework, it is worth giving parliamentarians sufficient and reasonable time, both to seek out the necessary information for their activities and to inform the public of these ongoing activities, in complete transparency.
11. GRECO concludes that recommendation i has not been implemented.

Recommendation ii.

12. *GRECO recommended (i) that a code of conduct be adopted for the attention of members of the National Council to set standards in respect of general conduct, gifts and other benefits, and relations with third parties, and that it be brought to the attention of the public; ii) that measures be taken to facilitate its implementation in practice (explanatory comments, concrete examples etc.)*
13. The authorities of Monaco state that the Rules of Procedure of the National Council include in Article 78 a series of prohibitions whose aim is to prevent conflicts of

interest between parliamentary functions and other private activities or interests. They point out that the Criminal Code punishes the unlawful acquisition of interests, all forms of active or passive corruption and trading in influence, and that these measures are applicable to parliamentarians. The National Council repeats the undertaking made by the previous legislature to draft a Code of Conduct to complement the current standards. It plans to provide elected representatives with an introduction to and training in ethics and good practices on the basis of the Code to be adopted.

14. The authorities of Monaco add that, during the Plenary Study Committee of 25 September 2019, a working group was set up to draw up a Code of Conduct. It will aim to complement the current standards set by law on the functioning of the National Council and the Internal Regulations. The authorities stress that training has already been provided on this issue to National Councillors of previous legislatures and underline that the General Secretariat of the National Council has initiated a training process for the National Councillors which will begin in January 2020, both on applicable legislation in this area, and on the implementation of the principles to be established by the future Code.
15. GRECO welcomes the renewed undertaking to draw up a Code of Conduct and the setting up of a working group for this purpose, as well as the training provided and envisaged. Such a Code, accompanied by comments or concrete examples, seems to it necessary to complete Article 78 of the Rules of Procedure of the National Council by illustrating in more detail the various forms of risk that parliamentarians may face. It therefore calls on the authorities of Monaco to honour this commitment, and then to set up within a proper timing adequate training for parliamentarians to ensure the effective implementation of principles, rules and practices concerning general conduct, gifts and other benefits, and relations with third parties, and to arrange the necessary publicity for this Code.
16. GRECO concludes that recommendation ii has not been implemented.

Recommendation iii.

17. *GRECO recommended that a requirement of ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings (in plenary or committee work) independently of whether such a conflict might also be revealed by members' declarations of activities and income.*
18. The authorities of Monaco point out that the unlawful acquisition of interests and all forms of active or passive corruption and influence trading are punished by the Criminal Code¹. The National Council says that it is receptive to GRECO's recommendation and points out that it "*is customary for National Councillors to declare any occasional conflicts of interest, particularly on the occasion of votes at public sittings*". The National Council "*plans to launch a discussion on the issue of occasional conflicts of interest when drawing up the Code of Conduct*" while taking into account the specific issues connected with the small size of the State of Monaco.
19. They indicate that the Working Group set up during the Plenary Study Commission of 25 September 2019 is also responsible for ensuring the implementation of this recommendation in the framework of the elaboration of the Code of Conduct. They specify that the implementation of the Code could lead, de facto, the amendment of

¹ Recently completed by Law N°1462 strengthening the fight against money laundering, the funding of terrorism and corruption.

the Rules of Procedure of the National Council. However, this amendment must meet constitutional and regulatory procedures that will differ from the adoption.

20. GRECO welcomes the changes brought by Law N° 1462 strengthening the fight against money laundering, the funding of terrorism and corruption. It points out that in addition to the legal punishment of illegal acquisition of interests, active or passive corruption and trading in influence, it is important to prevent such offences, particularly through measures requiring parliamentarians to declare in advance occasional conflicts of interest related to subjects connected with their legislative work. It emphasises that custom is not a sufficient means of satisfying parliamentarians' obligations to declare such conflicts in the context of parliamentary procedure. While it understands that the small size of the State of Monaco gives rise to specific constraints where it comes to potential conflicts of interest, it encourages the authorities to carry through on its plans to introduce such a requirement into any future Code of Conduct.
21. GRECO concludes that recommendation iii has not been implemented.

Recommendation iv.

22. *GRECO recommended (i) introducing a system of public declaration of the National Councillors' financial and economic interests (income, assets and significant liabilities) and (ii) envisaging including information on their spouses and dependent family members (it being understood that such information would not necessarily be made public).*
23. The authorities of Monaco consider that a public declaration of National Councillors' assets is liable to undermine their privacy and point out therefore that the principle of proportionality in view of the aim being pursued should be applied for any such measure. They add that the country's small size adds to the sensitive nature of such information. In their view, the strict application of a public declaration of financial and economic interests could deter citizens from standing for parliament by placing a disproportionate burden on potential candidates, even though the integrity of these persons is not questionable, *ab initio* and therefore be prejudicial to the country's democratic life
24. The authorities of Monaco also state that if a requirement to declare financial and economic interests were imposed, an independent authority tasked with checking the truth of declarations would have to be set up. However, *"Monaco's administrative organisation does not favour the creation of independent administrative authorities, unless imposed by the Principality's international commitments"*.
25. GRECO reiterates its understanding for the specific features linked to the country's small size and the fact that the links between citizens are particularly tight. It stresses, however, that the application of the principle of proportionality in the light of the aim pursued does not mean that there should not be any measure designed to compel parliamentarians, or the dependant members of their family, to supply information on their financial and economic interests. GRECO also recalls consistently in its reports that politicians must, for the sake of the necessary information of the electorate, impose themselves on expanded obligations of transparency compared to ordinary citizens. It notes that no steps have been taken to set up such a declaratory system. Moreover, as to the establishment of an authority to check declarations, GRECO points out that there are other ways of following up effectively on declarations, which do not necessarily involve an independent administrative authority.
26. GRECO concludes that recommendation iv has not been implemented.

Recommendation v.

27. *GRECO recommended that measures be taken to ensure the proper supervision and enforcement of the obligations of declaration and the rules of conduct of members of parliament, together with proper sanctions for failure to honour all these obligations.*
28. The authorities of Monaco state that the Rules of Procedure of the National Council set out the arrangements for supervising the conduct of parliamentarians. However, they do not rule out the possibility of extending the range of sanctions that can be applied to take account of GRECO's recommendations and confirm that the proper implementation of the Code of Conduct will necessarily be accompanied by a mechanism to control these commitments and by appropriate sanctions. The Working Group referred to above is studying these issues as part of the development of the Code. The authorities of Monaco refer to the replies given in the context of Recommendation iv concerning checks on asset declarations.
29. GRECO welcomes the willingness clearly stated by the authorities of Monaco to reflect on its recommendations so that they can be taken into account. It encourages them to effectively develop measures to ensure effective monitoring and enforcement of the reporting obligations and standards of conduct of parliamentarians, including adequate sanctions in relation to all obligations. Such measures do not exist to date.
30. GRECO concludes that recommendation v has not been implemented.

Recommendation vi.

31. *GRECO recommended (i) that training and awareness measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests; and (ii) that MPs be provided with confidential counselling on these issues.*
32. The authorities of Monaco recall that the National Council is envisaging to provide its members with information and/or training on ethics and good practices in connection with the future Code of Conduct. The establishment of the Code of Conduct should lead soon to a training of National Councillors, organised by the General Secretariat of the National Council on the basis of this Code and the applicable law.
33. GRECO reiterates its call for the planned Code to be actually drafted, adopted and that awareness raising measures regarding this Code are taken.
34. GRECO concludes that recommendation vi has not been implemented.

Corruption prevention in respect of judges and prosecutors

Recommendation vii.

35. *GRECO recommended that the authorities enhance the role and operational independence of the Judicial Service Commission, review its composition and give it a central role in guaranteeing the independence and good functioning of the justice system, as well as in the recruitment, career management and disciplinary proceedings in respect of judges and prosecutors.*
36. The authorities of Monaco recall that Article 88 of the Constitution guarantees the independence of the judiciary. They further indicate that a draft law amending the Law on the status of the judiciary was forwarded to the National Council on 22

November 2019 and made public². The National Council is committed to adopting this text at its session starting in April 2020. According to Article 1 of the draft law, the High Council of the Judiciary (HCJ) has a role of guarantor of the principle of judicial independence as guaranteed by the Constitution, together with the Director of Judicial Services, within the framework of the powers which are conferred to them by law. They also recall that the draft law amending the law on the status of the judiciary foresees in Article 3 the possibility for the HCJ to initiate *ex officio* disciplinary proceedings against a judge or prosecutor (see para. 73 below). Considering the institutional specificities and the legislation as foreseen in these amendments, the authorities of Monaco assert that the HCJ plays a central role in guaranteeing the independence and the smooth functioning of justice system, and that it is not relevant to establish constitutional provisions – which have not been explicitly recommended by GRECO. They also point out that under the law, 40% of the members of the HCJ must be judges or prosecutors and argue that to insist that the majority of members should be judges or prosecutors “*does not seem reasonable*” given the small number of judges and prosecutors present in the country. They point out that, outside the college of elected judges, three members who are judges or honorary judges are currently sitting. Basing themselves on the Opinion of the European Commission for Democracy through Law (Venice Commission) on the balance of powers in the Constitution and the Legislation of the Principality of Monaco, they state that the small number of judges in Monaco, half of whom are French nationals, may justify this exception to the principle contained in Recommendation CM(2010)12, according to which “*not less than half the members of [councils for the judiciary] should be judges chosen by their peers*”. The authorities of Monaco quote Opinion No. 10 of the Consultative Council of European Judges (CCJE) on the Council for Justice in the Service of Society, which states that such a Council “*can be either composed solely of judges or have a mixed composition of judges and non-judges. In both cases, the perception of self-interest, self-protection and cronyism must be avoided*”. They note that the Opinion states that “*such a mixed composition would present the advantages both of avoiding the perception of self-interest, self-protection and cronyism and of reflecting the different viewpoints within society, thus providing the judiciary with an additional source of legitimacy*”.

37. As to the fact that the HCJ is chaired by the Director of Judicial Services (who performs the functions carried out in other countries by the Minister of Justice), the authorities of Monaco insist that this position is independent from the executive, to which it does not belong, as stated in the Constitution. They deny any risk of the Director of Judicial Services being subservient to the executive.
38. GRECO welcomes the will of the authorities of Monaco to assert in the law the HCJ’s central role, as a guarantor of independence and the efficiency of the justice system, and its operational independence. It also notes that the authorities stress its independence, but do not propose measures to enhance this independence. It points out that it emphasises in the evaluation report that “*compared to the executive, ... [it] has only a minor role [vis-à-vis the executive power]*”. Its existence is not guaranteed by the Constitution (although that is what is recommended by the Venice Commission in the aforementioned opinion). Only two members out of seven are elected by their peers. The HCJ’s opinions are not always binding on the appointment

² <http://www.conseil-national.mc/index.php/textes-et-lois/projets-de-loi/item/801-n-1005-projet-de-loi-modifiant-la-loi-n-1364-du-16-novembre-2009-portant-statut-de-la-magistrature>

authority. Only the Director may convene the HCJ. The HCJ's activity report is not made public.

39. With regard to the CCJE Opinion N°10(2007) cited by the authorities of Monaco, GRECO notes that, while the CCJE recognises that mixed composition (judges and non-judges) is possible, the authorities of Monaco fail to mention that the CCJE asserts above all that "*when there is a mixed composition (...), in order to prevent any manipulation or undue pressure, a substantial majority of the members should be judges elected by their peers*". GRECO recalls that these principles are all drawn from the section of the Opinion entitled: "*A Council for the Judiciary composed by a majority of judges*".

40. GRECO concludes that recommendation vii has been partly implemented.

Recommendation viii.

41. *GRECO recommended (i) that the appointment of members of the Supreme Court be based on a transparent procedure and adequate objective criteria and (ii) that they be provided with appropriate rules on incompatibilities, conflicts of interest and other obligations related to integrity.*

42. The authorities of Monaco point out that the composition of the Supreme Court is set out in Article 89 of the Constitution and its members are appointed "*from among candidates put forward by functionally independent institutions so that the Sovereign Prince's freedom of choice is strictly managed and limited*". They note, as regards the procedure for recruiting members, that Article 89 of the Constitution is explicit enough. Furthermore, the authorities of Monaco state that the Sovereign Order on the organisation of the Supreme Court was amended on 27 November 2019 to define the incompatibilities with the function of member of the Supreme Court, as well as provisions relating to their independence and ethical obligations. The amended Order also prohibits members of the Court from having, directly or indirectly, "*interests which may compromise their independence vis-à-vis the court users*" and provides that, where appropriate, members must inform the President so as to abstain from sitting. The members of the Supreme Court are also subject to their own Code of Conduct, approved on 28 November 2019, and defining their duties.

43. GRECO welcomes the recent amendments to the legislation on the organisation of the Supreme Court which incorporate appropriate rules with regard to its members on incompatibilities, conflicts of interest and other obligations related to integrity. It also welcomes the adoption of the Code of Conduct. These texts are in line with GRECO's recommendations. It notes the explanations given by the authorities of Monaco. It encourages them to pursue these efforts in this way to strengthen at the same time the procedure for the appointment of members of the Supreme Court, in order to make it more transparent and based on appropriate objective criteria.

44. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

45. *GRECO recommended ensuring the transparency of the process for appointing judges and prosecutors in Monaco, whether seconded or not, based on clear and objective criteria, including for appointments to the most senior positions and for the extension and early termination of secondments.*

46. The authorities of Monaco point out that under the Status of the Judiciary Act, Monaco's judges and prosecutors are recruited exclusively through a public competition although, by derogation, persons who have passed a competition to be admitted to the office of judge or prosecutor in an EU member state and have

performed such functions for five years or more are not required to sit a competition. Judges and prosecutors are appointed for an indefinite period by the Sovereign Prince on the basis of a report by the Director of Judicial Services and an opinion of the HCJ. The authorities of Monaco state that the low number of Monegasque judges and prosecutors (12 currently) makes it inappropriate to organise a public competition for positions higher up in the hierarchy and that it is the custom for judges and prosecutors to express their interest in career development opportunities to the heads of their court or the Director of Judicial Services. However, they indicate that Law No. 1.364 of 16 November 2009 on the status of the judiciary sets out the procedures for the advancement of step or rank of judges, applicable to both Monegasque judges and prosecutors and French seconded judges or prosecutors.

47. With regard to the recruitment of seconded French judges, it is pointed out that this is organised through bilateral agreements between the two countries, which have constitutional status. The Monegasque Directorate of Judicial Services notifies the French authorities of the types of job profile sought through diplomatic channels, and the French Ministry of Justice makes a call for candidates on the basis of the recruitment criteria drawn up by Monaco. The public nature of this internal procedure, accessible to all French judges and prosecutors, is considered to be transparent by the authorities of Monaco. The Director of Judicial Services chairs a selection committee which hears candidates shortlisted by the French authorities. Proposals are submitted to the Prince, who appoints judges or prosecutors once he has gained the French authorities' consent.
48. Secondments are for three years, renewable once. However, the Directorate of Judicial Services now questions whether secondments should be renewable, referring to Study No. 711/2013 by the Venice Commission, in which it is pointed out that renewable terms may make judges and prosecutors "*dependent on the authority which appointed them or has the power to re-appoint them*". Accordingly, it is planned to negotiate a derogation from the principle of renewal with the French authorities to take account of the "*need for training in and adaptation to Monegasque law for those concerned*".
49. As for the recruitment of French judges and prosecutors outside the secondment procedure (for the Court of Review), the Monegasque authorities state that they have "*taken note with the greatest attention*" of the comments in GRECO's evaluation report concerning the failure to publish vacancy notices or outlines of the job profiles sought. They "*acknowledge the clear interest*" in ensuring that measures are taken in the future to guarantee the transparency of the procedure for future appointments of this type.
50. GRECO welcomes the fact that for the first time in 2018, a public call for candidates to the position of Prosecutor General was launched in France. This practice, which is a move towards greater transparency in the appointment procedure, should be continued and anchored in the texts.
51. It also reiterates its attachment to the transparency of procedures for the promotion of judges and prosecutors through a public call for candidates, which is an inherent part of the principle of the independence of the judiciary. This does not only concern advancement of step or rank, but also, and above all, promotion to higher positions in the hierarchy. To date there are no such public procedures for the promotion of Monegasque judges and prosecutors, and their small number cannot justify as such the absence of a suitable procedure to reinforce this necessary transparency.
52. As for the renewal of secondment periods for French judges and prosecutors, GRECO agrees with the Venice Commission that this may undermine the judge's or

prosecutor's independence because he or she may wish not to harm the executive authority with power to grant the renewal. However, from the moment a secondment procedure exists, under no circumstance may it be used to exert pressure on a judge or prosecutor. In Opinion No. 1(2001) on standards concerning the independence of the judiciary and the irremovability of judges, the Consultative Council of European Judges (CCJE) considers that "where, exceptionally, a full-time judicial appointment is for a limited period, it should not be renewable unless procedures exist ensuring that: i. the judge, if he or she wishes, is considered for re-appointment by the appointing body and ii. the decision regarding re-appointment is made entirely objectively and on merit and without taking into account political considerations". In this connection, GRECO is concerned about a recent decision not to renew the secondment of a French investigating judge tasked with examining sensitive cases; although he had received written assurance that his term would be renewed, he was notified two months later that it would not be.³ It would seem that in this case, the rules on secondment were amended during the secondment concerned. This decision is not conducive to the untroubled independent exercise of the functions of judges seconded to Monaco.

53. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

54. *GRECO recommended extending the principle of periodic evaluations to include more judges and prosecutors and ensuring that consideration is given in this exercise to integrity-related matters.*

55. The authorities of Monaco state that the draft law amending the law on the status of the judiciary has been forwarded to the National Council on 12 November 2019. Article 2 extends the periodical evaluation mechanism to the President of the First Instance Court (evaluated by the First President of the Court of Appeal) and the Deputy Prosecutor General (evaluated by the Prosecutor General).

56. Moreover, it is indicated that the forms for the periodic evaluation of judges have already been amended to include an appraisal of ethical values and rules of conduct regarding the ethical standards and integrity of judges. This evaluation concerns all judges and prosecutors, Monegasques or seconded. The forms relating to prosecutors will be amended shortly.

57. GRECO welcomes these future legislative changes to extend the evaluation mechanism to certain high-level judges. It appreciates that the evaluation forms now contain an assessment of the ethical values. On this basis, it considers that the recommendation can be considered as partially implemented.

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

Recommendation xi.

59. *GRECO recommended taking the necessary measures to ensure that Court of Review hearings are held, as far as possible, in public in Monaco, e.g. by adjusting the frequency of the sessions.*

60. The authorities of Monaco defend the current position, stating that the fact that there are no oral discussions when the Court of Review rules solely on points of law and "out of session" makes it superfluous to hold public hearings, and emphasising that

³ See the communiqué of 28 June 2019 from the *Union Syndicale des Magistrats* sent by 9 seconded French judges to the French Minister of Justice.

the lack of a public hearing in a judicial body higher than a first instance court is not incompatible with the fundamental principles of a fair trial⁴. They also point out firstly that the parties may object to the examination of a case "out of session" and secondly, that hearings are public when the Court of Review rules on the merits. They also state that since 2018 the Court of Review has held three sessions per year instead of two, which eases the flow of cases and the organisation of public hearings.

61. GRECO takes note of these explanations and welcomes the addition of a third session of the Court of Review, which will help make its activities more public.
62. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Recommendation xii.

63. *GRECO recommended that a Code of Conduct for judges and prosecutors be adopted as foreseen, which would cover in an appropriate manner their integrity, and that it be accompanied by measures to facilitate its implementation (with examples and practical guidance) and to raise awareness of, and compliance with these rules.*
64. The authorities of Monaco state that a Compendium of ethical and deontological principles of the judges and prosecutors was adopted on 26 November 2019, defining the behaviour expected of judges and prosecutors in their professional exercise, and in particular principles regarding independence, impartiality and integrity, as well as behaviour expected outside the professional scope. They also indicate that a training seminar for the judiciary on these principles is to be organised in the first half of 2020.
65. Furthermore, they indicate that since December 2016, registers have been held at each court, at the Prosecutor General's Office and at the general registry with a view to increasing public trust in the integrity, impartiality and efficiency of members of the judicial service. These registers include seven items concerning the date of the declaration, the date of receipt of the gift, the recipients mentioned, the nature of the gift, the donor, the estimated value (less than 100 €, between 100 € and 250 €, between 250 € and 500 €, more than 500 €), and the signature of one of the interested parties.
66. GRECO welcomes the adoption of a Compendium of ethical and deontological principles which adequately covers integrity issues, including practical approaches. It also notes the existence in courts and prosecution services of registers relating to gifts received by judges and prosecutors. It will be worth ensuring that judges and prosecutors are provided with appropriate information and training on all these rules. The seminar being organised seems to correspond to this objective. GRECO invites the authorities of Monaco to continue this training effort in the long term, and as to new judges and prosecutors arrive.
67. GRECO concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

68. *GRECO recommended carrying out an assessment of the parallel activities performed by judges and prosecutors, including those who are still working in France, and, depending on the results, take the necessary steps to ensure more robust and consistent rules on incompatibilities.*

⁴ See in particular ECHR, 22 February 1988, Ekbatani v. Sweden; ECHR, 22 February 1984, Sutter v. Switzerland; ECHR, 22 February 1996, Bulut v. Austria; ECHR, July 26, 2011, Meftah and others v. France.

69. The authorities of Monaco point out that the Status of the Judiciary Act authorises judges and prosecutors, on a decision of the Director of Judicial Services, to teach or to perform functions or activities which do not undermine their independence or the dignity of their function. They indicate that the assessment by the Directorate of Judicial Services of the parallel activities of all judges and prosecutors is under way, at the level of all courts (including the Court of Review) and prosecution services. They state that information gathered in this context will be used to remedy any incompatibilities that may arise.
70. GRECO emphasises the importance of preventing and remedying any conflicts of interest which may arise from extra-judicial functions or activities performed by judges and prosecutors posted in Monaco, regardless of their place in the judicial hierarchy. With this in mind, it welcomes this awareness and the ongoing evaluation of the extra-judicial activities of all judges and prosecutors, including seconded French judges and prosecutors. It encourages the authorities of Monaco to take account of the conclusions of such assessment procedures to make improvements in practice to the requirements and the consistency of the rules on incompatibilities.
71. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

72. *GRECO recommended (i) spelling out in legislation the disciplinary power and capacity of action of the Judicial Service Commission, including in respect of senior judges and prosecutors; ii) defining in greater detail those breaches of the integrity rules discussed in this report which are liable to result in disciplinary action.*
73. The authorities of Monaco indicate that the draft law amending the Law on the status of the judiciary, forwarded on 12 November 2019 to the National Council, introduces into Article 3 the possibility for the HCJ to initiate *ex officio* disciplinary proceedings against a judge or prosecutor, through the First President of the Court of Review in his capacity as President of the HCJ's panel sitting in disciplinary matters. Only the Director of Judicial Services had this competence to date. The draft law provides (Article 4) a different composition for the HCJ's panel sitting consecutively to such *ex officio* seizure, compared to the one initiating the seizure, in order to respect the fairness of the procedure.
74. Furthermore, the authorities of Monaco state that the Status of the Judiciary Act lays down the rules on infringements of the rules on the integrity of judges and prosecutors through a broad definition, in which the "*legal classification of facts liable to constitute ... misconduct*" must be "*established in the light of each specific case giving rise to disciplinary proceedings*".⁵ They further indicate that the Compendium of ethical and deontological principles, adopted on 26 November 2019, usefully serves as a reference and constitutes a precise guide on the duties and obligations of judges and prosecutors (see recommendation xii above). Breaches of ethical and deontological principles are *de facto* sanctioned by law.
75. GRECO welcomes the fact that the authorities of Monaco have recognised the need to organise the right of the HCJ to initiate cases *ex officio* in disciplinary matters and invite them to finalise the adoption of this draft. GRECO draws the authorities' attention to the benefits of more clearly dissociating the functions of prosecution and

⁵ Explanatory report to the Status of the Judiciary Act – No. 1.364 of 16 November 2009.

investigation when the procedure is initiated by the Director of Judicial Services, which currently both lie in the hands of the same person.

76. Moreover, GRECO notes the intention of the authorities of Monaco not to alter the current legislation on disciplinary proceedings against judges and prosecutors. However, it notes that breaches of the rules on the integrity of judges and prosecutors are determined in the Compendium of ethical and deontological principles which has recently been adopted, and that any failure to comply with the provisions of this Compendium may give rise to a disciplinary sanction under the law.
77. GRECO concludes that recommendation xiv has been partly implemented.

Recommendation xv.

78. *GRECO recommended that a system of in-service training for judges and prosecutors be introduced on integrity-related matters and deontology, which will also make it possible to address the future rules adopted in this area.*
79. The authorities of Monaco indicate that they have planned to organise training for all judges and prosecutors, concerning in particular the Compendium of ethical and deontological principles. They also point out that there is already a continuous training system that contains modules on integrity and ethics. It is implemented by the French *Ecole Nationale de la Magistrature*, to which judges and prosecutors practicing in Monaco have access every year. The Compendium of ethical and deontological principles provides that it is the duty of judges and prosecutors to continuously train.
80. GRECO takes note of the information provided by the authorities of Monaco and reiterates the importance of setting up a system of continuous training for judges and prosecutors on matters related to integrity and deontology. In this context, it welcomes the adoption of the Compendium of ethical and deontological principles and encourages the authorities of Monaco to implement effectively and fully the envisaged training scheme.
81. GRECO concludes that recommendation xv has been partly implemented.

Corruption prevention regarding prosecutors specifically

Recommendation xvi.

82. *GRECO recommended that the prohibition to issue any instruction in individual cases be laid down in legislation.*
83. The authorities of Monaco point out that the Director of Judicial Services is constitutionally responsible for the independence of the judiciary. He/she supervises criminal prosecutions and has authority over the Prosecutor General, who is the hierarchical and structural superior of the members of the prosecution service. The authorities specify that, according to Article 26 of Law N°1.398 dated 24 June 2013 on judicial administration and organisation, the Director of Judicial Services may not bring criminal proceedings him/herself, or interrupt or suspend the course of justice, and gives instructions to prosecutors in writing. These instructions are added to the case file. Prosecutors are required to comply with these instructions in their written submissions but retain their freedom of oral expression during hearings. The authorities of Monaco do not intend to amend the legislation in this area, since it is a fundamental principle of criminal procedure which makes the Director of Judicial Services the leading actor of criminal policy. In addition, they point out that in practice, the Director of Judicial Services never gives direct individual instructions to prosecute matters of which he/she is aware. They state that the law indeed gives

him/her power to adjudicate on appeals lodged by individuals against decisions of dismissal by the General Prosecutor, but according to the practice, this never happens.

84. GRECO takes note of the Monegasque authorities' position, and of the fact that in practice, the Director of Judicial Services does not instruct the Prosecutor General to prosecute. It highlights Opinion No. 13(2018) of the Consultative Council of European Prosecutors on "Independence, accountability and ethics of prosecutors" which states that "*instructions not to prosecute must be prohibited and instructions to prosecute must be strictly regulated in accordance with Recommendation Rec(2000)19*".⁶ GRECO invites the authorities of Monaco to align the legislation with these principles and with a practice that is deemed to be constant. In the meantime, it is of the opinion that its analysis should not be modified.
85. GRECO concludes that recommendation xvi has not been implemented.

III. CONCLUSIONS

86. **In the light of the foregoing, GRECO concludes that Monaco has implemented satisfactorily or dealt satisfactorily with two of the sixteen recommendations contained in the 4th Round Evaluation Report.** Of the remaining recommendations, six have been partly implemented and eight have not been implemented.
87. More specifically, recommendations xi and xii have been implemented in a satisfactory manner, recommendations vii, viii, x, xiii, xiv and xv have been partly implemented and recommendations i to vi, ix and xvi have not been implemented.
88. As regards parliamentarians, none of the recommendations have been implemented. The authorities of Monaco give justifications for the current circumstances but do not provide any evidence of tangible new developments since the publication of the last Evaluation Report. GRECO understands the specific features that are inherent to a small state, where the citizens know each other, and it is more difficult to mobilise public commitment. These features must not be used, however, as a pretext for opposing changes intended to increase public trust in its institutions and guarantee to the public that members of parliament perform their functions with the greatest possible integrity. GRECO notes with satisfaction that the authorities of Monaco have expressed their intention to prepare a Code of Conduct for parliamentarians, to flesh out the National Council's rules of procedure to extend the range of sanctions that can be applied for misconduct by parliamentarians and to train them. It encourages them to translate these intentions into reality, and change the legislation and practice relating to parliamentary processes so as to enhance their transparency, namely

⁶ See paragraph 13(d) of Recommendation Rec(2000)19: "Where the public prosecution is part of or subordinate to the government, member States should take effective measures to guarantee that where the government has the power to give instructions to prosecute a specific case, such instructions must carry with them adequate guarantees that transparency and equity are respected in accordance with national law, the government being under a duty, for example:

- to seek prior written advice from either the competent public prosecutor or the body that is carrying out the public prosecution;
- duly to explain its written instructions, especially when they deviate from the public prosecutor's advices and to transmit them through the hierarchical channels;
- to see to it that, before the trial, the advice and the instructions become part of the file so that the other parties may take cognisance of it and make comments."

when adopting legislation and to prevent conflicts of interest between the work of parliamentarians and other functions or activities.

89. As to judges and prosecutors, GRECO welcomes the new legislation organising the Supreme Court and the adoption of a Charter of Conduct for its members, as well as the adoption of a Compendium of ethical and deontological principles for judges and prosecutors. It notes with satisfaction the progress that could result from the adoption of the amendments to the law on the status of the judiciary in terms of the periodic evaluation of a larger number of judges and prosecutors and *ex officio* seizure of the High Council of the Judiciary in disciplinary matter. Moreover, the number of public hearings at the Court of Review has been extended, which must be welcomed. GRECO encourages the authorities of Monaco to draw practical conclusions from the current census of the incompatibilities and parallel activities within the courts and prosecution services. It is also necessary to ensure transparency in the appointment and management of the careers of judges and prosecutors (seconded or not), including at the level of the Supreme Court. GRECO recalls, in particular, that the procedure for the renewal of a secondment cannot be used to exert pressure on a judge or prosecutor; in this respect, it wonders about the non-renewal of the secondment of a French investigating judge responsible for sensitive files; this is not likely to ensure the serenity of the independent exercise of the functions of seconded judge in Monaco. The operational independence of the High Council of Justice must be strengthened.
90. Consequently, in the light of the foregoing, GRECO concludes that the low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, revised, paragraph 8.3, of its Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2.i), in respect of members not in compliance with the recommendations contained in the mutual evaluation report and asks the Head of the Monegasque delegation to provide a report on progress in implementing the recommendations on which no action has been taken (namely recommendations i to x and xiii to xvj) as soon as possible and by 31 December 2020 at the latest.
91. Lastly, GRECO invites the authorities of Monaco to authorise publication of this report as soon as possible.