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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

### SECOND COMPLIANCE REPORT

### REPUBLIC OF MOLDOVA

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

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## **I. INTRODUCTION**

1. The Second Compliance Report assesses the measures taken by the authorities of the Republic of Moldova to implement the fourteen pending recommendations issued in the Fourth Round Evaluation Report on the Republic of Moldova see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. [The Fourth Round Evaluation Report](#) on the Republic of Moldova was adopted at GRECO's 72<sup>nd</sup> Plenary Meeting (1 July 2016) and made public on 5 July 2016, following authorisation by the Republic of Moldova.
3. [The Compliance Report](#) was adopted by GRECO at its 81<sup>st</sup> Plenary Meeting (on 7 December 2018) and made public on 24 July 2019, following authorisation by Moldova. It was concluded that the Republic of Moldova had implemented satisfactorily or dealt with in a satisfactory manner four out of the eighteen recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, nine had been partly implemented and five had not been implemented. GRECO concluded that further significant material progress was necessary to demonstrate an acceptable level of compliance with the recommendations within the next 18 months. The Republic of Moldova was requested to submit additional information regarding the implementation of the outstanding recommendations. The information was received on 1 February 2020 and served as a basis for the Second Compliance Report.
4. GRECO selected Azerbaijan and Portugal to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Elnur Musayev, on behalf of Azerbaijan and Mr Daniel Marinho Pires, on behalf of Portugal. They were assisted by GRECO's Secretariat in drawing up the Second Compliance Report.

## **II. ANALYSIS**

5. GRECO, in its Fourth Round Evaluation Report, addressed 18 recommendations to the Republic of Moldova. In the Compliance Report, GRECO concluded that recommendations v, xi, xii and xvi had been dealt with in a satisfactory manner. Recommendations i, iv, vii, viii, ix, x, xiii, xv and xvii had been partly implemented and recommendations ii, iii, vi, xiv and xviii had not been implemented. Compliance with the pending recommendations is examined below.

### *Corruption prevention in respect of members of parliament*

#### **Recommendation i.**

6. *GRECO recommended ensuring (i) that draft legislation, all amendments and all supporting documents as required by law are published in a timely manner and (ii) that adequate timeframes are followed to allow for meaningful public consultation and parliamentary debate, including by ensuring that the emergency procedure is applied only in exceptional and duly justified circumstances.*
7. It is recalled that both parts of this recommendation were partly implemented in the Compliance Report. GRECO noted some progress, with the adoption of the new Law on normative acts, which systemises the law making process (requiring explanatory notes for draft legislation, regulating public consultations and various expertises). The law provides also for the setting-up of a unified e-legislation portal for draft laws, which was expected to be operational in 2019. It was also noted that adequate implementation of the legal framework was still a challenge and that many laws were still adopted in fast track procedures.

8. In respect of part (i) of the recommendation, the authorities of the Republic of Moldova now report that in 2019 Parliament adopted 202 legislative acts (laws and Parliament's decisions). The authorities specify that amendments and advisory opinions on draft laws adopted after the first reading and before second (final) reading are published on the Parliament's official website<sup>1</sup>. The authorities indicate that in order to improve transparency of Parliament's activities, Parliament is developing a modern e-Parliament Information System<sup>2</sup>, including a new web portal, electronic document circulation and e-voting. The authorities add that the unified e-Legislation portal aimed at improved transparency of the law making process is currently being tested.
9. The authorities further report that out of 326 draft laws registered in Parliament, 59 draft laws emanated from the Government. During the period December 2018 - January 2020 the Ministry of Justice published all government legislative initiatives on its dedicated website, calling the interested parties to present their proposals<sup>3</sup>. The Ministry of Justice has launched public consultations to upgrade its electronic portal of normative acts<sup>4</sup>. In 2019, seven Government draft laws were submitted to Parliament without anticorruption expertise as the NAC had refused endorsing uncompleted draft decisions<sup>5</sup>. All draft laws initiated by the Ministry of Justice were recorded at the State Chancellery, which also implies the start of endorsement and public consultation processes, both with the state institutions and civil society. The final versions of draft laws accompanied by the synthesis of objections and proposals were published online<sup>6</sup>.
10. Moreover, the authorities add that Parliament replies to requests for information from the public (26 such requests in 2019) and provides information to the media (there are approx. 5000 requests from the media per year; on average 80 - 100 requests during weeks of parliamentary sessions, and up to 50 outside the parliamentary sessions). They specify that no refusal of access to information have been registered. The authorities add that Parliament has worked to promote its openness, hosting regular visits and guided tours, information visits, meetings of MPs, open doors day etc. Parliament has also developed communication through press releases, press announcements, video materials, photos and social media.
11. Regarding part ii of the recommendation, the authorities report that during the period December 2018 - January 2020, the Government submitted 18 draft laws to Parliament through the emergency parliamentary procedure (Article 106 of the Constitution)<sup>7</sup>. Parliament voted on 17 of these draft laws. However, Parliament

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<sup>1</sup> In the period December 2018-January 2020 1103 advisory opinions and 242 amendments were published on the Parliament's website (<http://parlament.md>) under "legislative process" and "draft legislative acts".

<sup>2</sup> In the framework of the project "Strengthening Parliamentary Governance in Moldova" implemented by UNDP Moldova and co-financed by the Government of Sweden and Parliament of the Republic of Moldova.

<sup>3</sup> Pursuant to the Law n°100/2017 on normative acts, notices (public calls) asking interested parties to contribute are published in the directory "Announcements regarding the initiation of the elaboration of the normative acts", <http://www.justice.gov.md/lib.php?l=ro&idc=184>

<sup>4</sup> Introducing the new portal - <https://www.legis.md/> instead of the old one - [www.lex.justice.md](http://www.lex.justice.md)

<sup>5</sup> Overall in 2019 the NAC provided anticorruption expertise to 116 draft laws (out of 121 requests made).

<sup>6</sup> <http://www.justice.gov.md/pageview.php?l=ro&idc=230>

<sup>7</sup> Draft law on amending Law on Granting sole Support for some Pension Beneficiaries; draft law on amending Contravention Code; draft law on amending some legislative acts, e.g. Contravention Code, Law on Public System of Social Insurances, Law on Compulsory Health Insurance; draft law on amending art.10 of Law on the State Budget for year 2019; draft law on amending art. 14 of Law on the State Social Insurances Budget for year 2019; draft law on amending some legislative acts, e.g. Law on Compulsory Civil Liability Insurance for Damages caused by Motor Vehicles and Law on Insurances; draft law on amending art. 1 of Law no 26/2010 on Free Economic Zone Bălți; draft law

rejected the draft law on amending the Law on Public Prosecutor's Office (n°3/2016), subsequently holding a no-confidence vote in the government, which triggered the resignation of the government in November 2019. In addition, during the same period, Parliament applied the so called accelerated legislative procedure (adopting laws in first and second reading the same day) in respect of 39 laws.

12. Moreover, the authorities report that the standing committees of Parliament have further developed cooperation and communication with the civil society to improve the transparency of the legislative process<sup>8</sup>. In 2019, the standing committees and MPs initiated 33 public hearings and debates, held 26 working sessions / round tables and workshops with NGOs and one international conference. NGOs have access to committee meetings. In 2019 they made 70 contributions to the draft legislation. The standing committees keep record of the contributions of civil society and the activities carried out jointly in a register (indicating the number of contributions per committee, the number of those taken into consideration fully or partly or the number of those not taken into account as well as the number of considerations under way).
13. Furthermore, the authorities indicate that from December 2018 to January 2020 the Ministry of Justice organised 73 meetings with participation of representatives of civil society. These meetings included inter-ministerial meetings, convened to reach consensus on debatable issues (in line with paragraph 204 of Government Rules of Procedure). Prior to such meetings, the participants are informed about place, date and time at least 5 working days before they take place as well as about the draft laws under discussion (accompanied by informative note, synthesis of objections and proposals and other relevant documents).
14. GRECO takes note of the information provided. While regular publications of draft laws, amendments and advisories appear to have improved the transparency of the legislative process, an update of the parliamentary website is still under way and the unified e-Legislation portal (referred to in the Compliance Report) is still not operational, contrary to what was planned. This part of the recommendation remains partly complied with.
15. When it comes to the second part of the recommendation, GRECO regrets that the emergency procedure has increasingly been used for the adoption of laws (18 draft laws since December 2018 as opposed to 7 draft laws between July 2016 and December 2018). In addition, GRECO also notes that a considerable number of laws have been adopted through the accelerated legislative procedure (adoption in the first and second readings the same day), without sufficient consultations. GRECO is concerned about repeated failure to systematically ensure adequate timeframes for meaningful public consultation and parliamentary debate. This trend is clearly unsatisfactory. On a more positive note, GRECO notes that Parliament reportedly has continued to apply measures to improve its transparency and the involvement of the

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on declaring the public utility for the works of national interest of construction of the Customs Centre Terminal and of the reserved area for its extension; draft law on amending Labour Code; draft law on granting the unique support to the beneficiaries of state pensions and social allowances; law on amending art. 22<sup>5</sup> of Law no 21/2013 on persons involved in creativity and creative unions; draft law on amending some legislative acts, e.g. Law on Administrative Decentralization and Law on waste; draft law on amending Law on public procurements; draft law on amending some legislative acts, e.g. Law on Public Pensions System, Law on Social Protection of Citizens who have suffered from Chernobyl disaster, Law on the pension insurance of the military, of persons of the command body and of the troops of Ministry of Interior and of the General Inspectorate of Carabinieri; draft law on State Social Insurance Budget for year 2019; draft law on amending some legislative acts, e.g. Law on gambling, Fiscal Code; draft law on amending Law on State Budget for year 2019; draft law on amending Law on Public Prosecutor's Office no 3/2016.

<sup>8</sup> On the basis of the concept of cooperation between Parliament and civil society organisations, approved by the Decision of Parliament n°373-XVI of 29 December 2005 and the Disposition DD / C-1 n°32 of the President (Speaker) of the Parliament of the Republic of Moldova.

civil society at the level parliamentary committees, as well as by responding to requests from citizens and media. The second part of the recommendation remains also partly implemented.

16. GRECO concludes that recommendation i remains partly implemented.

**Recommendation ii.**

17. *GRECO recommended (i) adopting a code of conduct for members of Parliament and ensuring that the future code is made easily accessible to the public; (ii) establishing a suitable mechanism within Parliament, 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.*
18. It is recalled that this recommendation was not implemented in the Compliance Report. GRECO noted that a bill on a draft Code of Conduct for MPs (tabled by a group of individual MPs) was pending before Parliament, as was already the case when the Evaluation Report was adopted. The authorities also referred to the draft Code on Parliamentary Rules and Procedures, adopted in a first reading in Parliament, but GRECO was not in a position to assess its content.
19. The authorities now reiterate that the draft Law on Code of Ethics and Conduct of Parliamentarians (n°135), tabled by a group of 14 MPs in April 2016, is still pending before Parliament<sup>9</sup>. The authorities also recall that on 22 November 2018 Parliament adopted the draft Code of Parliamentary Rules and Procedures (n° 374) in the first reading. They specify that the provisions of the draft Code of Ethics and Conduct of Parliamentarians (n°135) will be merged with the draft Code of Parliamentary Rules and Procedures (n° 374). The authorities indicate that the draft law n°374/2018 will be submitted for adoption in a final reading by the end of 2020. The authorities have provided translation into English of the draft Law on Code of Ethics and Conduct of Parliamentarians (n°135) and of relevant provisions of the draft Code of Parliamentary Rules and Procedures (n° 374).
20. The authorities state that the draft law n°135 foresees a mechanism to promote the code and to raise awareness among MPs and the public as well as some enforcement provisions. Moreover, they indicate that the draft Code of Parliamentary Rules and Procedures (n° 374) provides for rules on MPs conduct and ethics, as well sanctions for non-compliance with them. The authorities add that two civil servants from Parliament have been trained on ethical norms.
21. GRECO notes that essentially what was already available in the previous reports has once more been repeated. In addition, the authorities have now submitted the relevant texts in English. While the draft Code of Parliamentary Rules and Procedures (n°374) was adopted in a first reading (in November 2018), it does not reflect all the inherent features of a code of conduct for parliamentarians. Currently the text merely contains some provisions on discipline and provides for sanctions for their violations. However, it does not address the issue of conflict of interest and related matters such as acceptance of gifts and other advantages, incompatibilities, additional activities and financial interests, contacts with third parties and lobbyists etc. These issues are to some extent covered in the draft Code of Ethics and Conduct of Parliamentarians (n°135). GRECO notes the intention reported by the authorities of possibly merging the draft Code of Ethics and Conduct of Parliamentarians with the draft Code of Parliamentary Rules and Procedures. Taken all the above uncertain factors together, GRECO cannot assess that the moves reported towards a possible future code of

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<sup>9</sup><http://parlament.md/ProcesulLegislativ/Proiectedeactelegislative/tabid/61/LegislativId/3158/language/en-US/Default.aspx>

conduct for parliamentarians are sufficiently developed to consider this recommendation even partly implemented.

22. GRECO concludes that recommendation ii remains not implemented.

**Recommendation iii.**

23. *GRECO recommended introducing rules for parliamentarians on how to interact with third parties seeking to influence the legislative process.*
24. It is recalled that this recommendation was not implemented in the Compliance Report. GRECO noted that the draft Law on a Code of Ethics and Conduct of Parliamentarians (submitted by a group of individual MPs) had been adopted in a first reading in Parliament. GRECO was not in a position to assess its content.
25. The authorities now repeat the information already available in the Compliance Report regarding provisions on lobbying contained in the draft Code of Ethics and Conduct of Parliamentarians (n°135). They indicate that the draft law introduces the terms "lobby", "activities of lobbyists" and provides for restrictions for the MPs to act as lobbyists. However, the authorities report the intention to regulate lobbying and interaction with third parties seeking to influence the decision-making process in the Code of Parliamentary Rules and Procedures, which has been adopted in the first reading in Parliament.
26. GRECO notes that the draft legislation referred to by the authorities was already known at the time of the adoption of the Compliance Report. GRECO also notes the intention of authorities to regulate the issue of lobbying, in the draft Code of Parliamentary Rules and Procedures (n° 374). However, currently the draft Code of Parliamentary Rules and Procedures (n° 374), which has been adopted in a first reading in Parliament, still does not contain any provisions on contacts with lobbyists and third parties.
27. GRECO concludes that recommendation iii remains not implemented.

**Recommendation iv.**

28. *GRECO recommended ensuring a significantly more independent and effective control, by the National Integrity Commission, of compliance by members of Parliament, judges and prosecutors with the rules on conflicts of interest, incompatibilities, statements of personal interests and statements of income and property.*
29. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO took note of the new legislation, establishing the National Integrity Authority (NIA), which replaced the National Integrity Commission. GRECO noted that the composition of NIA was different from that of the old Commission and its members were not selected on the basis of political belongings. It also noted that the integrity inspectors were to be independent and that NIA's competences were expanded, as compared to the Commission. Furthermore, NIA became competent to take administrative action in respect of late submissions or failure to submit asset declarations. It started to operate, albeit with limited capacities. Despite these noticeable improvements, the overall effectiveness in practice of NIA was to be reassessed once it had been operational for some time.
30. The authorities now report that all NIA's integrity inspectors, seventeen in total, were selected between June 2018 – January 2020 following six public competitions, each lasting approximately two-four months and including six stages (applications;

verification of candidates by the Security and Intelligence Service; admissibility procedure; written test; interview; polygraph test). There are currently 39 staff members employed by NIA, constituting 52% of all the available positions in the institution. This figure includes integrity inspectors. In accordance with the official information provided by NIA, several weaknesses and obstacles have been identified in the process of selection and appointment of candidates for the positions of integrity inspectors, including the following: applicants' low level of professional and training skills; moratorium on employment in the public sector; failure to pass the polygraph test (final stage); unattractive positions following salary reduction.

31. In 2019 the NIA integrity inspectors verified 101 declarations of Members of Parliament, 693 declarations of prosecutors and 395 declarations of judges<sup>10</sup>. In 2019 NIA integrity inspectors ascertained :
  - 16 contraventions in respect of MPs or ex-MPs: 15 – on breaching the rules of declaring assets and personal interests (Article 330<sup>2</sup> Contravention Code) and 1 on infringement of the legal regime of incompatibilities and restrictions applicable to public office or public dignity (Article 313<sup>4</sup> Contravention Code);
  - 9 contraventions in respect of prosecutors: 8 on breaching the rules of declaring assets and personal interests (art. 330<sup>2</sup> Contravention Code); 1 on the failure to declare or solve a conflict of interest (Article 313<sup>2</sup> Contravention Code),
  - 8 contraventions in respect of judges on breaching the rules of declaring assets and personal interests (Article 330<sup>2</sup> Contravention Code).
32. The authorities specify that in one case NIA notified the Superior Council of Magistracy about the failure of a judge to submit the annual declaration of property and personal interests and requested his removal from office, pursuant to the Law n° 544 of 20 July 1995 on the status of judges.
33. Furthermore, the authorities indicate that by 1 January 2020, there had been pending controls initiated by NIA in respect of 26 MPs, 27 prosecutors and 19 judges (regarding incompatibilities and restrictions, conflict of interests and asset disclosure).
34. The NIA General Activity Report for 2019 contains the following figures: 453 complaints and notifications examined; 1390 requests for integrity certificates examined; 2764 declarations of assets and personal interest verified. On this basis, NIA draw up 453 reports, concluded 147 findings and initiated 133 contravention files (incl. 16 MPs, 9 prosecutors and 8 judges or former judges). A total amount of 174 250 MDL (approx. 9000 EUR) were imposed as fines for committing contraventions.
35. In 2019, the NIA staff participated in 70 training activities, handbooks, informational flyers and guidelines have been published.
36. GRECO takes note of the information provided. It has been appreciated that NIA has been operational. According to NIA's activity report for 2019, 22% of its controls concerned MPs, 11% concerned judges and 11% concerned prosecutors. The statistics on the activities of NIA appear to demonstrate some dynamics. However, several weaknesses appear to undermine its effectiveness, including the lack of a strategy and understaffing. An institutional strategy was developed with the support of technical cooperation of the Council of Europe<sup>11</sup> but still remains to be approved. Currently there are only 17 integrity inspectors out of 46 required. Overall, the

<sup>10</sup> Overall, the officials subject to declaratory requirement provided for by the Law n°133/2016 submitted 2764 declarations of assets and personal interests in 2019.

<sup>11</sup> Joint EU/CoE project on Controlling corruption through law enforcement and prevention, CLEP.

current 39 staff members constitute only 52% of the required number of staff. Moreover, despite training efforts undertaken, the level of professional capacities is still insufficient. Therefore, GRECO concludes that more resolute measures are required to make NIA more effective and efficient, while respecting judicial independence.

37. GRECO concludes that recommendation iv remains partly implemented.

**Recommendation vi.**

38. *GRECO recommended that determined measures be taken in order to ensure that the procedures for lifting parliamentary immunity do not hamper or prevent criminal investigations in respect of members of Parliament suspected of having committed corruption related offences.*
39. It is recalled that this recommendation was not implemented in the Compliance Report. GRECO noted that a draft Code on Parliamentary Rules and Procedures, adopted by Parliament in a first reading, reportedly contains provisions on lifting parliamentary immunity, but it was not in a position to assess the content of the draft.
40. The authorities now report that in the course of 2019, the Prosecutor General submitted five requests for lifting parliamentary immunity in respect of five MPs allegedly accused of committing crimes such as corruption, money laundering, fraud, embezzlement and abuse of office. Parliament decided to lift parliamentary immunity in all these cases. Moreover, the authorities reiterate that the draft Code of Parliamentary Rules and Procedures (n° 374 of 02.11.2018) provides for a procedure of lifting parliamentary immunity, which they indicate is similar to the current one, assessed by GRECO in its Fourth Round Evaluation Report.
41. GRECO takes note of the information provided. In practice, Parliament lifted immunities, upon motions from the Prosecutor General, in all cases. However, GRECO recalls that the purpose of this recommendation is to have clear and objective criteria guiding the parliamentary procedure and decisions for lifting immunity (see paragraph 83 of the Evaluation Report). GRECO notes that the draft Code of Parliamentary Rules and Procedures (Chapter XXIV on Immunities) provides for a procedure for lifting immunity. However, this draft law, adopted by Parliament in a first reading, does not contain clear and objective criteria to guide such procedures and decisions on lifting immunity.
42. GRECO concludes that recommendation vi has not been implemented.

*Corruption prevention in respect of judges*

**Recommendation vii.**

43. *GRECO recommended (I) changing the composition of the Superior Council of Magistracy, in particular by abolishing the ex officio participation of the Minister of Justice and the Prosecutor General and by allowing for more diverse profiles among lay members of the Council, on the basis of objective and measurable selection criteria; (ii) ensuring that both judicial and lay members of the Council are elected following a fair and transparent procedure.*
44. It is recalled that this recommendation was partly implemented in the Compliance Report. The new law excluded the *ex officio* members of the SCM from voting rights regarding judges' career, disciplinary liability, sanctioning and dismissal. However the composition of the SCM remained the same as it was when the recommendation



was issued, i.e. the Minister of Justice and the Prosecutor General were still members of the Council. GRECO also noted the draft amendments to the Constitution providing for a new composition of the SCM, excluding the Minister of Justice and the Prosecutor General from this body, as required by the recommendation. While these draft amendments were submitted to Parliament they remained to be considered. The first part was therefore considered partly complied with. Regarding the second part of the recommendation, GRECO noted that while the authorities claimed that elections were transparent and fair, other information coming from civil society groups indicated that this was not the case; e.g. few candidates participating and insufficient and untimely provision of public information on candidates. Against this background, the second part of the recommendation was not more than partly complied with.

45. The authorities now report that in December 2019 Parliament amended the Law on Superior Council of Magistracy providing for an increase of SCM members from 12 to 15, by adding one judge member and two lay members. Therefore, in addition to three *ex officio* members, the law provides that the SCM is to be composed of seven judge members (and seven substitutes) elected among judges by the General Assembly of Judges (four judges from lower courts, two judges from courts of appeal and one judge from the Supreme Court of Justice), and five lay members appointed by Parliament (with the vote of the "majority of the elected deputies") among tenured law professors (following a proposal by the Standing Legal Committee for Appointments and Immunities and a public contest). The authorities explain that the amendment of the law aimed at overcoming the blockage of the SCM because of a lack of quorum. The authorities refer to the Venice Commission, which adopted an urgent opinion on the law<sup>12</sup> welcoming a broader and more representative composition (in particular increased participation of lower courts) and a wider parliamentary majority needed for the election of lay members, but underlined that a stronger majority would be more appropriate, with a possibility to involve outside bodies (such as the Bar, Law faculties or independent non-political commission) to propose candidates. The President of the Republic submitted a referral to the Constitutional Court requesting it to examine the compliance of certain provisions of the amended Law with the Constitution. The Constitutional Court rejected the President's referral as inadmissible. The authorities indicate that the Law amending the Law on SCM n°193 of 20 December 2019 entered into force on 31 January 2020, following its publication in the Official Gazette (n°24-34/23).
46. Moreover, the authorities report that the Parliamentary Standing Legal Committee for Appointments and Immunities has adopted a decision/regulation on running the public competition for the selection of SCM lay members elected by Parliament, setting certain requirements for candidates (such as citizenship, certain level of responsibilities (lecturer, associate professor, full professor); scientific and teaching experience of at least five years, absence of prohibition from holding public office or public dignity position, irreproachable reputation and high professional skills). It regulates the way the competition is announced and organised (incl. documents to be submitted; publication of info on candidates with possibility for anyone to comment, examination in committee closed session of admissibility of candidates) as well as how the competition is run (overall publicity such as open committee meetings, except interviews, invitation of experts, assessment criteria for committee; framing interviews, recordings of transcripts of meetings etc). The authorities have provided a translation of the regulation in English.
47. The authorities also specify that on 5 February 2020 the Parliamentary Standing Legal Committee for Appointments and Immunities publicly announced a competition to fill four positions for lay members in the SCM to be selected among tenured law professors. 17 candidatures were accepted out of 18 applications received before the

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<sup>12</sup> CDL-REF(2020)001

deadline of 19 February 2020. NGOs and media representatives were initially asked to submit their opinions on candidates within five days. This deadline was subsequently extended until 3 March 2020. On 10 March the composition of Parliamentary Standing Committees, including of the Standing Legal Committee for Appointments and Immunities, was modified. The parliamentary opposition left the Committee and boycotted the interview phase of the election of lay members. Parliament publicly announced interviews with candidates for 13 March 2020. On 17 March 2020 Parliament appointed four new members of the SCM from among law professors for a period of four years.

48. Furthermore, the authorities report that the government has approved a draft law with amendments to the Constitution, *inter alia* abolishing the *ex officio* membership in the SCM of the Prosecutor General, the Minister of Justice and the President of the Supreme Court of Justice. However, on 22 September 2020, the Constitutional Court held that the draft law did not comply with the required conditions for a revision of the Constitution.
49. GRECO takes note of the information provided. GRECO regrets the rushed adoption of legislative amendments to the law on SCM in December 2019. In accordance with the amended law, the SCM is to consist of 15 members, seven of which are judges elected by the General Assembly of Judges. This composition is not in line with the well-established standard that at least half of the members of a judicial council should consist of judges elected by their peers. Furthermore, GRECO notes that the draft law with amendments to the Constitution would have excluded the *ex officio* members (Minister of Justice, Prosecutor General and President of the Supreme Court of Justice) from the SCM, if adopted. However, on 22 September 2020, the Constitutional Court adopted an opinion indicating that the draft law did not comply with constitutional requirements. Regarding the second part of the recommendation, GRECO notes that a new regulatory framework has been put in place for the selection of SCM members by Parliament. This is a positive development. However, GRECO regrets that the new regulation does not provide for criteria for assessing the integrity and reputation of candidates. The assessment of candidates by a committee in a closed session is also a concern. Moreover, GRECO notes that the recent election (March 2020) of four new lay members of the SCM has been criticised for not being conducted in an appropriate manner, including the last minute (on 10 March 2020) change of the composition of the relevant Parliamentary committee in charge of this process<sup>13</sup>. These developments raise questions as to the real or perceived fairness of the election process in practice.
50. GRECO concludes that recommendation vii remains partly implemented.

#### **Recommendation viii.**

51. *GRECO recommended that decisions of the Superior Council of Magistrates be adequately reasoned and be subject to judicial review, both on the merits of the case and on procedural grounds.*
52. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO appreciated that following a Constitutional Court ruling and relevant legal amendments, it became possible to challenge the SCM's decisions both on the merits of the case and procedural grounds. GRECO noted also that the new legislation on selection and performance evaluation of judges may reduce the arbitrary nature of SCM's decisions. However, the authorities did not provide information regarding justification in practice of the SCM's decisions on recruitment, career and disciplinary matters.

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<sup>13</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)001-e)

53. The authorities now specify that the Law amending some legislative acts (n°137 of 27 September 2018), which entered into force on 19 October 2018, fosters the objectivity of the decisions of the Superior Council of Magistracy and the transparency of procedures of promotion or transfer of judges. The Law amends the Law n°544/1995 on the status of judges, to the Law n°947/1996 on the Superior Council of Magistracy, the Law n°154/2012 on selection, evaluation of the performance and the career of judges and the Law n°178/2014 on the disciplinary liability of judges. The authorities have provided a translation of the relevant provisions. They also report that the SCM has reviewed its internal rules on recruitment and career in line with the above-mentioned amendments.
54. Moreover, the authorities state that in particular, the amendments to the Law on status of Judge (LSJ) are to ensure that the Superior Council of Magistracy proposes the appointments in accordance with the results of the competition. The SCM makes a reasoned decision in case of equal scores of candidates for promotion, as well as for appointments of court presidents or vice-presidents or for transfers of judges to the same level or lower courts (Article 9, paragraph 9). In case of non-compliance with the legal requirements, the SCM may refuse to make submissions for appointment to the positions of judges, but must motivate such refusals Article 9, paragraph 10).
55. Furthermore, the authorities explain that the competences of transferred, seconded or suspended judges during the examination of a criminal or civil case in the final stage are maintained until the completion of the respective case, based on a reasoned decision of the SCM (art. 26<sup>1</sup>). Also, the SCM must take a reasoned decision if it decides to consider a case in a closed session (Article 8/1 (2) of the Law on SCM). The authorities add that the SCM decisions, as well as annual reports shall be published on the official website of the SCM (art. 8<sup>1</sup> (7) Law on SCM). Moreover, they specify that the decisions of the SCM and its boards on recruitment, career and disciplinary matters are motivated by law and in practice<sup>14</sup>.
56. Finally, the authorities emphasise that the SCM decisions may be appealed to Chişinău Appeal Court and then to the Supreme Court of Justice and that in accordance with the Constitutional Court judgment n°13 of 14 May 2018, such appeals can be based on the merits of a case as well as on procedural grounds.
57. GRECO takes note of the information provided. It is satisfied with the available mechanism of judicial review of SCM decisions. GRECO notes that the new information provided by the authorities on the justification of SCM's decisions refers to the legislation already in place at the time of the Compliance Report. In addition, the authorities have provided the text of the Law amending some legislative acts n°137 of 27 September 2018. It establishes some requirements for the SCM to motivate its decisions, in particular if the SCM decides not to follow the recommendation of the Selection Board. This goes in the right direction. However, based on the information provided GRECO cannot conclude that the SCM's decisions on recruitment, career and disciplinary matters are systematically and adequately motivated in practice. In particular, the authorities have not provided any examples of SCM decisions in which the SCM deviated from the decisions of the Selection Board.
58. GRECO concludes that recommendation viii remains partly implemented.

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<sup>14</sup> <https://www.csm.md/ro/hotaririle/hotarari-csm.html>;  
<https://www.csm.md/ro/hotaririle/hotarari-csc.html>; <https://www.csm.md/ro/hotaririle/hotarari-cep.html>;  
<https://www.csm.md/ro/hotaririle/hotarari-cd.html>.

## Recommendation ix.

59. GRECO recommended (i) that appropriate measures be taken, with due regard to judicial independence, in order to avoid the appointment and promotion to judicial positions of candidates presenting integrity risks; and (ii) abolishing the five-year probation period for judges.
60. It is recalled that this recommendation was partly implemented in the Compliance Report. As regards the first part of the recommendation, GRECO noted that the SCM was considering a wider range of information about candidate judges' integrity. Furthermore, GRECO welcomed the draft constitutional amendments requiring the decisions on appointments and promotion to be based on "objective criteria, merits" and a transparent procedure. GRECO stressed the importance of verification of integrity risks of candidates for appointment by the judiciary itself, to guarantee judicial independence. For part (ii) of the recommendation, GRECO noted the pending draft constitutional amendments providing for abolishment of the probation period for judges.
61. Concerning the first part of the recommendation, the authorities now refer to the draft law initiated by the Government and providing for vetting of judges of the Supreme Court of Justice, presidents and vice-presidents of Courts of Appeal and of courts of first instances, as well as the prosecutors of specialised prosecutor's offices<sup>15</sup>. Following the Venice Commission opinion on the draft law<sup>16</sup> and the Council of Europe *Ad hoc* working group visit to Chisinau in January 2020<sup>17</sup>, the Ministry of Justice conducted public consultations and abandoned this legislative initiative. Instead the Ministry of Justice decided to focus on strengthening the existing anti-corruption prevention tools (e.g. integrity checks and professional appraisals, including verification of declarations of assets and personal interests).
62. Moreover, the authorities stress that the Law n°137 on amending some legislative acts (in force since 19 October 2018, see above) provides in particular for the amendments to the Law n°947/1996 on the Superior Council of Magistracy, in order to ensure the independence of the SCM and prevent interference in its activities. The SCM has reviewed its internal rules on recruitment and career in line with these amendments<sup>18</sup>, clarifying the rules on enhanced transparency, publication of vacancies, applications, Selection Board activities, criteria for selecting judges, judicial competitions, transfer of judges, promotion of judges etc.
63. Furthermore, the authorities report that 188 integrity records have been requested for candidates to the positions of court president / vice president<sup>19</sup>. Also the SCM has received 76 polygraph (simulated behaviour detector) notices regarding candidate judges (on the basis of cooperation agreements with the National Anticorruption Centre and the General Police Inspectorate).

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<sup>15</sup> For the translation of the draft law see :

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2019\)031-e12](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2019)031-e12)

<sup>16</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)020-e)

<sup>17</sup> [https://search.coe.int/directorate\\_of\\_communications/Pages/result\\_details.aspx?ObjectId=09000016809987ea](https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809987ea)

<sup>18</sup> Decision of 20 December 2018 n° 613/29 on the amendments to the *Rule on selection, promotion and transfer criteria of judges*; Decision of the Plenary of the SCM n° 141/7 of March 6, 2018, on amending *Rule on organization of the activity of the Board for evaluation of the judges' performances*; *Rule on the organization of the activity of the Board for the selection and career of judges*; *Rule on the criteria for selection, promotion and transfer of judges*, and *Rule on the criteria, indicators and procedure for evaluating the performances of judges*. Decision n°612/29 of 20 December 2018 approved the *Rule on the procedure for organizing and conducting competitions/contests to fill the position of judge, president and vice president of the court*.

<sup>19</sup> Pursuant to Government Decision n°767 of 19.09.2014 implementing the Law n°325 on professional integrity testing and the Law on the status of judges (Article 9, paragraph 8).

64. As to the second part of the recommendation, the authorities refer to the draft constitutional amendments approved by the Government and registered in Parliament, which provide for the abolishment of the probation period of 5 years.
65. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO welcomes that the draft law providing for vetting of judges of the Supreme Court, presidents and vice-presidents of Courts of Appeal and of specialised prosecutors has been abandoned, as such a vetting (large scale evaluation) of judges can only be seen as an exceptional measure, which should only be allowed in exceptional circumstances and which cannot be compatible nor proportionate with the requirement in the first part of this recommendation. While the SCM has taken measures to review the regulatory framework concerning the competitions for judicial positions and the promotion and transfer of judges, the testing of integrity of candidate judges during the selection process does not appear to be adequately regulated. GRECO underlines that there should be clear, predictable and comprehensive rules on how the integrity of candidate-judges is to be checked by the judiciary, before they are appointed and/or promoted. Obviously, such rules need to be consistently applied in practice.
66. As far as the second part of the recommendation is concerned, GRECO notes that draft legislation comprising amendments to the Constitution abolishing the 5-year probation period for judges, had been approved by the Government. However, on 22 September 2020, the Constitutional Court adopted an opinion indicating that the draft law did not comply with constitutional requirements.
67. GRECO concludes that recommendation ix remains partly implemented.

#### **Recommendation x.**

68. *GRECO recommended that additional steps be taken (I) to ensure that cases are adjudicated without unjustified delays and (ii) to increase the transparency and accessibility of information available to the public on judicial activity.*
69. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted the measures taken to update the random allocation system (PIGD) by addressing identified shortcomings with the purpose of speeding up proceedings. Moreover, it noted the amendments made to the Civil Procedure Code to speed up the handling of civil cases. GRECO also noted the efforts taken to promote alternative dispute resolution. As for part (ii) of the recommendation, GRECO noted the regulatory measures taken by the SCM to raise the transparency and accessibility of court judgments and decisions through on-line publication. Also, GRECO welcomed the legislative amendments aiming at further improving the transparency and accessibility of information on SCM's activities, but their implementation in practice was still an issue.
70. Regarding the first part of the recommendation, the authorities recall that the procedural law requires the adjudication of criminal and civil cases within reasonable timeframes (taking into consideration the criteria such as the complexity of the case (objective factor), the behaviour of the participants during the trial, the conduct of the court and of the relevant authorities, the importance of the case for the interested party etc.)<sup>20</sup>. The Contravention Code states that a contravention case shall be judged within 30 days from its registration in court. By a reasoned decision, the judge can extend the trial period by 15 days. Moreover, the authorities recall that the Law

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<sup>20</sup> Articles 4, 192 and 371 of the Civil Procedure Code, Articles 20, 41, 414 and 435 of the Criminal Procedure Code.

n°87 of 21 April 2011 provides for compensation of the damage for breaching the reasonable timeframes for adjudicating or enforcing a judicial decision. The authorities also refer to the Decision n°830/33 of the Superior Council of Magistracy (of 29 November 2016), which approved the terms for the examination of various types of judicial cases, taking into account the judicial practice.

71. In its decisions n°533/25 and n°532/25 of 27 November 2018, the SCM ordered the court presidents to take measures in order to guarantee speedy trial and to verify the reasons for delay. Currently the judicial inspection continues its monitoring of cases lasting more than 12, 24, 36 months. The authorities report that in 2019 57% of cases were adjudicated within 9 months and among pending cases 84% were those lasting up to 12 months. They also refer to a study by an NGO (Legal Resources Centre from Moldova) of October 2019, stating that the adjudication of cases in Moldova is faster than the average in other Council of Europe Member States, based on data of the European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ)<sup>21</sup>.
72. As far as the second part of the recommendation is concerned, the authorities recall that court hearings are generally public (Articles 23 and 316 of the Criminal Procedure Code), with a limited number of exceptions (participation of minors, state secrets etc). All procedural documents are published on the court's webpage within three days. The random allocation of cases through the PIGD (Integrated Programme of Case Management) automated system is constantly improved (now PIGD-5 is running). This system ensures the recording of court hearings, accessible on request from parties. The authorities also refer to the development of e-justice tools rendering services cost-effective and more accessible. In particular they indicate that the pilot *E-case project*, providing valuable services to litigants, is currently being tested. Moreover, they report about the efforts undertaken since 2014 to digitalise the archives of courts.
73. Concerning the first part of the recommendation, GRECO notes that no changes in legislation have occurred since the Compliance report was adopted. The referred SCM regulations were also in place before the adoption of the Compliance Report. That being said, based on the statistics and materials provided by the authorities, the trend appears to be positive regarding the duration in the adjudication of cases.
74. With regard to the second part of the recommendation, the authorities refer to the legal provisions on publicity of court proceedings, which were already in place at the time of the adoption of the Evaluation Report. They also refer to the constant update of the PIGD automated system and to the e-justice tools, such as the E-case project (still in testing phase) and the continued efforts to digitalise the archives of courts. The reported measures go in the right direction, but more progress is required to improve a sustainable transparency and accessibility of information on judicial activity in practice.
75. GRECO concludes that recommendation x remains partly implemented.

### **Recommendation xiii.**

76. *GRECO recommended that the legal and operational framework for the disciplinary liability of judges be revised with a view to strengthening its objectivity, efficiency and transparency.*

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<sup>21</sup> [https://crjm.org/wp-content/uploads/2019/12/Moldovan\\_justice\\_in\\_figures\\_comparative\\_analysis\\_CEPEJ\\_final\\_web.pdf](https://crjm.org/wp-content/uploads/2019/12/Moldovan_justice_in_figures_comparative_analysis_CEPEJ_final_web.pdf)

77. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO noted that legal amendments were adopted bringing some changes to the disciplinary framework for judges. In particular, the competencies of Judicial Inspectors were reinforced and appeal against the Inspectorate's decisions to the Disciplinary Board was made possible. The authorities were invited to further report on legal revisions to strengthen the objectivity, efficiency and transparency of disciplinary proceedings in respect of judges, as required by the recommendation.
78. The authorities now refer to the SCM Decision n°505/24 of 13 November 2018, which approved new Rules on disciplinary liability of judges as well as the SCM Decision n°506/24 of 13 November 2018 on the new Rules on the organisation, competence and functioning of the Judicial Inspectorate. They give details of the new mechanism for examining claims regarding disciplinary violations as well as the competences and activities of the Disciplinary Board and of its appeal panels.
79. The authorities also refer to statistics submitted regarding disciplinary measures against judges in 2019, showing in particular a number of claims lodged before the Disciplinary Board against the Judicial Inspection's decisions dismissing complaints (the overwhelming majority of which are rejected), a number of reports registered by the Judicial Inspectorate (65), a number of appeals of decisions in disciplinary cases and a more or less constant number of disciplinary sanctions applied (13 as opposed to 10 in 2015 and 16 in 2014).
80. Finally, the authorities indicate that the Disciplinary Board decisions are duly justified and published online<sup>22</sup>. They also add that the Disciplinary Board and its appeal panels' meeting agendas and minutes are also published<sup>23</sup>. Furthermore, the authorities indicate that the general activity reports and outcomes of Judicial Inspection reports are also made public on the SCM website<sup>24</sup>.
81. GRECO takes note of the information provided. The authorities refer to the legal framework of the procedure and the role of the Judicial Inspection, which was already in place at the time of the adoption of the Compliance Report. GRECO notes that the revised system has become operational and that the decisions on disciplinary matters are apparently public. However, GRECO cannot conclude, based on the information provided, that the Disciplinary Board's decisions are duly justified
82. GRECO concludes that recommendation xiii remains partly implemented.

#### *Corruption prevention in respect of prosecutors*

##### **Recommendation xiv.**

83. *GRECO recommended (i) expressly notifying all prosecutors in writing that verbal instructions given to hierarchically subordinate prosecutors are not binding, unless they are confirmed in writing, including in such notifications the procedures to be followed in providing timely confirmations and (ii) ensuring that all hierarchical interventions regarding a case are properly documented in practice.*

<sup>22</sup> <https://www.csm.md/ro/hotaririle/hotarari-cd.html>

<sup>23</sup> <https://www.csm.md/ro/organe-subordonate/colégiul-disciplinar/colégiul-disciplinar/sedinte-cd.html>; <https://www.csm.md/ro/organe-subordonate/colégiul-disciplinar/completele-de-admisibilitate-ale-cd/completul-de-admisibilitate-nr-1/sedinte-ca-nr-1.html>; <https://www.csm.md/ro/organe-subordonate/colégiul-disciplinar/completele-de-admisibilitate-ale-cd/completul-de-admisibilitate-nr-2/sedinte-ca-nr-2.html>

<sup>24</sup> <https://www.csm.md/ro/organe-subordonate/inspectia-judiciara.html>



84. It is recalled that this recommendation was not implemented in the Compliance Report. GRECO noted the new amendments to the Law on Prosecutor's Service - and especially amendments to the Criminal Procedure Code (CPC), that clarified hierarchical interventions and provided the possibility to challenge instructions of superiors. However, the new legislation did not explicitly exclude verbal instructions (without confirmation in writing), nor did it indicate how prosecutors shall react when they receive them. It remained necessary to notify all prosecutors in writing about the fact that oral instructions were not binding unless confirmed in writing. The outcomes of a special working group to address this matter remained to be seen. As for the second part of the recommendation, measures remained to be taken to ensure adequate documentation in practice of all hierarchical interventions.
85. With regard to part i of the recommendation, the authorities now report that the Prosecutor General has issued a written notification (n°11-3d/19-3357 of 1 October 2019) for all prosecutors stating that verbal instruction given to hierarchically subordinated prosecutors are not allowed and that only written instructions are to be followed. All prosecutors signed the notification and are aware of its binding character. The authorities specify that so far there have been no registered individual cases or complaints from hierarchical subordinated prosecutors against allegedly illegal or verbal hierarchical instructions or interventions within pending criminal procedures. The authorities have provided a translation of the notification.
86. Concerning part ii of the recommendation, the authorities report that the General Prosecutor's Office is finalising amendments to the "*Instruction on the role and duties of heads of General Prosecutor's Office subdivisions and chief territorial and specialised prosecutors in carrying out and leading criminal prosecutions*". The authorities specify that amendments will provide for a procedure of documentation in practice of all hierarchical interventions in individual cases.
87. GRECO takes note of the information provided. With respect to the first part of the recommendation, GRECO welcomes the issuance by the Prosecutor General of a written notification, which clarifies that verbal instructions are not binding unless confirmed in writing. Therefore, the first part of the recommendation has been addressed properly.
88. As for the second part of the recommendation, it would appear that amendments are being drafted to the relevant regulatory framework to ensure that all hierarchical interventions regarding a case are properly documented. This work is still at an early stage.
89. GRECO concludes that recommendation xiv has been partly implemented.

#### **Recommendation xv.**

90. *GRECO recommended that appropriate measures be taken to ensure that the composition and operation of the Superior Council of Prosecutors be subject to appropriate guarantees of objectivity, impartiality and transparency, including by abolishing the ex officio participation of the Minister of Justice and the President of the Superior Council of Magistracy.*
91. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO welcomed the amendments to the Constitution which provided a constitutional basis for the SCP (Article 125<sup>1</sup>) as guarantor of independence and impartiality of prosecutors. However, the Minister of Justice and the President of the SCM continued to be *ex officio* members of the SCP, contrary to what is required in the recommendation.



92. The authorities now report that on 19 September 2019, Parliament adopted the Law n°128 amending Law on Public Prosecutor's Service, which entered into force on 21 September 2019, increasing the number of members of the Superior Council of Prosecutors from 12 to 15. The Council has now two more *ex officio* members – i.e. the Ombudsman and the President of the Bar Association (in addition to the previously existing four *ex officio* members, i.e. Prosecutor General, Head Prosecutor of Autonomous Region of Gagauzian, Minister of Justice and President of the Superior Council of Magistracy). It has also now one additional non-prosecutor member, appointed by the Government. The authorities explain that the number of prosecutors elected by their peers among SCP members remains five. Together with two *ex-officio* prosecutorial members (i.e. Prosecutor General and Head Prosecutor of Autonomous Region of Gagauzia) there are now seven prosecutors and eight non-prosecutors in the composition of the SCP<sup>25</sup>. Finally, the authorities refer to the opinion of the Consultative Council of European Prosecutors (CCPE) Bureau concerning the independence of prosecutors in the context of legislative changes as regards the prosecution service in the Republic of Moldova (CCPE-BU (2020)2), which points to the desirability for prosecutors elected by their peers to be in majority in prosecutorial councils. They also refer to the Venice Commission Amicus Curiae Brief n°972/2019 (CDL-AD (2019)034), which considers that the new membership balance within the SCP (following the Law n°128/2019 on amending the Law on Prosecutor's Office) is in line with previous VC recommendations, and indicates that the presence of the Minister of Justice in the SCP "would not seem objectionable (paragraphs 35 and 36).
93. GRECO notes that the amended legislation provides for an increase in members of the SCP, by adding two *ex officio* members (the Ombudsman and the President of the Bar), and one member appointed by the Government. The number of non-prosecutors increases to eight and the number of prosecutors elected by their peers is five. At the same time, the Minister of Justice remains an *ex officio* member as does the President of the Superior Council of Magistracy, contrary to what is required by the present GRECO recommendation.
94. GRECO concludes that recommendation xv remains partly implemented.

#### **Recommendation xvii.**

95. *GRECO recommended (i) that the Code of Ethics and Conduct be communicated effectively to all prosecutors and complemented by further written guidance on ethical questions – including explanations, interpretative guidance and practical examples – and regularly updated; (ii) that dedicated training of a practice-oriented nature and confidential counselling within the prosecution service be provided for all prosecutors.*
96. It is recalled that this recommendation was partly implemented in the Compliance Report. With respect to the first part, GRECO appreciated that the Code of Ethics and other relevant provisions were compiled in one document, published and made available online. GRECO noted that practical guidance in solving concrete ethical dilemmas, including explanations and practical examples were under elaboration. The first part of the recommendation was partly implemented. As regards the second part of the recommendation, GRECO welcomed the training on ethics and corruption prevention, included in the annual training curriculum of the NIJ and that a series of training events had been organised. However, the Disciplinary and Ethics Board was still empowered with the task of providing guidance. Confidential counselling distinct from disciplinary mechanisms remained to be introduced.

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<sup>25</sup> The Constitution (Art. 125<sup>1</sup>) requires that the prosecutors constitute "a substantial part within the Superior Council of Prosecutors".

97. The authorities now report that, following a proposal by the Superior Council of Prosecutors, the General Assembly of Prosecutors adopted on 22 February 2019 amendments to the Code of Ethics of Prosecutors. These amendments (paragraph 11) provide for the development by the Disciplinary and Ethics Board of "additional written guidance on interpreting" the Code of Ethics of Prosecutors and "granting of confidential counselling" on request from prosecutors by "persons appointed by the SCP as Ethics Advisers". The Ethical Advisers are to be selected among former members of the self-governing bodies of Prosecutor's Service, considering in particular their reputation and communication skills. The SCP is expected to publish a list of advisers and their contact details and to "determine the conditions for conducting discussions and keeping confidentiality".
98. The authorities add that the National Institute of Justice (NIJ), responsible for initial and in-service training of judges and prosecutors, organised, throughout the year 2019, a series of regular practice-oriented training events on ethics and deontology. These training sessions are part of the annual training curricula<sup>26</sup>. In particular, on 5 April and 29 October 2019, the NIJ held two modules of training courses on Management of Ethical and Professional Conduct and solving conflicts of interests for a total of 60 prosecutors.
99. GRECO takes note of the information provided. With respect to the first part of the recommendation, the authorities are reportedly to develop and to publish further written guidance on for the Code of Ethics. This goes in the right direction but the written guidance to the Code of Ethics still remains to be elaborated, adopted and communicated to all prosecutors. The first part of the recommendation remains partly implemented.
100. As regards the second part of the recommendation, GRECO appreciates that the NIJ continues to provide regular dedicated training on ethics to prosecutors, as part of its annual training curriculum. Moreover, GRECO notes that the new amendments to the Code of Ethics foresee the setting up of a system of confidential counselling for prosecutors by Ethics Advisers. Advice is expected to be provided confidentially and, as it appears, distinct from disciplinary bodies. These developments also go in the right direction, but the system of confidential counselling remains to be set up and made operational. It follows that also the second part of the recommendation remains partly implemented.
101. GRECO concludes that recommendation xvii remains partly implemented.

### **Recommendation xviii.**

102. *GRECO recommended that additional measures be taken in order to strengthen the objectivity, efficiency and transparency of the legal and operational framework for the disciplinary liability of prosecutors.*
103. It is recalled that this recommendation was not implemented in the Compliance Report. The reason for the current recommendation was the lack independence, impartiality, means and transparency of relevant bodies, including the statutory and budgetary dependence of the Inspection of Prosecutors, the possibility for a SCP member to be involved in several stages of disciplinary proceedings against a prosecutor, the lack of justification of the decisions in disciplinary matters and the lack of adequate publicity for disciplinary cases. Nothing to this end was reported.

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<sup>26</sup><https://www.inj.md/sites/default/files/19/docfc/Plan%20calendaristic%20pentru%20jud%20si%20proc%20se%20I%202019.pdf>;  
<https://www.inj.md/sites/default/files/FC/planuri/Plan%20calendaristic%20pentru%20jud%20si%20proc%20se%20II%202019.pdf>

104. The authorities now report that draft proposals to review the framework for disciplinary liability of prosecutors and to strengthen the independence of the Inspection of Prosecutors are under elaboration. These draft proposals are foreseen within the Government Action Plan for 2019 – 2020 (Rule of Law component) and the draft Strategy for the development of justice sector for 2019-2022. The SCP has requested assistance of the national data protection authority to elaborate a methodology for the publication of decisions of the Disciplinary and Ethics Board, striking the balance between transparency and the respect of privacy.
105. Finally, the authorities have submitted statistics regarding disciplinary measures against prosecutors taken in 2018 and in 2019, indicating that the Inspection of Prosecutors examined 102 (in 2018) and 204 (in 2019) complaints against 133 (in 2018) and 260 (in 2019) prosecutors and identified grounds for disciplinary liability in 27 (in 2018) and 47 (in 2019) cases. The Disciplinary and Ethics Board registered 25 (in 2018) and 51 (in 2019) disciplinary proceedings against 22 (in 2018) and 44 (in 2019) prosecutors and sanctioned 15 (in 2018) and 24 (in 2019) prosecutors.
106. GRECO takes note of the information provided, in particular, the intention of the authorities to review the framework for disciplinary liability of prosecutors and to publish the decisions of the Disciplinary and Ethics Board. The authorities have provided some figures showing that the system is operational. In the absence of consistent progress in reviewing the legal and operational disciplinary framework for prosecutors, GRECO concludes that recommendation xviii remains not implemented.

### **III. CONCLUSIONS**

107. **GRECO concludes that the Republic of Moldova has implemented satisfactorily or dealt with in a satisfactory manner only four out of the eighteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, ten have now been partly implemented and four have not been implemented.
108. More specifically, recommendations v, xi, xii and xvi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i, iv, vii, viii, ix, x, xiii, xiv, xv and xvii have been partly implemented and recommendations ii, iii, vi and xviii have not been implemented.
109. Concerning members of parliament, the progress is clearly insufficient. Still too many laws are adopted without adequate consultation and at accelerated speed. A code of conduct for MPs remains to be adopted, including rules for various situations of conflicts of interest. Clear and objective criteria on lifting parliamentary immunity are still not in place.
110. As far as judges are concerned, it is to be welcomed that a much criticised previous draft law providing for a general vetting of judges has been abandoned, as such large scale evaluations would not be compatible nor proportionate with the requirement to check the integrity of judges before appointment/promotions, without putting large risks in respect of the independence of the judiciary. That said, the integrity requirements and testing of candidate judges for appointments and promotions are not adequately regulated as yet. More needs to be done to enhance the transparency in practice of judicial activity, judgments and decisions, including the Superior Council of Magistracy and to strengthen the objectivity of the disciplinary procedures and measures against judges.
111. As regards prosecutors, it is welcomed that it has been made clear that verbal instructions to prosecutors are to be confirmed in writing for their validity. However, no progress has been made to ensure that all hierarchical interventions regarding a

case are properly documented. It is noted that according to amended legislation, the Minister of Justice and the President of the Superior Council of Magistracy remain *ex officio* members of the Superior Council of Prosecutors, contrary to what was recommended. A written guidance to the Code of Ethics of prosecutors still remains to be developed, adopted and communicated to all prosecutors and a system of confidential counselling remains to be set up. Finally, no progress has been made to review the framework for disciplinary liability of prosecutors.

112. In view of the above, GRECO concludes that the current low level of compliance with the recommendations is “globally unsatisfactory” in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of the Republic of Moldova to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i-iv, vi-x, xiii-xv, xvii and xviii) as soon as possible, however – at the latest – by 30 September 2021.
113. Finally, GRECO invites the authorities of the Republic of Moldova to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.