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Groupe d'États contre la corruption

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## FOURTH EVALUATION ROUND

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

### INTERIM COMPLIANCE REPORT

### NORTH MACEDONIA

Adopted by GRECO at its 85<sup>th</sup> Plenary Meeting  
(Strasbourg, 21-25 September 2020)

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## **I. INTRODUCTION**

1. This Interim Compliance Report assesses the measures taken by the authorities of North Macedonia 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 North Macedonia was adopted at GRECO's 62<sup>nd</sup> Plenary Meeting (6 December 2013) and made public on 17 March 2014, following authorisation by North Macedonia ([GrecoEval4Rep\(2013\)4E](#)). The corresponding first Compliance Report was adopted at GRECO's 72<sup>nd</sup> Plenary Meeting (1 July 2016) and made public on 12 October 2016 ([GrecoRC4\(2016\)8](#)).
3. In the Second Compliance Report ([GrecoRC4\(2018\)6](#)) adopted by GRECO at its 80<sup>th</sup> Plenary Meeting (22 June 2018) and made public on 9 August 2018, following authorisation by North Macedonia, it was concluded that North Macedonia had implemented satisfactorily or dealt with in a satisfactory manner six of the nineteen recommendations contained in the Fourth Round Evaluation Report. In view of this result, GRECO concluded that the very low level of compliance was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply the Rule 32, paragraph 2(1) 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 North Macedonia to provide a report on the progress in implementing the pending recommendations (namely recommendations i to v, vii, xi, xii, xiv to xvi, xviii and xix) by 30 September 2019. This report was received on the requested date and, together with the information presented subsequently, served as a basis for this Interim Compliance Report.
4. GRECO selected Armenia and Denmark to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mariam Galstyan, Head of Division for Drafting Anti-Corruption Policies, Department for Drafting Anti-Corruption and Penitentiary Policies, Ministry of Justice, on behalf of Armenia, and Mr. Anders Dyrvig Rechendorff, Senior Prosecutor, State Prosecutor for Serious Economic and International Crime, on behalf of Denmark. They were assisted by GRECO's Secretariat in drawing up this Interim Compliance Report.
5. This Interim Compliance Report assesses the further implementation of thirteen recommendations pending since the adoption of the Second Compliance Report and performs an overall appraisal of the level of compliance of North Macedonia with these recommendations.

## **II. ANALYSIS**

### Corruption prevention in respect of Members of Parliament

#### **Recommendation i.**

6. *GRECO recommended (i) swiftly proceeding with the development of a code of conduct for members of the Assembly and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within the Assembly, both to promote the code and raise awareness among its members on the standards expected of them, but also to enforce such standards where necessary.*
7. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. The first part of the recommendation had been met through the adoption of a Code of Ethics for MPs. It was noted at the time that the consistency of

the rules would need further adjusting. As for the recommendation's second part, the enforcement mechanism was yet to become fully functional (procedural and other implementing rules were to be adopted) and prove its effectiveness. All of the code's prescriptions were to be translated into corresponding infringements, and sanctions tightened. Promotional and awareness measures were to be re-examined once the announced measures (publication, training) and possibly other initiatives had actually been implemented.

8. The authorities now report that, in January 2019, the Assembly adopted amendments to the Code of Ethics with revised rules on conflicts of interests, gifts and sanctions which were promptly published in the Official Gazette. In July 2019, the competent supervisory body – the Assembly's Committee on Procedure and Mandate-Immunity – adopted "Rules on conducting the procedure for determining committed minor and serious violations of the Code and on pronouncing measures stipulated by the Code of Ethics for MPs", which also included a gift reporting form. Moreover, in April 2019, with the support of the French Embassy, a training session was held for MPs on "Measures to promote the code of ethics and raise awareness of its content" attended by 35 MPs.
9. GRECO takes note of the action taken in pursuit of this recommendation. The revision of the Code of Ethics for MPs – to incorporate rules on conflicts of interest, gifts and sanctions – goes in the right direction but has in some respects not generated greater clarity or consistency. The provisions are not clear on concrete measures that need to be taken in the event of a potential conflict with an MP's private interest. The provisions on gifts are repetitive<sup>1</sup> and contradictory<sup>2</sup>. Overlapping provisions have not been adjusted as previously asked for. However, sanctions for breaches of the Code have been expanded. It would appear that awareness raising and training of MPs still need to be developed. Consequently, further progress is required.
10. GRECO concludes that recommendation i remains partly implemented.

#### **Recommendation ii.**

11. *GRECO recommended that internal mechanisms and guidance be further developed within the Assembly on the prevention of conflicts of interest and the acceptance of gifts, hospitality and other advantages and that compliance by parliamentarians with these rules be properly monitored.*
12. It is recalled that this recommendation had not been implemented in the Second Compliance Report. In terms of guidance and similar mechanisms, GRECO had expected definitions, concrete explanations and examples to be provided, and this specifically in relation to an MP's legislative and administrative activities. The brevity and inconsistency of the Code of Ethics for MPs' rules on conflicts of interest and gifts had been noted. With respect to monitoring and compliance, GRECO had been pleased that the Code contemplated a specific supervision mechanism. However, breaches of conflicts of interest rules qualified as violations of the Code only in situations involving a vote, and violations of gift related provisions were not clearly covered.
13. The authorities now report that the Assembly, in co-operation with the National Democratic Institute, OSCE/ODIHR and the Swiss Embassy has prepared Guidelines for MPs on clearly problematic situations and conduct expected specifically in respect of MPs' legislative and administrative activities. They were adopted in February 2020 by the Assembly's Committee on Procedure and Mandate-Immunity Issues and

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<sup>1</sup> Articles 5, 10 and Chapter III-a (Articles 12-a, 12-b, 12-c and 12-d).

<sup>2</sup> According to Articles 5 and 12-a gifts can be received. Article 10 is entitled "Ban on receiving gifts" and contains a blanket prohibition on requesting and/or receiving gifts.

published on the Assembly's official web site. In November 2019, a preparatory workshop was held for MPs, employees of the Assembly's expert service, scientific experts, NGOs and OSCE experts on the Guidelines' future content. Reference is also made to the new provisions of the Code on conflicts of interest, the acceptance of protocol gifts and related sanctions.

14. GRECO notes the adoption of a series of amendments to the Code of Ethics for MPs which create internal mechanisms for the prevention of conflicts of interests and the reporting of gifts and sanctions related breaches. In case of a suspected conflict of interests, an MP is obliged to request an opinion by the State Commission for Prevention of Corruption and to submit a copy of it to the Assembly's Committee on Procedure and Mandate-Immunity. However, as already noted above (cf. recommendation i), the Code falls short of prescribing specific conduct for various situations of conflicts of interest (i.e. withdrawal from a committee, discussion, vote); it only stipulates that, in the event of a possible conflict of interest, an MP is obliged to take "all necessary measures" to prevent the influence of a private interest.
15. The inconsistency of the provisions on gifts has already been mentioned (cf. recommendation i). GRECO is pleased that all gifts are now to be reported, evaluated and included in a public register kept by the Assembly's Secretary General. Yet, the distinction between foreign and domestic gifts in terms of applicable thresholds and retention procedures merit further clarification (Articles 12-a and 12-b) and hospitality and other advantages to be clearly covered.
16. GRECO welcomes in principle the adoption of guidelines on the implementation of the Code of Ethics for MPs. That being said, this document, is rather short (3 pages, compared to the 9 pages of the revised Code), and does not meet the requirements of the recommendation: instead of providing guidance and explanations, it rather reiterates the existing rules or refers back to them or sets new standards/principles. GRECO would expect a more developed document containing further explanations and examples. As already noted, the Code also requires adjustments. Last but not least, GRECO will need to assess the actual role and activities of the supervisory body, the Assembly's Committee on Procedure and Mandate-Immunity Issues once more specific information on its functioning is available.
17. GRECO concludes that recommendation ii has been partly implemented.

**Recommendation iii.**

18. *GRECO recommended to introduce rules on how Members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*
19. It is recalled that this recommendation had not been implemented in the Second Compliance Report as no developments or concrete proposals have been taken in this respect.
20. The authorities now report that, in December 2018, the Ministry of Justice launched the process for the elaboration of a new Law on Lobbying, which is to replace the current 2011 law and to take into account GRECO's recommendations and Recommendation CM/Rec(2017)2 on the legal regulation of lobbying in the context of public decision-making. The draft law contains a definition of lobbying and regulates *inter alia* the conditions for obtaining the status of a lobbyist/lobby organisation, registration, obligations, the keeping of the Lobbyists' Register, and provides for sanctions in case of non-compliance. The draft covers lobbying within the legislative, the executive and local government. It strengthens the supervisory role of the State Commission for the Prevention of Corruption in relation to lobbying and transfers to it responsibility for keeping the Register (currently with the

Assembly). The authorities stress that the draft would apply to anyone who is considered a third party, not only to lobbyists/lobby organisations. The draft has been submitted to Parliament, nonetheless its adoption is uncertain due to early parliamentary elections.

21. GRECO notes the authorities' intention to improve the quality of the 2011 Law on Lobbying, *inter alia* by extending its scope to any third party. As much as it welcomes this initiative, GRECO recalls that the recommendation pursues the specific goal of providing a set of rules for the transparent conduct of MPs in their contacts with lobbyists and other third parties in connection with on-going legislative proposals outside the meetings of the Assembly and its commissions. GRECO regrets that earlier plans to include relevant rules in a future Code of Ethics for MPs (cf. paragraph 18 of the First Compliance Report) have apparently been abandoned. With respect to the Law on Lobbying, GRECO notes that the current law already establishes an obligation on the legislative and executive branches of central government to adopt internal acts that regulate the procedure for lobbying. The new draft law articulates this obligation more explicitly and stipulates liability for failure to do so only in respect of "a manager of an authority concerned". Consequently, from the material standpoint, the situation has not improved compared to the time of adoption of the Evaluation Report. For this reason, GRECO concludes that the recommendation remains not implemented and renews its call on the authorities to pursue their efforts to take full account of and implement the specific content of this recommendation.
22. GRECO concludes that recommendation iii remains not implemented.

**Recommendation iv.**

23. *GRECO recommended to ensure (i) that sanctions are provided in the relevant laws for all infringements they contain and (ii) that appropriate enforcement action is taken in all cases of misconduct by Members of Parliament.*
24. It is recalled that this recommendation had not been implemented in the Second Compliance Report. No progress had been made with respect to part one of the recommendation. As for part two, GRECO had welcomed information concerning the action taken by the State Commission for the Prevention of Corruption (SCPC) in respect of MPs, noting however that it only pertained to asset declarations and that no consistent and convincing data had been made available on the final outcome of proceedings or on penalties applied pursuant to the sanctions provided for in the rules.
25. The authorities now submit that in January 2019 a new Law on Prevention of Corruption and Conflicts of Interest was adopted, which prescribes sanctions for all its established infringements. The relevant (misdemeanour) procedures are to be conducted and sanctions (fines) imposed by the misdemeanour Commission newly established under the SCPC and composed of five SCPC administrative servants. A settlement procedure is provided for and entails issuing a misdemeanour payment order pursuant to the Law on Misdemeanours. Since February 2019, the SCPC has taken action as follows:

<b>A. Reporting of interests and assets</b>
February-December 2019: 117 misdemeanour payment orders issued, of which 100 for violations of Article 82 (reporting of property and interests). Perpetrators paid half of the prescribed fine in 94 cases, 41 proceedings are pending and in two cases a misdemeanour claim was filed with the Misdemeanour Commission and sanctions (fines) were imposed. In 2019, a total of 14 requests for initiating misdemeanour procedures were submitted to the SCPC Misdemeanour Commission, 10 of which were resolved and four of which are pending; fines were imposed in nine cases.
<b>B. Conflicts of interest</b>
Since February 2019: 66 cases opened <i>ex officio</i> ; 29 of which are ongoing and 37 of which closed. 364 cases were initiated on other grounds (reports, requests for opinion), 221 of which are ongoing

and 143 closed. 25 cases of regular review of statements of interests for 2017 were opened, six of which are ongoing and 19 closed. Two public reprimands were issued for failure to act on the SCPC's request. Requests were filed with competent authorities as follows: 16 requests to incur liability of an official person and two requests to incur criminal liability of an official person. Two decisions were adopted to request the annulment of recruitment selection decisions, and two requests have been made to ensure employment procedures are free from possible political influence or conflict of interests. Additionally, the SCPC on its own initiative has opened cases against nepotism, of which 17 concern MPs, five judges and three ministers. As a result, eight "close persons" of four MPs resigned.

26. The authorities also report that, in May 2019, the Chair of the Assembly's Committee on Procedure and Mandate-Immunity resigned from his post and his seat in Parliament for ethical reasons<sup>3</sup>. This resignation is interpreted by the authorities as a sign of integrity and adherence to ethics standards.
27. GRECO takes note of the sanctioning regime established under the new Law on Prevention of Corruption and Conflicts of Interest (LPCCI). While most of the infringements contained in the law are subject to sanctions<sup>4</sup>, certain infringements, e.g. engaging in lobbying when in office and one year after entitlement to public remuneration ceases, remain to be covered. It can be noted that the established sanctions (fines ranging from 300 to 500 EUR), have decreased compared to the previous legislation (500 to 1000 EUR). Therefore, certain issues highlighted in the Evaluation Report (cf. paragraphs 76, 77 and 80) have not been addressed.
28. As for the second part of the recommendation, although extensive data has been presented by the authorities, it is not clear which cases involve MPs, aside from cases of nepotism which, as GRECO understood, fall outside the scope of the LPCCI. It needs to be recalled that the present recommendation refers to the need for effective action under the LPCCI. GRECO regrets that no convincing data is made available yet on the final outcome of proceedings vis-à-vis MPs or on penalties applied pursuant to the sanctions provided for.
29. GRECO concludes that recommendation iv has been partly implemented.

#### Corruption prevention in respect of Judges

##### **Recommendation v.**

30. *GRECO recommended that, in order to strengthen the independence of the judiciary from undue political influence, the ex officio membership of the Minister of Justice in the Judicial Council be abolished.*
31. It is recalled that that the status of this recommendation had changed from partly implemented in the first Compliance Report to not implemented in the Second Compliance Report. Initially, constitutional amendments to modify the composition of the Judicial Council in a way that would not include the Minister of Justice had been before Parliament. Similar changes to the Law on the Judicial Council were in the drafting stage. Subsequently, plans to revise the Constitution had been abandoned and the authorities reported that they had complied with the recommendation by depriving the Minister of Justice of voting rights (amendments to the Law on the Judicial Council) and through the voluntary non-participation of the Ministers of Justice of the two last governments in the Council's work.
32. The authorities now reiterate that the Ministers of Justice of the last two governments have not participated in the work of the Judicial Council. A new Law on the Judicial

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<sup>3</sup> The MP had allowed one of his private telephone conversations to be recorded by a taxi driver and made public. Although this did not constitute an offence, such behaviour was considered undignified by the general public.

<sup>4</sup> For example, failure to file a statement of interest, non-compliance with certain incompatibility and post-employment restrictions, and establishing business relations with affiliated legal entities

Council has also entered into force, according to which the Minister of Justice and the Supreme Court President are members of the Council without voting rights and cannot participate in sessions of the Council dealing with the liability, election and dismissal of a judge/court president.

33. As before, GRECO regrets that the plan to remove the Minister of Justice from the composition of the Judicial Council via constitutional reform has been abandoned. The legislation adopted recently does not fundamentally alter the situation. The potential for political influence by a Minister of Justice even without voting rights or formal attendance of meetings was well documented in the Evaluation Report (cf. pars. 100 and 118). In the absence of concrete plans to implement this recommendation, GRECO's earlier assessment is maintained.
34. GRECO concludes that recommendation v remains not implemented.

#### **Recommendation vii.**

35. *GRECO recommended that appropriate measures be taken with a view to strengthening the independence, impartiality and integrity of lay judges, inter alia, by introducing specific guidelines and training on questions of ethics, expected conduct, corruption prevention and conflicts of interest and related matters.*
36. It is recalled that this recommendation had been partly implemented. The authorities referred to a Training Programme for lay judges run by the Academy for Judges and Prosecutors which included a special module on ethics and was attended by 183 lay judges in 2017. Other intended improvements had however been abandoned, namely passing psychological and integrity tests and extending the code of judicial ethics to cover lay judges.
37. The authorities now report that amendments to the Law on Courts have entered into force, which extend the Code of Ethics for judges to also cover lay judges. The draft law on the Academy for Judges and Prosecutors, which is in Parliament, foresees mandatory continuous training for lay judges. A Specialised Training Programme for Lay Judges was adopted by the Management Board of the Academy for Judges and Prosecutors in April 2019 and attendance is compulsory. Between June 2018 and June 2019, 99 newly elected lay judges took part in specialised training. In October 2019, training sessions on conflicts of interest, anti-corruption measures, ethics and the code of ethics were organised for 11 lay judges and such training will be held in 2020 for new and current lay judges.
38. GRECO welcomes the implementation of a series of measures aimed at strengthening the independence, impartiality and integrity of lay judges. These include dedicated compulsory training and extending the code of ethics for judges to cover lay judges. Bearing in mind also the extensive training and awareness raising initiatives reported at earlier stages of the compliance procedure, GRECO considers that the requirements of this recommendation have been met.
39. GRECO concludes that recommendation vii has been implemented satisfactorily.

#### **Recommendation xi.**

40. *GRECO recommended that rules and guidance be developed for judges on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.*
41. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. Although a "Practical Guide to the Code of Judicial Ethics" had

been adopted, the concerns underlying the recommendation had not been addressed. As regards proper monitoring, the actual role and activities of the newly created body – the Advisory Body for Judicial Ethics – was to be assessed when more specific information became available. GRECO had given some credit to training efforts designed to present judges and prosecutors the various restrictions already in place concerning gifts and other benefits.

42. The authorities now refer to the new Code of Ethics for Judges and Lay Judges adopted by the Supreme Court in September 2019 and its provisions which prohibit gifts, establish the value threshold for acceptable protocol gifts, prescribe the manner how such gifts are to be managed (registration, valuation), define non-material gifts and establish the Advisory Body for Judicial Ethics under the Association of Judges competent *inter alia* to issue advisory opinions on compliance with the Code and to centralise data on accepted protocol gifts. In February 2020, the Advisory Body adopted a Handbook on the Code's implementation which was promptly published on the Association's official website.
43. GRECO is satisfied that the new Code of Ethics for Judges and Lay Judges introduces clear rules on the acceptance of gifts and other advantages. All gifts, services and other benefits and advantages, whether material or immaterial, are prohibited, with the exception of protocol gifts received during official visits, receptions and celebrations if their value does not exceed 3 000 DN/approx. 50 EUR in a calendar year. Material gifts, immaterial benefits and protocol gifts are defined. Court presidents are to maintain a register of accepted protocol gifts and to send related data to the Advisory Committee for Judicial Ethics and to the State Commission for the Prevention of Corruption. Complementary guidance, explanations and practical examples are provided in the accompanying Handbook. It contains an explicit obligation for judges to report to court presidents accepted protocol gifts and for each court to introduce internal rules on the reporting of gifts. Samples of a gift reporting form and of a request for an opinion by the Advisory Committee for Judicial Ethics are appended. GRECO accepts that, taken together, these rules establish an obligation for court presidents to monitor judges' compliance with gift-reporting rules. Therefore, it concludes that all the requirements of the recommendation have been met.
44. GRECO concludes that recommendation xi has been implemented satisfactorily.

#### **Recommendation xii.**

45. *GRECO recommended (I) that disciplinary infringements applicable to judges be clearly defined and that the range of sanctions be extended to ensure better proportionality and (ii) that dismissal of a judge only be possible for the most serious cases of misconduct, ensuring, in particular, that the possibility to dismiss a judge solely in case one of his/her decisions is found to be in violation of the right to a trial within a reasonable time be abolished.*
46. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. At the time of adoption of the first Compliance Report, GRECO reviewed a draft Law on Courts, endorsed by the Government, which appeared to address the first part of the recommendation and to some extent the second part. At the stage of adoption of the Second Compliance Report, another law amending the Law on Courts (already in force), different from the previous draft was reviewed. GRECO had pointed to the excessively vague definition of disciplinary infringements applicable to judges, which failed to meet the first part of the recommendation. With respect to the second part of the recommendation, the Law on Courts as amended still provided for the type of situations that the recommendation calls for abolishing.



47. The authorities now refer to a new law amending the Law on Courts (Official Gazette No.96 of 17 May 2019), which distinguishes between two types of disciplinary violations/procedures: i) violations that result in a disciplinary measure and ii) violations that trigger a judge's dismissal. The grounds for the former violations (Article 77) are: 1) a less severe breach of public order or other less serious misconduct that damages the reputation of the court and the judge; 2) use of office or the reputation of the court to pursue personal interests; 3) failure to perform mentoring duties; 4) violation of the rules on absence from work; 5) failure to attend continuous training; and 6) failure to wear a judge's robe. Applicable disciplinary measures are a written warning, public reprimand and reduction of 15 to 30% of a judge's monthly salary for a period of one to six months.
48. A judge can be dismissed (Article 74) on the grounds of "serious disciplinary violations discrediting the judicial office" and "unprofessional and negligent exercise of the judicial office". "More severe disciplinary violations" (Article 75) comprise: a) a severe violation of public order and peace and other more serious forms of misconduct that damage the reputation of the court and the judge; b) gross influence/interference in the performance of the judicial function of another judge; c) failure to file a statement of assets or submission of a statement that is to a large extent false; and d) obvious violation of exemption rules where the judge knew or should have known about exemption provided by law.
49. "Unprofessional and unethical performance of the judicial function" (Article 76) consists in: 1) two unjustified consecutive unsatisfactory appraisals through the judge's own fault; 2) conviction by a final court verdict to a sentence lower than unconditional imprisonment for a minimum of six months, as a direct result of performance of the judicial office, deliberately or with conscious negligence; 3) disclosing confidential information; 4) unjustified failure to schedule hearings on cases assigned or otherwise delaying the procedure; 5) expiration of the statute of limitations for criminal prosecution or enforcement of sanctions due to failure to act on a case; 6) working on a case not assigned through the automatic court case management system; and 7) commitment of an intentional and unjustifiable gross professional mistake, the different interpretation of the law and facts not being the grounds for dismissal.
50. GRECO takes note of the Law on Courts as amended in 2019, which reforms the disciplinary mechanisms. Commendable efforts have been made to clarify disciplinary infringements applicable to judges within the two types of disciplinary procedures (to discipline and to dismiss a judge) and to avoid parallelism and overlaps, which is confirmed by Opinion No. 944/2018 of the Venice Commission. In particular, provisions allowing for the dismissal of a judge on the ground that s/he failed to apply the case-law of the European Court of Human Rights or that his/her decisions led to a finding of a violation by the European Court of Human Rights have been repealed. Nonetheless, important requirements of the two parts of the recommendation have not been complied with. The range of sanctions has not been extended to ensure better proportionality and is the same as described in the Evaluation Report (cf. paragraph 158). Moreover, no evidence has been furnished to dispel GRECO's concerns about the practical implementation of the relevant law, notably a lack of proportionality of the Judicial Council in disciplinary procedures against judges and political pressures exercised to dismiss certain judges (cf. paragraph 168 of the Evaluation Report).
51. GRECO concludes that recommendation xii remains partly implemented.

## Corruption prevention in respect of prosecutors

### **Recommendation xiv.**

52. GRECO recommended that a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, be established which will apply to all prosecutors.
53. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. At the time of adoption of the first Compliance Report, note had been taken of the new Code of Ethics for Prosecutors adopted in 2014 which applied to all prosecutors. Its contents had been considered as fairly general and explanatory comments were lacking. At the stage of the Second Compliance Report, Guidelines for the practical implementation of the Code adopted in 2018 had been examined. These diverged from the codes reviewed previously (one from 2014 and one from 2004 - analysed in the Evaluation Report). With respect to the codes, contradictory information was received as to which prosecutors they applied to (all prosecutors or only members of the Prosecutor's Association). Regarding the Guidelines, GRECO did not accept that they had added value to the Code of Ethics.
54. The authorities indicate that, in order to overcome the existence of two separate codes of ethics, in February 2019, the Assembly of the Association of Public Prosecutors (APP) repealed the 2004 Code and it was removed from the APP's website. The only applicable code is now the one adopted by the Prosecutor General in 2014. In April 2019, this Code was amended *inter alia* to include new articles on conflicts of interest (new Article 4-a) and gifts (Article 6). Regarding the explanatory comments, the authorities refer to the same Guidelines as examined in the Second Compliance Report.
55. GRECO is pleased that a single code of ethics now governs the conduct of all prosecutors and has been amended to incorporate *inter alia* rules on conflicts of interests and gifts. That being said, the revised Code and the Guidelines, which contain some ethical standards of their own, have not been aligned<sup>5</sup>, errors<sup>6</sup> and gaps in the Code have not been corrected as suggested in the Guidelines (e.g. on secondary employment). The notion of conflicts of interest has not been defined. The rules on gifts, aside from the Code and the Guidelines, are also set out in internal Rulebooks (cf. recommendation xv). To conclude, the existence of multiple inconsistent rules on prosecutorial professional conduct persists as a source of concern and the objectives of coherence and clarity in the applicable standards and their interpretation pursued by this recommendation are not fully met. The urgency of compliance is amplified by an unprecedented significance of prosecutors' integrity for the national agenda revealed by the July 2019 "Racket case". It had triggered the resignation and detention of the Chief of the Special Prosecutor's Office on charges of corruption and organised crime, discredited the work of this Office<sup>7</sup> and provoked amongst others early parliamentary elections in 2020.
56. GRECO concludes that recommendation xiv remains partly implemented.

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<sup>5</sup> For example, the new Article 4-a in the Code has been taken from the Guidelines and now identical text can be found in both.

<sup>6</sup> For example, the Code contains a provision (Article 8), whereby "the behaviour and personal appearance of prosecutors in and outside work" should be governed by a special code, which has not been developed.

<sup>7</sup> <http://www.gazetatema.net/en/north-macedonias-zaev-denies-involvement-in-the-racket-affair/>,  
<https://china-cee.eu/2019/10/11/north-macedonia-political-briefing-the-racket-case-and-its-political-consequences/>

### **Recommendation xv.**

57. *GRECO recommended that rules and guidance be developed for prosecutors on the acceptance of gifts, hospitality and other advantages and that compliance with these rules be properly monitored.*
58. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. At the time of adoption of the first Compliance Report, GRECO had acknowledged that the Code of Ethics for Prosecutors of 2014 contained more elaborate provisions on gifts in general, with a prohibition when they could prejudice impartiality and objectivity, and specifically in relation to parties to proceedings. The Code also provided for a supervisory mechanism under the responsibility of an Ethical Council appointed by the Prosecutor General. The added value of the new rules was however limited due to a lack of practical guidance, some lacunae (e.g. on hospitality) and insufficient information about the Council's actual responsibilities and work. At the stage of the Second Compliance Report, GRECO had analysed the Guidelines for the Practical Application of the Code adopted in 2018, which contained rules on the acceptance of gifts, hospitality and other advantages. As already mentioned above, GRECO had not been convinced that they constituted the kind of practical guidance that the recommendation aims at as they had added to the standards, instead of interpreting them.
59. The authorities now refer to amendments to the 2014 Code of Ethics and to the new "Rulebook on the manner of disposal and recording of gifts received at protocol events", both adopted by the Prosecutor General in 2019. The new rules prohibit the acceptance of gifts, the sole exception being in the context of protocol events (defined) at which gifts not exceeding a value of 100 EUR in one calendar year can be exchanged. Such gifts are to be valued and recorded in a register kept in each prosecutor's office. The Prosecutor General's Office is to be notified of gifts received of a value exceeding 100 EUR and to register them with the Public Revenue Office. Article 26 of the Code, as amended, now provides that senior prosecution offices can refer to the Ethical Council's notifications for the purpose of initiating disciplinary proceedings against prosecutors. The Council's members were appointed in February 2019 and since then it has acted on five cases involving eight prosecutors. The conduct of five prosecutors was found to be contrary to the principles of the Code.
60. GRECO regrets the multiplication of rules on gifts, which, in addition to the 2014 Code of Ethics and the Guidelines, now include an internal Rulebook. This does not clarify which standards apply in various situations. For example, whereas the Rulebook is clear and succinct and only allows the acceptance of protocol gifts by prosecutors of a value below 100 EUR, the Code and the Guidelines stipulate other rules. Furthermore, according to the Guidelines (Article 6), a separate Rulebook on protocol gifts seems to apply to the Prosecutor General's Office and e.g. allows the Prosecutor General to exchange protocol gifts of a value not exceeding *one average salary*. Regarding the Ethical Council's monitoring role, it is unclear whether it is to oversee adherence to the Rulebooks and, more broadly, how it would deal with overseeing adherence to the different sets of rules. Last but not least, even in situations where violations have been established, its findings would not automatically trigger disciplinary procedures against a prosecutor.
61. GRECO concludes that recommendation xv remains partly implemented.

### **Recommendation xvi.**

62. *GRECO recommended that the disciplinary regime applicable to prosecutors be reviewed so that (i) infringements are clearly defined and that (ii) the range of available sanctions be extended to ensure better proportionality ensuring, in*

*particular, that dismissal of a prosecutor is only possible for the most serious cases of misconduct.*

63. It is recalled that this recommendation had not been implemented. The process for developing a new draft Law on Public Prosecution, addressing the above matters, had been resumed twice and, at the time of adoption of GRECO's Compliance and Second Compliance Reports, was still at an early stage.
64. The authorities now report that the disciplinary regime applicable to prosecutors is regulated by the new Law on Public Prosecution adopted in February 2020. It defines clear and predictable grounds for the disciplinary liability of prosecutors, based on the principle of proportionality and it foresees disciplinary measures accordingly. Disciplinary violations are divided into two categories: light and severe. Dismissal is only possible for serious disciplinary violations and membership of a political party. For light disciplinary violations the following measures are foreseen: a written warning and a reduction of up to 15% of a prosecutor's monthly salary for a period of one to six months. For serious disciplinary violations a reduction of 15 to 30% of a prosecutor's monthly salary for a period of one to six months and dismissal.
65. GRECO welcomes the adoption of the new Law on Public Prosecution, which has clarified disciplinary infringements applicable to prosecutors along the lines established for judges (cf. recommendation xii). GRECO is satisfied that dismissal is only possible for the most serious cases of intentional misconduct or due to gross negligence. That being said, compared to the situation described in the Evaluation Report<sup>8</sup>, a reduction, instead of an extension of the range of sanctions available for disciplinary violations by prosecutors is foreseen. In this light, GRECO concludes that the recommendation has been partly implemented.
66. GRECO concludes that recommendation xvi has been partly implemented.

#### Corruption prevention in respect of all categories

##### **Recommendation xviii.**

67. *GRECO recommended that appropriate legal, institutional and operational measures be put in place to ensure a more in-depth scrutiny of statements of interest and asset declarations submitted by Members of Parliament, judges and prosecutors, in particular by streamlining the verification process under the aegis of the State Commission for the Prevention of Corruption.*
68. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. At the time of adoption of the first Compliance Report GRECO had welcomed measures to increase the capacity of the State Commission for the Prevention of Corruption (SCPC) to scrutinise asset declarations and statements of interest, including setting up of a registry of public officials to whom a disclosure obligation applies, the introduction of specific IT solutions, standardised formats and interconnectivity with other agencies. At the stage of adoption of the Second Compliance Report, the SCPC was still working on the implementation of the aforementioned requirements.
69. The authorities now refer to new features of the system of supervision of public officials' interests and assets introduced by the new Law on Prevention of Corruption and Conflicts of Interests. The two previous reporting documents (a statement of interests and a declaration of assets) have been replaced by one consolidated

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<sup>8</sup> At the time of the Evaluation, the following sanctions were in place: a written warning, a public reprimand, a salary reduction in the amount of 15 to 30% of a prosecutor's monthly salary for a period of one to six months, suspension and dismissal (cf. paragraph 235).

statement, which is to be filed solely with the SCPC (the Public Revenue Office is no longer a recipient). The procedure for initiating the examination of statements – if there is a reasonable doubt that the property of an official has disproportionately increased in comparison to his/her regular income or that of his/her family members – has been transferred from the Public Revenue Office to the SCPC. This procedure entails the inquiry of the official concerned and sending mandatory information requests to other state and local government bodies, banks and other financial institutions, natural and legal persons. Today the SCPC enjoys electronic access to databases of 17 institutions/registries and is competent to investigate official's family members and close persons. If in the examination procedure it is not proved that the property has been acquired/increased with income that is reported and taxed, the SCPC is to request the initiation of criminal proceedings with the competent prosecutor's office and to notify the employer of the official in question.

70. On 8 February 2019, the members of the SCPC were elected pursuant to the new rules (cf. recommendation xix). Between February and September 2019, the new SCPC reportedly checked the statements of 89 officials and examined the property of nine officials, including five judges (one of them the Supreme Court President). According to the authorities, statements of MPs and judges will be scrutinised in the future alongside with those of the members of the current and previous government as well as the directors and deputy directors of all public enterprises at central level and some other groups of officials.
71. GRECO takes note of the new Law on Prevention of Corruption and Conflicts of Interest, which, on paper, has consolidated and streamlined the verification of public officials' interests and assets. The SCPC is in charge of the procedure. Its institutional and operational capacities have been strengthened by empowering it to address mandatory requests for information *inter alia* to banks and financial institutions and to examine third persons (spouses and relatives) who have been thus integrated into the declaration system. Doubts about the effectiveness of supervision over the content of declarations, their quality and accuracy nevertheless persist<sup>9</sup>. The above statistics do not actually demonstrate that a more *in-depth* scrutiny of statements has been pursued *in practice* with respect to the three professional groups, MPs in particular. In the absence of such data as well as that on actual compliance, or the detection of inaccurate and incomplete statements and imposition of penalties relative to the sanctions contemplated in the rules, GRECO cannot conclude that all the elements of this recommendation have been properly dealt with.
72. GRECO concludes that recommendation xviii remains partly implemented.

#### **Recommendation xix.**

73. *GRECO recommended (i) that the financial and personnel resources of the State Commission for the Prevention of Corruption in the areas of conflicts of interest, lobbying and asset declarations be increased as a matter of priority and that (ii) the Commission demonstrate a more balanced and proactive approach in these areas.*
74. It is recalled that this recommendation had been partly implemented in the Second Compliance Report. The first Compliance Report concluded that the financial and staff resources of the State Commission for Prevention on Corruption (SCPC), including salaries, had been increased and the recommendation's first part had thus been implemented. Regarding the recommendation's second part, the underlying concerns – the lack of proactivity, prioritisation and impartiality of the SCPC and the risks of interference in its work due to the absence of criteria for the dismissal and

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<sup>9</sup> GRECO recalls that, at the time of the evaluation, only a cursory examination of the content of asset declarations was made and keeping track of compliance with the obligation to report changes in assets or that of family members appeared a challenge (cf. paragraphs 71 and 72 of the Evaluation Report).

appointment of its members - had not been addressed. At the time of adoption of the Second Compliance Report, GRECO had considered that the information reported was excessively general or of a too limited value to warrant a proper analysis.

75. The authorities now indicate that the new Law on Prevention of Corruption and Conflicts of Interest (LPCCI) has provided better safeguards for the SCPC's impartiality: merit-based criteria for the appointment of members (Article 11), open and transparent selection procedure (Article 12) and grounds for dismissal and termination of office (Article 14). Candidates are to have *inter alia* at least 10 years of working experience in corruption prevention, rule of law and good governance and not be an MP, member of government or a party functionary. The Selection Committee to be formed by the parliament, is to include, in addition to the even number of representatives of the ruling and the opposition parties (four in total), also representatives of the Ombudsman (1) and civil society (2). Intermediary results in the selection process are to be published and interviews of the shortlisted candidates by media representatives broadcasted live on the parliament's television channel.
76. Since its appointment in February 2019, the SCPC has initiated 710 cases *ex officio* or based on complaints from natural and legal persons. The increase in the number of complaints from citizens and the registration of 17 whistleblower reports (the first reports of this kind – all including requests for protection - since the entry into force in 2016 of the relevant law) confirms, in the authorities' view, the heightened public trust in the SCPC's work. Decisions in 100 corruption-related cases were adopted. Requests were filed with the competent authorities as follows: to hold public officials liable – in nine cases and to hold public officials criminally liable – in five cases. During the same period, 57 corruption-related cases have been initiated in the context of the 2019 presidential and local elections. As the result of those, five requests were filed with the competent authorities for initiating misdemeanour procedures in accordance with the Electoral Code and the LPCCI. Moreover, the SCPC's actions with respect to nepotism (cf. recommendation iv) have prompted more persons related to high-level officials to withdraw from employment. The SCPC is now preparing proposals for amending employment laws with a view to limiting discretion in employment procedures.
77. GRECO is pleased that the new Law on Prevention of Corruption and Conflicts of Interest has revised substantially regulation of the terms of selection, appointment and dismissal of members of the SCPC. The independence and professionalism of this body seem to have been reinvigorated and opportunities for interference in its work reduced. The statistics submitted by the authorities also confirm that the SCPC has demonstrated a proactive but also more balanced approach by pursuing cases from across a broad political spectrum.
78. GRECO concludes that recommendation xix has been dealt with in a satisfactory manner.

### **III. CONCLUSIONS**

79. **In view of the foregoing, GRECO concludes that North Macedonia has implemented satisfactorily or dealt with in a satisfactory manner nine of the nineteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, eight have been partly implemented and two have not been implemented.
80. More specifically, recommendations vi, vii, viii, ix, x, xi, xiii, xvii and xix have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, ii, iv, xii, xiv, xv, xvi and xviii have been partly implemented and recommendations iii and v have not been implemented.

81. Overall, noticeable efforts have been made by the authorities to revise the legislative frameworks of relevance for this evaluation. In certain respects however, progress still remains partial as a number of gaps are yet to be addressed and consistent practical application of the new rules remains to be seen. For MPs, the revised Code of Ethics does not prescribe specific conduct for various situations of conflicts of interest and interactions with lobbyists, and its provisions on gifts have not been streamlined. Sanctions for breaches of the Code have been expanded, however their imposition is at the discretion of the supervisory body and their dissuasiveness questionable. Similarly, while the new Law on Prevention of Corruption and Conflicts of Interest (LPCCI) has sanctioned certain infringements, others have been omitted and consistent and convincing data on the final outcome of proceedings vis-à-vis MPs or on penalties applied pursuant to the sanctions provided for in the rules has not been presented.
82. With respect to the judiciary, one of the achievements concerns lay judges. It can be expected that the extension to them of the Code of Ethics for judges and the organisation of a series of dedicated compulsory training sessions will strengthen their impartiality and integrity. The introduction of rules and guidance on the acceptance of gifts, hospitality and other advantages for both judges and lay judges is another positive development. GRECO is nonetheless particularly concerned that earlier intentions to formally remove the Minister of Justice from the Judicial Council have been abandoned. Also, despite commendable efforts made to clarify disciplinary infringements applicable to both judges and prosecutors, the range of sanctions applicable to them has not been expanded to ensure better proportionality. With respect to prosecutors, the existence of multiple incongruent rules on conduct also remains a source of concern.
83. As for the system of reporting interests and assets, GRECO welcomes the substantially strengthened regulation of the terms for the selection, appointment and dismissal of the State Commission for Prevention of Corruption (SCPC) introduced by the new law, LPCCI, which will have the potential to reinvigorate the independence and professionalism of this body. On paper, the verification of interests and assets has been streamlined and a more balanced approach demonstrated with respect to cases from across a broad political spectrum. However, it remains to be seen that a more in-depth scrutiny of statements takes place in practice with respect to the three professional groups under review.
84. In view of the above achievements made, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
85. In application of paragraph 8.2 of Article 31 revised of the Rules of Procedure, GRECO asks the head of the delegation of North Macedonia to provide a report on the measures taken to implement the outstanding recommendations (namely, recommendations i-v, ix-xii, xiv-xvi and xviii) by 30 September 2021 at the latest.
86. Finally, GRECO invites the authorities of North Macedonia to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.