



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

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## FOURTH EVALUATION ROUND

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

## SECOND INTERIM COMPLIANCE REPORT LUXEMBOURG

Adopted by GRECO at its 86<sup>th</sup> Plenary meeting  
(Strasbourg, 26-29 October 2020)

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## **I. INTRODUCTION**

1. The [Fourth Round Evaluation Report on Luxembourg](#) was adopted at GRECO's 60<sup>th</sup> plenary meeting (21 June 2013) and made public on 1 July 2013, following authorisation by Luxembourg. GRECO's Fourth Evaluation Round addresses "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. In the [Compliance Report](#), adopted at GRECO's 68<sup>th</sup> Plenary Meeting (19 June 2015), it was concluded that Luxembourg had satisfactorily implemented only one of the 14 recommendations contained in the Fourth Round Evaluation Report. Eight recommendations had been partly implemented and five had not been implemented.
3. In the [Second Compliance Report](#), adopted by GRECO at its 77<sup>th</sup> plenary meeting (18 October 2017), it was concluded that Luxembourg had satisfactorily implemented or dealt with only four of the 14 recommendations contained in the Evaluation Report (six others had been partly implemented and four not implemented). In view of this result, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 paragraph 2.i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the Head of the Delegation of Luxembourg to provide a report on the progress made in implementing the recommendations still pending.
4. In the [Interim Compliance Report](#), adopted by GRECO at its 82<sup>nd</sup> plenary meeting (22 March 2019), it was concluded that Luxembourg had made some progress since the previous report, although that progress had had no impact on the number of fully implemented recommendations. Four of the 14 recommendations contained in the Evaluation report remained satisfactorily implemented and the remaining ten had been partly implemented. GRECO therefore concluded once again that the level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. In accordance with Rule 32, paragraph 2 subparagraph ii.a), GRECO drew the attention of the Head of the Luxembourg delegation to the failure to comply with the recommendations in question and the need to take resolute action to achieve tangible progress as soon as possible. In addition, pursuant to Rule 31 paragraph 8.2 (revised) of its Rules of Procedure, GRECO asked the Head of the Luxembourg delegation to submit a report by 31 March 2020 on the measures taken to implement the recommendations still pending. That report, received on 31 March 2020, forms the basis for this second interim compliance report.
5. This [Second Interim Compliance Report](#) assesses the further implementation of the ten recommendations pending since the adoption of the first Interim Compliance Report (Recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv) and performs an overall appraisal of the level of Luxembourg's compliance with these recommendations
6. GRECO instructed Switzerland (with respect to parliamentary assemblies) and Bulgaria (with respect to judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Olivier Gonin, for Switzerland, and Mr Georgi Roupchev, for Bulgaria. They were assisted by GRECO's Secretariat in drafting this report.

## II. **ANALYSIS**

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

#### **Recommendation i.**

7. *GRECO had recommended that i) as intended with the current draft Code of Conduct, a set of ethical rules and standards be adopted with the aim of preventing corruption and safeguarding integrity in general; ii) these rules be supplemented by an implementing instrument providing the necessary clarifications.*
8. GRECO points out that this recommendation had been partly implemented. The first part of the recommendation had been implemented through the adoption and entry into force in 2014 of the Code of Conduct relating to financial interests and conflicts of interest for the members of the Chamber of Deputies.<sup>1</sup> As for the second part of the recommendation, the Bureau of the Chamber of Deputies adopted an implementing instrument providing further clarification of certain provisions of the Code on 26 April 2018. GRECO had welcomed this text in its previous report, but had felt that it should be more illustrative in nature, providing specific, and above all fuller, examples to explain all the Code's provisions, including those relating to conflicts of interest and lobbying.
9. The Luxembourg authorities state that the situation remains exactly the same as described in the previous compliance report.
10. GRECO finds it a matter of regret that there has been no progress regarding the second part of the recommendation. The need for clarification concerning relations with lobbyists and conflicts of interest is all the more pressing given that compliance with the provisions of the Code of Conduct rests first and foremost on the individual responsibility of members of parliament. The fact is that practice would appear to reveal diverging interpretations of these concepts and, as far as some quarters are concerned, a very restrictive view of conflicts of interest.<sup>2</sup>
11. GRECO concludes that recommendation i remains partly implemented.

#### **Recommendation ii.**

12. *GRECO had recommended that the declaration system be further developed in particular i) by including data which are sufficiently precise and pertinent, for instance on financial assets, debts and resources of parliamentarians; ii) by considering including information on assets of spouses and dependent family (it being understood that such information would not necessarily need to be made public).*
13. GRECO points out that this recommendation had been partly implemented. Notwithstanding the introduction of a declaration system applicable to all parliamentarians under the Code of Conduct for MPs and the introduction of an obligation to declare the special pension or temporary salary, the data to be declared regarding interests, assets and income are still largely vague and incomplete. Members of parliament opted to stick with the declaratory system modelled on that of the European Parliament and not revise and broaden their own declaration system. The second part of this recommendation had been taken into account following a series of consultations and discussions run since 2014, although GRECO had expressed regret at the MPs' decision not to extend the declaratory obligations to close relatives.

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<sup>1</sup> [www.legilux.public.lu/leg/a/archives/2014/0201/a201.pdf#page=2](http://www.legilux.public.lu/leg/a/archives/2014/0201/a201.pdf#page=2)

<sup>2</sup> <https://www.reporter.lu/interessenkonflikte-parlament-die-sache-mit-der-selbstkontrolle/>

14. The Luxembourg authorities state that members of parliament have not changed their views on the parts of this recommendation which have still not been implemented.
15. GRECO once again deplores the lack of progress in implementing this recommendation. The shortcomings identified in its previous reports concerning the inadequacy and imprecision of the information that has to be provided on financial interests, assets and income severely limit the effectiveness of the declaration system, as recognised by certain MPs themselves.<sup>3</sup>
16. GRECO concludes that recommendation ii remains partly implemented.

#### **Recommendation iv.**

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

#### **Recommendation v.**

21. *GRECO had recommended the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of Conduct for members of parliament.*
22. GRECO points out that this recommendation had been considered partly implemented. A new monitoring and sanctioning mechanism had been introduced in July 2014 to ensure compliance with the various provisions of the Code of Conduct. It involved an independent advisory committee issuing recommendations on shortcomings reported by MPs and on the powers of the Speaker of the Chamber to take reasoned decisions and decide on sanctions.<sup>4</sup> It provided for a range of sanctions and also the possibility of appeal. But GRECO had found that the measures taken, while positive developments, were still insufficient, in particular because the Code did not entrust the monitoring bodies with responsibility for checking the accuracy of declarations and no details were given regarding the means of parliamentary oversight. The Institutions and Constitutional Review Committee had recommended that the Chamber of Deputies be given the necessary means of oversight to detect

<sup>3</sup> <https://www.reporter.lu/luxemburg-transparenz-nebenjobs-abgeordnete-wollen-nachbessern/>

<sup>4</sup> The Conference of Committee Chairs initiates the disciplinary procedure against the Speaker of the Chamber and imposes sanctions for any wrongdoing.

false or inaccurate declarations, but its recommendations had not yet been followed up. In July 2018, it became possible for any citizen suspecting irregularities in an MP's declaration of financial interests to refer the matter to the Speaker of the Chamber. GRECO had welcomed this development but noted that it could not be a substitute for genuine proactive monitoring by the Chamber of Deputies itself, which was the only way of guaranteeing full and effective oversight.

23. The Luxembourg authorities state that the situation remains the same as described in the previous compliance report.
24. GRECO once again expresses its regret that there is no genuine monitoring by the Chamber of Deputies, resulting in persistent grey zones and diverging practices in the declaration of interests made by MPs. As acknowledged by the Chamber departments themselves, there is no guarantee that the information submitted is complete.<sup>5</sup>
25. GRECO concludes that recommendation v remains partly implemented.

#### *Prevention of corruption of judges and prosecutors*

26. Firstly, the Luxembourg authorities state that the recommendations still pending all relate to the setting up of the Supreme Judicial Council (CSJ). A bill on the organisation of the Supreme Judicial Council (parliamentary document no. 7323) was tabled in the Chamber of Deputies by the Minister of Justice and was published. GRECO took a positive view of this bill in its previous compliance report and felt that it meant that all six recommendations relating to the justice system could be considered partly implemented.
27. The actual setting up of the new CSJ should have led to these recommendations being considered as satisfactorily implemented. Unfortunately, we are not yet at that stage as the discussions on this bill in the Chamber of Deputies are still ongoing, following a change of position by a major opposition party over enshrining the independence of the Public Prosecution Service in the Constitution and in law.

#### **Recommendations vi, vii, ix, x and xiv.**

28. *GRECO had recommended:*
  - *that under the rules of the future National Judicial Council, the procedures for the promotion of the various categories of judges and public prosecutors, including access to senior functions of president or vice-president of a court and Principal State Prosecutor, should be reviewed and made more transparent, particularly through the use of objective criteria and periodic appraisal (recommendation vi);*
  - *that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits the risks for the general integrity of judges (recommendation vii);*
  - *that it be clarified which of the provisions of the General Civil Service Regulations – on management of conflicts of interest or other matters relevant for the purposes of preventing corruption – are in force at present and in respect of which categories of justice posts, with a view to enforcing the applicable clauses of the regulations (recommendation ix);*

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<sup>5</sup> <https://www.reporter.lu/luxemburg-nebeneinkuenfte-von-abgeordneten-transparenz-mit-luecken/>

- *that the rules on incompatibilities and secondary activities be clarified and made more coherent in respect of all persons required to sit as judges or act as prosecutors (recommendation x);*
  - *i) the future collegial body for the judiciary be involved in supervision and in disciplinary decisions concerning prosecutors; ii) that the disciplinary arrangements applicable to prosecutors, including the applicable sanctions, be defined more clearly (recommendation xiv).*
29. GRECO points out that the recommendations relating to corruption prevention in respect of judges (recommendations vi, vii, ix and x) and recommendation xiv relating to corruption prevention in respect of prosecutors had been deemed to be partly implemented. GRECO had noted that Draft Law No. 7323 on the organisation of the CSJ, tabled in the Chamber of Deputies on 15 June 2018, was a step towards complying with all these recommendations. However, there were still a number of points requiring clarification, in particular the assessment criteria for appointing and promoting the various categories of judges and prosecutors given that there was no periodic appraisal system for the judiciary – which GRECO found regrettable – and that interviews with candidates (recommendation vi) were merely optional. GRECO had also wished to consider, at the appropriate time, the practices of the future CSJ (recommendations vii, ix and x). Regarding clarification of the rules on incompatibilities and secondary activities (recommendation x), GRECO had urged the authorities to pursue their efforts in this regard. Lastly, the draft law addressed two parts of the recommendation concerning the disciplinary arrangements applicable to prosecutors (recommendation xiv).
30. The Luxembourg authorities report that there is still the political will to establish the CSJ and that there is a consensus on this point at national level. This consensus encompasses all the issues addressed by Draft Law No. 7323 with regard to recommendations vi, vii, ix and x. Discussions in the Chamber of Deputies are currently focusing on whether the Constitution should be revised rather than on drafting a new one, for which there had been broad political agreement among the majority of MPs until 2018. These discussions also relate to the question of the independence of the Public Prosecutor’s Office being enshrined in law (see recommendation xiii below). No positive developments regarding these recommendations can therefore be reported.
31. GRECO takes note of the lack of progress in the Chamber of Deputies regarding Draft Law No. 7323, on which the setting up of the CSJ is dependent. While the establishment of the CSJ is an essential factor in implementing most of the recommendations still pending, it draws the authorities’ attention to the fact that further steps will have to be taken to ensure that some of these recommendations are fully implemented (see paragraph 29 and previous compliance reports).
32. GRECO concludes that recommendations vi, vii, ix, x and xiv remain partly implemented.

**Recommendation xiii.**

33. *GRECO had recommended that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service’s decisions be completed.*
34. GRECO points out that this recommendation had been deemed to have been partly implemented in its previous report. It had expressed its support for the reform of the independence of the Public Prosecution Service, which met the requirements of the recommendation. It particularly welcomed the proposal that the Public Prosecution

Service would no longer exercise its powers under the authority of the Minister of Justice and that the latter would not be able to order prosecutions or intervene in disciplinary proceedings against prosecutors. GRECO had also noted with satisfaction that the Principal State Prosecutor would be able to issue only written instructions to public prosecutors within the hierarchical framework, specifically to start legal proceedings or make referrals to the competent court and that these would be placed on file. The fact that the Principal State Prosecutor would not be able to order prosecutors to refrain from instituting proceedings was also regarded as positive.

35. The Luxembourg authorities state, as explained above, that work on the constitutional revision and the draft law on the organisation of the CSJ (No. 7323) is continuing in the Chamber of Deputies. However, contrary to the situation at the time the last report was adopted, there is no longer broad political consensus on the question of the independence of the prosecution service.
36. A proposed revision of Chapter VI of the Constitution (on the Justice system) was tabled in the Chamber of Deputies on 5 May 2020. Article 87 reads as follows: *Article 87. (1) Judges shall be independent in the exercise of their judicial functions. (2) The public prosecution service shall bring prosecutions and enforce the application of the law.*
37. The commentary to this article states that "given the lack of consensus, the Commission decided not to accept the clarification that "the Public Prosecution Service shall be independent in the exercise of its functions." "
38. However, the authorities once again emphasise the fact that the Public Prosecution Service has always been independent in practice, as noted in various GRECO reports. Nevertheless, the Constitution and legislation do not sufficiently reflect this independence. They note that the situation regarding progress in the work relating to the National/Supreme Council of Justice and the independence of the judiciary is exclusively due to discussions in the Chamber of Deputies, which are as such independent of the Government's position.
39. Lastly, they note that the Council of State, in a supplementary opinion of 10 March 2020 on the draft law on the organisation of the CSJ, stated that "if the future constitutional provisions were to omit an explicit reference to the independence of the Public Prosecution Service, about which the Council of State will have the opportunity to express its views when drafting its opinion on the proposal for a partial revision of the Constitution, then the legislative provisions under consideration would have a genuinely normative scope".
40. GRECO deeply regrets the fact that there is no longer a political consensus on enshrining in law the principle of the independence of the Public Prosecutor's Office, which has been deleted from the proposed revision of the chapter of the Constitution on the Justice System tabled in the Chamber of Deputies on 5 May 2020. This consensus was replaced by a compromise which maintained the previous situation, which it had criticised in the 2013 Evaluation Report.
41. While since 2013 work on this issue has been consistent with a legitimate expectation with regard to the independence of the Public Prosecution Service, it points out that maintaining the status quo ante risks rekindling the dangers and fears of intervention by the executive in sensitive cases and calls into question the established practice of non-intervention. This is a step backwards, a lost opportunity to secure at the highest legal level the principle of the separation of powers and the independence of the prosecution service.

42. GRECO urges the Luxembourg authorities to reconsider their position on this issue, in compliance with the recommendation. In the meantime, it can only note that the recommendation has once again become not implemented.
43. GRECO concludes that recommendation xiii is not implemented.

### **III. CONCLUSIONS**

44. **Luxembourg has made no progress in implementing the recommendations since the March 2019 Interim Compliance Report, and in the case of one recommendation there has even been a step backwards. In total, only four of the fourteen recommendations contained in the Evaluation Report have been satisfactorily implemented.** Nine other recommendations remain partly implemented and one recommendation has once again become not implemented.
45. More specifically, recommendations iii, viii, xi and xii have been implemented satisfactorily. Recommendations i, ii, iv, v, vi, vii, ix, x and xiv have been partly implemented and recommendation xiii once again becomes not implemented.
46. There is no progress to report regarding MPs who, it would appear, are not ready to fill the persistent gaps in their system of declarations, the mechanism for monitoring MPs' declarations and the rules governing MPs' contact with third parties.
47. With regard to judges and prosecutors, full implementation of the recommendations has been put on hold until the setting up of the Supreme Judicial Council (CSJ), which is still pending and has an impact on the recommendations regarding the promotion of members of the judiciary, management of the courts (and the prosecution service), the role of the CSJ in determining and monitoring rules on ethics, and the disciplinary liability of members of the judiciary. Regarding the independence of the Public Prosecution Service, GRECO deeply regrets the fact that there is no longer consensus on the proposed revision of the chapter in the Constitution on the justice system tabled in the Chamber of Deputies. It calls on the Luxembourg authorities to review their position on this matter so that the independence of the prosecution service can be enshrined in the Constitution and in law.
48. In the light of the above, GRECO concludes that the current level of compliance with the recommendations remains "globally unsatisfactory" within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure.
49. Pursuant to Rule 32, paragraph 2(i) of the Rules of Procedure, GRECO asks the Head of the Luxembourg Delegation to provide a report on the measures taken to implement the outstanding recommendations (i.e. recommendations i, ii, iv, v, vi, vii, ix, x, xiii and xiv as soon as possible but by 31 October 2021 at the latest.
50. In addition, in accordance with Rule 32, paragraph 2(ii) (b), GRECO calls on the President of the Statutory Committee to send a letter to the Permanent Representative of Luxembourg to the Council of Europe drawing his attention to non-compliance with the relevant recommendations and the need to take resolute steps to achieve tangible progress as soon as possible.
51. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.