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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

THIRD *INTERIM* COMPLIANCE REPORT

Including

FOLLOW-UP TO THE AD HOC (RULE 34) REPORT

ROMANIA

Adopted by GRECO at its 92nd Plenary Meeting
(Strasbourg, 28 November-2 December 2022)

GRECO Secretariat
Council of Europe
F-67075 Strasbourg Cedex
☎ +33 3 88 41 20 00

www.coe.int/greco

Directorate General I
Human Rights and Rule of Law
Information Society and Action against Crime Directorate

I. INTRODUCTION

1. This Third *Interim* Compliance Report including Follow-up to the Ad hoc (Rule 34) Report on Romania assesses the measures taken by the Romanian authorities to implement the recommendations issued in the Fourth Round Evaluation Report on the country (see paragraph 2) dealing with "Corruption prevention in respect of members of parliament, judges and prosecutors" and the Rule 34 Ad hoc Report assessing issues closely related to the scope of the Fourth Round Evaluation Report (see paragraph 5).

2. The Fourth Round Evaluation Report on Romania was adopted at GRECO's 70th Plenary Meeting (4 December 2015) and made public on 22 January 2016, following authorisation by Romania (GrecoEval IVRep(2015)4E).

3. The Compliance Report on Romania (GrecoRC4(2017)24) was adopted by GRECO at its 78th meeting (8 December 2017) and made public on 18 January 2018, following authorisation by Romania. The report concluded that only two of the 13 recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt with in a satisfactory manner and four had been partly implemented. This very low level of compliance was considered "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of GRECO's Rules of Procedure. GRECO therefore decided to apply Rule 32, paragraph 2(i) and requested further information from the Romanian delegation.

4. The *Interim* Compliance Report was adopted by GRECO at its 83rd meeting (21 June 2019) and made public on 9 July 2019, following authorisation by Romania. The level of compliance remained "globally unsatisfactory" and the Romanian authorities were requested to submit further information.

5. GRECO decided at its 78th Plenary Meeting (4-8 December 2017) to apply the Rule 34 Ad hoc procedure[1] in respect of Romania as a result of the 2017 reforms in Romania that critically affected the criminal justice system (including the status of judges and prosecutors). GRECO adopted the Rule 34 Ad hoc Report at its 79th Plenary Meeting (19-23 March 2018) assessing issues closely related to the scope of the Fourth Round Evaluation Report. The Follow-up Report to the Ad hoc Report was adopted by GRECO at its 83rd Plenary Meeting (17-21 June 2019) and made public on 9 July 2019, following Romania's authorisation. GRECO decided to terminate the ad hoc procedure and to continue evaluating Romania's compliance with the pending recommendations from the Rule 34 Ad hoc Reports under the on-going Fourth Round Compliance Procedure.

6. In the Second *Interim* Compliance Report including Follow-up to the Ad hoc (Rule 34) Report, adopted by GRECO at its 87th Plenary Meeting (25 March 2021) and made public on 5 May 2021, GRECO concluded that four out of the 13 recommendations in the Fourth Round Evaluation Report and one out of the five recommendations of the Follow-up Report to the Ad hoc Report (Rule 34) had been implemented satisfactorily or dealt with in a satisfactory manner by Romania. GRECO concluded that the level of compliance with the recommendations was "globally unsatisfactory" and asked the Head of the Romanian delegation to provide a report on measures taken to implement the outstanding recommendations (namely recommendations i-iv, vi, viii ix, xi and xiii of the Fourth Round Evaluation Report and recommendations i-iii and v of the Rule 34 Report) by 31 March 2022, extended to 31 May 2022. That report, submitted on 28 April 2022 and updated on 30 May 2022, forms the basis of this report.

[1] Rule 34 of GRECO's Rule s of Procedure provides for an ad hoc procedure that can be triggered in exceptional circumstances, such as when GRECO receives reliable information concerning institutional reforms, legislative initiatives or procedural changes that may result in serious violations of the Council of Europe's anti-corruption standards.

7. GRECO selected Denmark and Türkiye to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Anders RECHENDORFF on behalf of Denmark and Mr Furkan USTAOĞLU on behalf of Türkiye. They were assisted by GRECO's Secretariat in drawing up the current Report.

II. ANALYSIS

8. GRECO addressed 13 recommendations to Romania in its Evaluation Report and five recommendations in the Ad hoc (Rule 34) Report. In the Second *Interim* Compliance Report including Follow-up to the Ad hoc (Rule 34) Report, GRECO concluded that recommendations v, vii, x, xii, as well as Rule 34 recommendation iv, had been implemented satisfactorily or dealt with in a satisfactory manner. Compliance with the remaining recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i

9. *GRECO recommended that the transparency of the legislative process be improved (i) by further developing the rules on public debates, consultations and hearings, including criteria for a limited number of circumstances where in camera meetings can be held, and ensuring their implementation in practice; ii) by assessing the practice followed and accordingly revising the rules to ensure that draft legislation, amendments to such drafts and the agendas and outcome of committee sittings are disclosed in a timely manner, and that adequate timeframes are in place for submitting amendments and iii) by taking appropriate measures so that the urgent procedure is applied as an exception in a limited number of circumstances.*

10. GRECO recalls that, in its Second *Interim* Compliance Report including Follow-up to the Ad hoc (Rule 34) Report, this recommendation remained not implemented as no new information was provided.

11. The Romanian authorities now indicate for part (i) of the recommendation that in the context of the COVID-19 pandemic, the Senate has developed relevant rules setting out which meetings were to be held in hybrid format or entirely online; civil society could participate in these meetings and present their views on draft laws under debate. Article 44 of the amended Regulation of the Senate (Senate Decision no. 50/2022) has a new paragraph 6, which provides that "The meetings of the Committee of the leaders of the parliamentary groups are recorded by the Senate through electronic means and stenography." And Article 67 has a new paragraph (1^1) which reads: "By its decision, the work of the Committee may be broadcast live or recorded by the media accredited to the Senate." The amendments to paragraph 1 and the introduction of a new paragraph 4 to Article 135 read as follows: "Art. 135. — (1) The debates within the meetings of the Senate are recorded on magnetic tape or in digital format, are broadcast through electronic means and stenography;" and "(4) The meetings of the Senate can be broadcast live or recorded by the media accredited to the Senate."

12. The authorities indicate as regards part (ii) of the recommendation, that following the meeting of the Permanent Bureau of the Senate on 25 January 2021, the Regulation of the Senate (approved by Senate Decision no. 28/2005) was amended and supplemented by Decision no. 10/2021 to ensure the possibility for senators, deputies and the government to electronically submit projects and legislative proposals on the Senate's website through an application that manages the receipt and registration of these documents by referring to the initiator (*Application for the*

management registration of the legislative proposals – AGIPL).[2] According to the authorities, Decision no. 10/2021 represents a step forward towards the digitalization of Romania's legislative activity. The Chamber of Deputies indicate that, to ensure the respect for the principle of transparency, information regarding the roadmap of the legislative initiatives submitted to the Chamber of Deputies is published on the institution's website. It sets out the initiators, the data regarding the legislative events, the opinions on the legislative initiatives, the endorsements, the reports, the solutions (approval, rejection), the roadmap of the legislative initiatives (within the committees, on the agenda of the Plenary of the Chamber of Deputies, upon enactment, the end of the legislative procedure), the objections of unconstitutionality, the decisions of the Constitutional Court, the requirements of the President of Romania regarding the re-examination of legislative initiatives and the vote within the Plenary of the Chamber of Deputies, respectively the vote of each deputy regarding the legislative initiatives.

13. The authorities report no new information with respect to part (iii) of this recommendation.

14. GRECO takes note that for part (i) of this recommendation changes have been introduced in the Regulation of the Senate as a result of the COVID-19 pandemic, which partly address the issue of a lack of adequate rules in place to allow for public debates, consultations or hearings, but only as far as the Senate is concerned. However, there are still no clear rules/criteria for a limited number of circumstances in which meetings may be held *in camera* in respect of both Chambers. In respect of part (ii) of the recommendation, a notable step forward has been made with respect to the digitalization of the legislative process, which in the future may be helpful for addressing the issue of disclosing information in a timely manner and that adequate timeframes are in place for submitting amendments. However, it does not even partly implement part (ii) of the recommendation. As for part (iii), GRECO takes note that there are no developments.

15. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii

16. *GRECO recommended i) developing a code of conduct for the members of parliament and ii) ensuring there is a mechanism to enforce* [its rules] *when it is necessary.*

17. GRECO recalls that in its Second *Interim* Compliance Report, this recommendation remained partly implemented. Part (i) of the recommendation had already been implemented satisfactorily by the adoption of a code of conduct. Part (ii) of this recommendation remained not implemented as no new information was provided.

18. The authorities now indicate that, with respect to part (ii) of the recommendation, in 2021 and 2022, the legal commissions of the Chambers of Parliament, which are competent to solve any breach of the Code of Conduct by deputies and senators, were notified with disciplinary cases regarding deputies and senators (two cases regarding deputies in 2021, one case regarding one deputy[3] in 2022 and one case regarding a senator in 2021). The disciplinary procedure regarding the case of the senator was finalised with the adoption of Decision no. 13/2021 of the Permanent Bureau of the Senate, sanctioning the senator with a written warning. This sanction was confirmed by the Plenum of the Senate on 17 May 2021, rejecting the senator's objection. As regards the cases pertaining to the deputies: the Legal Commission of the Chamber of Deputies held a hearing following which an opinion was issued for

[2] https://www.senat.ro/agipl/agipl.aspx
[3] http://www.cdep.ro/pls/dic/site2015.page?id=1046

the Permanent Bureau with a proposal for a solution. All the deputies concerned were sanctioned with written warnings.

19. GRECO notes that there are legal procedures in place in both Chambers of Parliament, which can enforce the rules of the Code of Conduct and legislation in this area, as required by part (ii) of this recommendation.

20. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii

21. *GRECO recommended that measures be taken i) to clarify the implications for members of parliament of the current provisions on conflicts of interest independently of whether such a conflict might also be revealed by declarations of assets and interests and ii) to extend the definition beyond the personal financial interests and iii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate.*

22. GRECO recalls that in its Second *Interim* Compliance Report, this recommendation was not implemented as no new information was provided.

23. The Romanian authorities now indicate that the National Anticorruption Strategy for 2021-2025 includes in its specific objective no. 5.2. *"- Ensuring integrity in the exercise of public functions and dignities, the measure of reviewing and updating the legislation on the integrity framework, in order to respond to the international recommendations."* The implementation of the measure started in February 2022, when the financial contract was signed within the framework of an on-going EU funded project. Objective no. 5.2 will address the issues raised in this recommendation.

24. GRECO takes note that some aspects of this recommendation could possibly be dealt with by the National Anticorruption Strategy for 2021-2025 under specific objective no. 5.2 (i.e. ensuring integrity in the exercise of public functions), which is encouraging. However, this has not yet been translated into any concrete action.

25. GRECO concludes that recommendation iii remains not implemented.

Recommendation iv

26. *GRECO recommended establishing a robust set of restrictions concerning gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable.*

27. GRECO recalls that in its Second *Interim* Compliance Report, this recommendation was not implemented because no new information was provided.

28. The authorities now indicate that there is still no new information provided by Parliament in respect of this recommendation.

29. GRECO notes that there have been no new developments with respect to this recommendation and concludes that recommendation iv remains not implemented.

Recommendation vi

30. *GRECO recommended the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.*

31. GRECO recalls that in its Second *Interim* Compliance Report, this recommendation was not implemented as no new information was provided.

32. The Romanian authorities now indicate that the National Anticorruption Strategy for 2021-2025 provides, in its specific objective no. 3.2.: *Extending the culture of transparency for an open government in public administration, the following measure, with a permanent deadline of implementation: "Strengthening and extending the Single Register of Transparency of Interests (RUTI) platform to include the Romanian Parliament and local public administration, as well as raising awareness of the importance of the principles of integrity and transparency and integrity in decision-making processes."* The Parliament and the General Secretariate of the Government are responsible for implementing the measure.

33. GRECO takes note that some aspects of this recommendation may possibly be dealt with by the National Anticorruption Strategy for 2021-2025 under specific objective no. 3.2 (i.e. by extending the Single Register of Transparency of Interests (RUTI) to include MPs), which is encouraging. However, this has not yet yielded any concrete results.

34. GRECO concludes that recommendation vi remains not implemented.

Recommendation viii

35. *GRECO recommended that the system of immunities of serving parliamentarians, including those who are also members or former members of government, be reviewed and improved, including by providing for clear and objective criteria for decisions on the lifting of immunities and by removing the necessity for prosecutorial bodies to submit the whole file beforehand.*

36. GRECO recalls that this recommendation was partly implemented in the previous Compliance Report, based on the amendments made to the Regulation of the Chamber of Deputies. These amendments contained criteria and a procedure for removing parliamentary immunity for MPs of the Chamber of Deputies, including those who are also members of government, but no similar provisions had been adopted in the Regulation of the Senate. GRECO also noted that requests for criminal prosecution, detention, arrest, or search of an MP must be reasoned in fact and in law. GRECO noted the intention of the Vice-President of the Chamber of Deputies to send an official letter to the Prosecutor General of Romania, specifying that there was no requirement for the prosecution in such cases to submit the whole file. GRECO, in its Second *Interim* Compliance Report including Follow-up to the Ad hoc (Rule 34) Report, noted that an informal requirement for prosecutorial bodies to submit the whole file when prosecuting a minister or a former minister, who was also a member of Parliament, had apparently been lifted by a letter. However, it remained unclear whether this informal practice was still maintained in respect of MPs who were *not* current or former members of government in situations where prosecution authorities seek their arrest, search or detention. GRECO also recalled that clear and objective criteria for decisions on the lifting of immunity were to be developed for senators, to mirror the rules already in place in the Chamber of Deputies.

37. The authorities now indicate that the *Proposal for amending and supplementing the Regulation of the Senate* "mirroring" the relevant provisions of the Regulation of the Chamber of Deputies, has been adopted and published in the Official Gazette on 7

November 2022. These amendments include a new paragraph 2^1 to Article 165 of the Regulation of the Senate, setting out the procedure for requesting the criminal investigation of senators currently acting as ministers or who are former members of government. Arguments must be provided for and against the lifting of immunity of a senator who is or has been a member of government and must fulfil the criteria and guidelines for lifting parliamentary immunity contained in Chapter V of the Venice Commission Report on the scope and lifting of parliamentary immunities (CDL-AD(2014)011). The amendments also include a new paragraph 7^1 to Article 190 on parliamentary immunity, with the same content in respect of the procedure for requesting the lifting of immunities of senators so a to allow their detention, arrest or search, with the prior consent of the Senate.

38. GRECO takes note of the amendments made to the Regulation of the Senate, which now follow the amendments made to the Regulation of the Chamber of Deputies for removing parliamentary immunity for Members of Parliament, including those who are or have been members of government. Both Chambers of Parliament now apply similar rules for the lifting of immunity of their members.

39. GRECO concludes that recommendation viii has been dealt with in a satisfactory manner.

Recommendation ix

40. *GRECO recommended that the parliamentary authorities establish for their members i) a system of counselling through which parliamentarians can seek advice on integrity matters and ii) provide dedicated and regular training on the implications of the existing and yet-to-be adopted rules for the preservation of the integrity of parliamentarians, including the future Code of Conduct.*

41. GRECO recalls that this recommendation was not implemented in the Second *Interim* Report as no new information was provided.

42. The Romanian authorities now indicate that both Chambers of Parliament informed them that "people had been designated", by Order of the Secretary General, to counsel the MPs and their staff with regard to declarations of wealth and interests, in cooperation with the National Integrity Agency. The legal commissions also play a role in this field with regard to senators, through the Permanent Bureau of the Senate, in order to clarify any possible situation of incompatibility.

43. GRECO notes that the information received by the authorities is similar to the information it had received in the Evaluation, Compliance and Interim Compliance reports and provides no new elements.

44. GRECO concludes that recommendation ix remains not implemented.

Corruption prevention in respect of judges and prosecutors

Recommendation xi

45. *GRECO recommended that the justice system be made more responsive to risks for the integrity of judges and prosecutors, in particular by i) having the Supreme Council of Magistracy and the Judicial Inspectorate play a more active role in terms of analyses, information and advice and ii) by reinforcing the role and effectiveness of those performing managerial functions at the head of courts and public prosecution services, without impinging on the independence of judges and prosecutors.*

46. GRECO recalls that parts i) and ii) of this recommendation were partly implemented in the previous compliance reports. Following the uncovering of "criminal rings" in

Romania that were found to have links to "related dubious practices" within the judiciary (see Evaluation Report, para. 114), this recommendation was formulated to address the inefficient implementation of preventive policies, which identify risk-prone areas with insufficient internal controls. This inefficient implementation was noted in existing bodies in Romania: the Judicial Inspectorate and the Superior Council of Magistracy (hereinafter, the "SCM"). It was also noted in respect of those who had managerial responsibilities in the courts and prosecution service, whose task was rendered more difficult due to their very limited role to deal with cases of suspicion of irregularities within the services – which needed to be addressed.

47. The authorities now indicate that, as regards part i) of the recommendation, the SCM has an established practice of ruling on potential situations of incompatibility or prohibitions (Law on Judges and Prosecutors), at the request of judges and prosecutors before they take up their position or before they carry out an activity. Summaries of the SCM's decisions in this field are published on what is called the "EMAP portal" in a section reserved for judges and prosecutors.[4] The latter also contains anonymised final judgments on disciplinary matters.[5] All judges and prosecutors have accounts on EMAP, which gives them access to many different platforms, *inter alia*, to ECRIS, which is a nationally centralised platform used by all courts in the country for electronic file management (https://emap.csm1909.ro/Ecris/EcrisCdms.aspx) as well as to the Official Gazette, which is updated on a daily basis. In addition, the case law of the five-judge panels of the High Court of Cassation and Justice on disciplinary matters is available on the court's website.[6] Both the "EMAP portal" and the High Court of Cassation and Justice's website are claimed by the authorities to provide useful guidance to judges and prosecutors.

48. The authorities indicate that – for part ii) of the recommendation, which deals with reinforcing the role and effectiveness of those performing managerial functions at the head of courts and public prosecution services – the *Regulations on the appointment of judges to managerial positions and their dismissal* and *on the appointment of prosecutors to managerial positions and their dismissal* were approved in 2019.[7] Two competitions were organised in 2021 under these regulations: one for judges for the courts of appeal, tribunals, specialised tribunals and first instance courts, and the other for prosecutors for the prosecutors' offices attached to the courts of appeal, tribunals, specialised tribunals and first instance courts. In these competitions, the assessment of "management plans" – which must be prepared by each candidate and include a description on the reason for which they would like a specific managerial position and the objectives they propose for this position – was carried out by the competition committees, which included integrity standards. These standards are provided by the legal framework in force (i.e. the Law on the Status of Judges and Prosecutors, the Law on Judicial Organisation, the Code of Conduct for judges and prosecutors).

49. The authorities furthermore refer to the National Institute of Magistracy's continued organisation of training courses for judicial management, ethics and deontology in

[4] Accessible at https://emap.csm1909.ro/PageDetails.aspx?PageId=326&FolderId=8935&FolderTitle=Sinteza-soluţiilor-adoptate-la-nivelul-Consiliului-Superior-al-Magistraturii-în-materia-incompatibilităţilor-şi-interdicţiilor-stabilite-de-lege-în-sarcina-judecătorilor-şi-procurorilor.

[5] The decisions of the Section for Judges for disciplinary matters are accessible at https://emap.csm1909.ro/Pages.aspx?PageId=327 and those of the Section for Prosecutors for disciplinary matters at https://emap.csm1909.ro/Pages.aspx?PageId=331. In accordance with Article 63 (1) final version of the Regulation on the organisation and functioning of the Superior Council of Magistracy, approved by the Decision no. 1073/2018 of the Plenum of the Superior Council of Magistracy.

[6] https://www.iccj.ro/en/jurisdictional-structures/the-5-judge-panels-the-9-judge-panel/

[7] Decision no. 573 of 10 April 2019 of the Section for Judges of the SCM and Decision no. 234 of 9 April 2019 of the Section for Prosecutors - both published in the Official Gazette of Romania, Part I, No. 279 of 11 April 2019.

2021.[8] They also refer to the Judicial Inspectorate's assessment of the management objectives' achievements, which continued in 2021, through background or managerial controls, resulting in reports that were subject to the approval of the SCM. These assessments are carried out annually in courts and prosecutors' offices. Each area of activity is controlled at regular intervals (i.e. every 5 to 6 years). In addition, controls may be carried out at any time if information is received on recurring irregularities in certain courts or prosecutors' offices. If there is a breach of the Code of Conduct or a disciplinary breach, the Judicial Inspectorate starts its investigation *ex officio*. If irregularities are identified at the managerial level, then the Judicial Inspectorate may propose the revocation of the judge or prosecutor in question from the managerial position. Once the Judicial Inspectorate's decision and report have been approved, they are published on the website of the SCM.

50. GRECO welcomes the measures highlighted by the Romanian authorities, *inter alia* for part i): the SCM's practice of ruling on potential situations of incompatibility or prohibitions at the request of judges and prosecutors; providing online access to the case law on disciplinary matters rendered by the five-judge panels of the High Court of Cassation and Justice; and the continued organisation of training courses in the field of judicial management, ethics and deontology/conduct. Information is also provided on the increased role of the Judicial Inspectorate in terms of analysis, information and advice on integrity risks of judges and prosecutors. With respect to part ii) of this recommendation, which deals with managerial functions within the courts and public prosecution services – some of the measures introduced may well have a positive impact. This includes the recent competitions for the appointment of judges and prosecutors to managerial positions, which indicate a responsiveness of the judiciary to risks posed to the integrity of judges and prosecutors. Above all, these measures have increased the awareness of risks to the integrity of judges and prosecutors and the need for a more proactive approach to prevent such risks. The long-term effects of the measures reported need to be followed up by the judicial authorities.

51. GRECO concludes that recommendation xi has been dealt with in a satisfactory manner.

Corruption prevention in respect of prosecutors specifically

Recommendation xiii

52. *GRECO recommended that the procedure for the appointment and revocation for the most senior prosecutorial functions other than the Prosecutor General, under Article 54 of Law 303/2004, include a process that is both transparent and based on objective criteria, and that the Supreme Council of Magistracy is given a stronger role in this procedure.*

53. GRECO recalls that this recommendation was not implemented in the previous Compliance Report. The draft Law on the Status of Judges and Prosecutors was still to be submitted to Parliament. GRECO was notably concerned that giving the SCM an enhanced role in the procedure for the appointment and revocation for the most senior prosecutorial functions (other than the Prosecutor General) did not appear to be foreseen. As before, the SCM's Section for Prosecutors could only issue a non-binding opinion on the proposal to the Minister of Justice. Moreover, the Selection

[8] Two seminars were organised in Bucharest, attended by 27 judges, five prosecutors, five persons from the category of legal staff assimilated to judges and prosecutors. Four seminars in the field of judicial management were also organised in 2021 within the project *Justice 2020: professionalism and integrity*. SIPOCA: 453/MySMIS: 118978: on 24-25 May 2021, the *Judicial Management Seminar* took place in Bucharest, attended by 21 judges; on 7- 8 June 2021, the *Judicial Management* Seminar took place in Bucharest, attended by 21 prosecutors; on 18-19 October 2021, the *Judicial Management* Seminar took place in Bucharest, attended by 14 judges; on 27-28 September 2021, the *Judicial Management* Seminar was held in Bucharest, attended by 19 prosecutors.

Committee established by the draft was to include only one prosecutor amongst its seven members. GRECO concluded that the involvement of the Minister of Justice in the appointment/revocation of the most senior prosecutors remained considerable and bore a risk of undue political influence.

54. The Romanian authorities now indicate that the new Law on the Status of Judges and Prosecutors as well as the new Law on the Judicial Organisation and the new Law on the Superior Council of Magistracy, were all adopted by the Senate on 17 October 2022. The constitutionality of all three laws was challenged before the Constitutional Court on 26 October 2022 and on 9 November 2022, the Constitutional Court announced that it rejected all appeals as unfounded.[9] On 15 November 2022, all three laws were enacted by the President of Romania.[10]

55. The authorities indicate that the new Law on the Status of Judges and Prosecutors provides for transparency with respect to the procedure for the appointment of prosecutors to the most senior prosecutorial functions by publishing the vacancy together with the selection procedure on the website of the Minister of Justice at least 40 days before the date on which the interviews of candidates begin (Article 145(2), Law on the Status of Judges and Prosecutors). In addition, the hearing of candidates during their interviews will be transmitted live by audio-video on the website of the Ministry of Justice, recorded and then published on its website (Article 146(8)). The authorities furthermore submit that the Law also provides for a stronger involvement of the SCM, notably, candidates' interviews will be held before a committee, which includes two prosecutors *appointed* by the Section for Prosecutors of the SCM (Article 146(2)). The authorities add that objective criteria are expressly provided for as regards the specific skills required for the management position in question, the verification of managerial and communication competences and the evaluation of candidates (Article 161(2)).

56. GRECO takes note of the new legislative developments with respect to the appointment of prosecutors to the most senior prosecutorial functions. Under Article 144(1) of the Law on the Status of Judges and Prosecutors, the President of Romania decides on the appointment of the most senior prosecutors, on the proposal of the Minister of Justice. This still leaves the Minister of Justice with an important role in the appointment procedure, as s/he is to select the candidates and make a reasoned proposal for each of the managerial positions (Article 147(1)). Nonetheless, the SCM seems to have received a somewhat stronger role in this procedure (Article 148(2)), as it is to issue an opinion to the Minister of Justice that leads to the Minister having to reconsider his/her choice of candidate. The Law does not, however, provide the SCM with more than an advisory role of a non-binding character for the final proposal by the Minister of Justice. For this reason, it would not appear that the role of the SCM has been more than marginally increased. GRECO, however, cannot assess any practice at this stage, as this Law has just been enacted.

57. GRECO notes, as regards the revocation of prosecutors from senior prosecutorial functions, that Section 3 of the Law on the Status of Judges and Prosecutors provides clear grounds for removal. These grounds are verified by the Judicial Inspectorate, who produces a report that is submitted to the SCM (Section for Prosecutors) for discussion and the prosecutor in question is notified and may provide objections. The decision for removal handed down by the President at the proposal of the Minister of Justice with the endorsement of the Section for Prosecutors of the SCM may be appealed to the Administrative and Fiscal Section of the High Court of Cassation and Justice, whose decision is final.

[9] https://www.ccr.ro/comunicat-de-presa-9-noiembrie-2022/ (in Romanian).
[10] https://www.presidency.ro/ro/media/decrete-si-acte-oficiale/decrete-semnate-de-presedintele-romaniei-klaus-iohannis1668520683

58. Overall, GRECO acknowledges that the appointment procedure has been made more transparent and that criteria for the appointments and removal of prosecutors from the most senior positions have been established. However, it remains to be seen in practice whether the SCM has been given a stronger role in this procedure.

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

Recommendations issued in the Rule 34 Ad hoc Report of June 2019

Rule 34 Recommendation i

60. *GRECO recommended that i) the impact of the changes on the future staff structure of the courts and prosecution services be properly assessed so that the necessary transitional measures be taken and ii) the implementing rules to be adopted by the Superior Council of Magistracy for the future decisions on appointments of judges and prosecutors to a higher position provide for adequate, objective and clear criteria taking into account the actual merit and qualifications.*

61. GRECO recalls that both part (i) and part (ii) of this recommendation were partly implemented in the previous Compliance Report. The basis for this recommendation were the several hundreds of amendments made to the Law on the Status of Judges and Prosecutors, to the Law on Judicial Organisation and to the Law on the Superior Council of Magistracy (SCM). The combined effect of these amendments was expected to have a significant impact on the workforce and the general capacities of courts and prosecutorial bodies, notably risks of drainage in the magistracy and of arbitrariness in promotions – and no transitional period was foreseen. GRECO noted, in its previous Compliance Report, that new draft regulations were underway, *inter alia*, removing the early retirement system and the prolongation of traineeships, leading to the recommendation being partly implemented.

62. The authorities now indicate, as regards part (i) of the recommendation (which concerns the issue of the early retirement system and the length of traineeship for trainee judges and trainee prosecutors), that the provisions regarding the early retirement system (introduced by amending Article 82, paragraph (3) of Law on the Status of Judges and Prosecutors)[11] were repealed by Article I of Law no. 86/2021.[12]

63. The authorities also indicate that the new Law on the Status of Judges and Prosecutors provides that the length of the traineeship for trainee judges and trainee prosecutors is of four years instead of six years (Article 44(1) one year of training in addition to the three years of studies at the National Institute of Magistracy). During this traineeship, they will be obliged to continue their professional training under the coordination of a specific judge/prosecutor (Article 44(2)).

64. The authorities refer, for part (ii) of the recommendation (promotion of judges and prosecutors to higher positions) to the adoption by the SCM of two regulations on the promotion of judges and prosecutors (Decision no. 1.348 of 17 September 2019 of the Section for Judges of the SCM (approving the *Regulation on the organisation and conduct of the competition for the promotion of judges*) and Decision no. 681 of 23 July 2019 (for the approval of the *Regulation on the organisation and conduct of the competition for the promotion of prosecutors in execution positions*)). They state that the criteria provided by the Regulations taken into account during the procedures regarding the promotion of judges and prosecutors, are based on objective and clear elements. There are evaluation criteria (Article 43(1), Article 45(1)) that apply to the various stages in the selection procedure of both "on the spot" and "effective promotions". For a candidate to be declared admitted, s/he has to obtain a specific number of points/grades. The total score of each candidate is published on the website of the SCM and the National Institute for Magistracy and can be appealed to

[11] The early retirement system was introduced through the Law 242/2018 (by amending Art. 82 para (3) of the Law on the Status of Judges and Prosecutors) and postponed until January 2022 through Emergency Ordinance no. 92/2018.

[12] Law no. 86/2021 regarding the amendment of Art. I point 142 from Law no. 242/2018 for amending and supplementing Law no. 303/2004 on the Status of Judges and Prosecutors (magistracy), as well for repealing Art. V from Emergency Ordinance no. 92/2018 for amending and completing several normative acts in the field of justice.

the SCM's Section of Judges. The final results are published and presented to the SCM's Section of Judges for validation. Under the Regulations for the promotion of prosecutors, largely similar principles and conditions apply.

65. On the basis of these two Regulations, seven competitions were organised for judges (two are still on-going) and five for prosecutors in the period between 2019 and 2022. This has led to 1218 judges and 642 prosecutors obtaining a higher position so far.

66. GRECO takes note of the information provided by the Romanian authorities. As regards part i) of this recommendation, among other things, the authorities refer to the new Law on the Status of Judges and Prosecutors, which has ended the early retirement system for judges and prosecutors, which is to be welcomed. GRECO also notes that the traineeship period for judges and prosecutors has been shortened to four years in total. Consequently, part (i) of the recommendation has been dealt with in a satisfactory manner. As for part (ii) of the recommendation, the two Regulations on the organisation and conduct of the competition for the promotion of judges and of prosecutors (Decision no. 1.348 and Decision no. 681 – both made available to GRECO) set out criteria for appointments to higher positions. These criteria go in the right direction. Furthermore, the authorities have provided data showing that a large number of judges and prosecutors have been promoted under the new criteria. It can therefore be concluded that this part of the recommendation has also been dealt with in a satisfactory manner.

67. GRECO concludes that Rule 34 recommendation i has been dealt with in a satisfactory manner.

Rule 34 Recommendation ii

68. *GRECO recommended that the creation of the new special prosecutor's section for the investigation of offences in the judiciary be abandoned.*

69. GRECO recalls that this recommendation was partly implemented in the previous Compliance Report. GRECO noted that the provisions of the Law on Judicial Organisation, which placed the *Section for the Investigation of Criminal Offences within the Judiciary* outside the hierarchical structure of the Romanian prosecution service, were ruled to be unconstitutional by the Constitutional Court. These provisions would have allowed the Section's Chief Prosecutor to revoke appeals lodged with higher instance courts by other prosecutorial services, including by the Prosecutor General, in corruption cases. GRECO noted that this deeply worrying development, criticised in its Follow-up report, had been reversed. GRECO also welcomed the elaboration of legislative proposals foreseeing the Section's formal dismantling.

70. The authorities now indicate that on 28 February 2022, Parliament adopted Law no. 49/2022 *regarding the dismantling of the Section for investigating criminal offences within the judiciary as well as for amending the Law no. 135/2010 regarding the Criminal procedure code*. The Law was challenged before the Constitutional Court, however, the Constitutional Court rejected the objection of unconstitutionality. Law no. 49/2022 was enacted and published in the Official Gazette no. 244 of 11 March 2022.[13]

71. According to Article 1(2) of Law no. 49/2022, the ongoing cases of the Section for investigating criminal offences within the judiciary will be sent by the Prosecutor's Office attached to the High Court of Cassation and Justice to the competent prosecutor's offices (within 60 days from the entry into force of this Law), which will

[13] https://legislatie.just.ro/Public/DetaliiDocument/252558

deal with them. Finalised cases will also be sent to the competent prosecutor's offices within 180 days from the entering into force of this Law. Criminal offences committed by: judges, prosecutors, members of SCM, judges from the High Court of Cassation and Justice, prosecutors from the Prosecutor's Office attached to the High Court of Cassation and Justice, judges from the courts of appeal and from the Military Court of Appeal and prosecutors from the prosecutor's offices attached to these courts, as well as by the judges from the Constitutional Court of Romania – must be investigated by the Section for criminal investigation and forensics within the Prosecutor's Office attached to the High Court of Cassation and Justice (Article 3(1)).

72. The prosecutors' offices attached to the courts of appeal are competent to prosecute the criminal offences committed by judges of first instance courts, tribunals, military tribunals, and by prosecutors from the prosecutors' offices attached to these courts (Article 3(2)). The prosecutors provided to investigate the cases mentioned above will be appointed by the General Prosecutor from the Prosecutor's Office attached to the High Court of Cassation and Justice, at the proposal of the SCM's Plenum, for a four year-term (procedure regulated by Law 49/2022). The appointment may be renewed for another four years.

73. According to Article 4(1), the above-mentioned prosecutors must fulfil the following requirements: have a professional rank that corresponds to the Prosecutor's Office attached to the High Court of Cassation and Justice; a seniority of at least 15 years as a prosecutor; have obtained a qualification of "very good" over the last two professional evaluations and have received no disciplinary sanction in the last three years; have an impeccable moral conduct and a significant professional experience in supervising or carrying out criminal investigations.

74. Prosecutors who are designated to investigate the cases provided by Article 3(2) must fulfil the following requirements: develop their activity within the section for criminal investigation within the prosecutors' offices attached to the courts of appeal; have acquired seniority of at least 12 years as a prosecutor; have obtained a qualification of "very good" over the last two professional evaluations and have received no disciplinary sanction in the last three years; have an impeccable moral conduct and a significant professional experience in supervising or prosecuting.

75. The level of "significant professional experience" required for prosecutors to be proposed for appointment will be assessed (taking into account the specificity and complexity of the cases investigated by the respective prosecutors) on the basis of information or documents relevant to their activity, requested by the prosecutors' offices.

76. Prosecutors that meet these requirements may submit their interest to the SCM, which verifies whether all the requirements have been met. It will also request information from the prosecutors' offices with regard to statistics on activities carried out over the past five years, including the rate of acquittals, refunds, convictions, possible notifications made by investigated persons and solutions provided, as well as any other relevant information. The SCM (substantive department) also requests information from the prosecutors' offices in which the prosecutor concerned worked over the past five years, from the courts and the Bar, with regard to conduct in the exercise of his/her professional duties, relations with prosecutors, judges, other staff from the prosecutor's office and court, lawyers, litigants, experts and interpreters, conduct in society, integrity, avoidance of conflicts of interest of any kind and impartiality, and any other relevant issues. The SCM (substantive department) also requests information from the Judicial Inspectorate with respect to the integrity and impartiality of the prosecutor in question.

77. After their appointment, the prosecutors (Article 3(1)) start working in the section for criminal investigation and forensics within the Prosecutor's Office attached to the High Court of Cassation and Justice. A maximum of 14 prosecutors may be appointed to the section for criminal investigation and forensics and a maximum of three prosecutors may be appointed to each prosecutor's office within the courts of appeal.

78. Within 60 days from the entry into force of Law no. 49/2022, the SCM Plenum will propose to the General Prosecutor of the Prosecutor's Office attached to the High Court of Cassation and Justice, the prosecutors to be appointed.

79. GRECO takes note that Law no. 49/2022 – of which it has received a translation of the relevant provisions for this recommendation – provides for the dismantling of the Section for the Investigation of Criminal Offences within the Judiciary and that no new section was created, in line with this recommendation. All open/pending/finalised cases were or are in the process of being transferred to existing structures capable and competent to be able to deal with them.

80. GRECO concludes that this Rule 34 recommendation ii has been implemented satisfactorily.

Rule 34 Recommendation iii

81. *GRECO recommended i) ensuring that the independence of the prosecution service is – to the largest extent possible – guaranteed by law, and ii) assessing the impact of the intended changes on the future operational independence of prosecutors so that additional safeguards be taken, as necessary, to guard against interference.*

82. GRECO recalls that this recommendation had not been implemented in the previous Compliance Report. GRECO took note of the elaboration of amendments to the Law on the Status of Judges and Prosecutors and to the Law on Judicial Organisation. As opposed to the current legislative framework, which reduced the prosecutorial independence to the settlement of solutions, the draft Law on the Status of Judges and Prosecutors expressly provided, in addition to the principle of stability, for the principle of independence of prosecutors, which was a welcome development. Likewise, the draft Law on Judicial Organisation proposed to remove the possibility for the hierarchically superior prosecutor to invalidate the solutions of the prosecutor when ungrounded. While these draft texts went in the right direction, GRECO could not conclude that the recommendation had been complied with, even partly because both drafts were – at the time – still at an early stage of development. GRECO was also concerned that the assessments of the impact of the currently effective legislation on the operational independence of prosecutors carried out by the SCM and the Prosecution Office attached to the High Court of Cassation and Justice appeared to contradict the general direction of the proposed legislative change and, instead of proposing additional safeguards, appeared to favour the existing system, which was at variance with the recommendation.

83. The authorities now indicate that the new Law on the Status of Judges and Prosecutors, the new Law on the SCM and the new Law on Judicial Organisation, adopted on 17 October 2022 and enacted by the President of Romania on 15 November 2022, provide relevant provisions for this recommendation. The Law on the Status of Judges and Prosecutors expressly provides, in addition to the principle of stability, for the principle of independence of prosecutors (Article 3(1)) and for their independence in carrying out and supervising criminal investigations and ordering solutions (Article 3(2)). The Law on Judicial Organisation provides, *inter alia*, that the prosecutors' offices are independent in relation to courts as well as to other public authorities (Article 66(4)). And the Law on the SCM provides that the SCM has the right (and obligation) to act *ex officio* to defend judges and prosecutors against

any act of interference in their professional activity that might affect their independence or impartiality (Article 31(1)).

84. GRECO notes that the legislative developments go in the direction of the first part of the recommendation (i.e. to provide stronger independence for prosecutors and their operations in the law). However, there has been no assessment of the input of the new laws on the Status of Judges and Prosecutors, on Judicial Organisation and on the SCM, as required by the second part of the recommendation, as these laws have just been enacted.

85. GRECO concludes that this Rule 34 recommendation iii has been partly implemented.

Rule 34 Recommendation v

86. *GRECO recommended that various amendments affecting the rights and obligations and the liability of judges and prosecutors for judicial errors be reviewed so as to ensure sufficient clarity and predictability of the rules concerned, and to avoid that they become a threat to the independence of the judiciary.*

87. GRECO recalls that this recommendation was not implemented in the previous Compliance Report. The new Law on the Status of Judges and Prosecutors, which was a draft at the time, foresaw important improvements to the regime of liability of judges and prosecutors for judicial errors. GRECO noted that, overall, the draft Law seemed to go in the direction of the recommendation. However, the draft Law was still at an early stage of development at the time and had not yet been submitted to Parliament.

88. The Romanian authorities now indicate that the new Law on the Status of Judges and Prosecutors, adopted on 17 October 2022, was enacted by the President of Romania on 15 November 2022. This Law eliminates the role of the Ministry of Finance, an institution which is placed outside the judicial authority, with regard to the procedure of the liability (property) of judges and prosecutors for judicial errors committed in bad faith or with gross negligence. A central role is now given to the SCM as the guarantor of the independence of the judiciary.

89. GRECO takes note of the legislative developments with respect to this recommendation excluding, *inter alia*, the Ministry of Finance from the liability procedure, which appears to be a step in the right direction. However, the authorities have not presented a review of the system and its rules and GRECO cannot assess the practice at this stage, as the Law on the Status of Judges and Prosecutors has just been enacted.

90. GRECO concludes that this Rule 34 recommendation v has been partly implemented.

III. CONCLUSIONS

91. **In view of the foregoing, GRECO concludes that Romania has implemented satisfactorily or dealt with in a satisfactory manner seven out of thirteen recommendations contained in the Fourth Round Evaluation Report, and three out of the five recommendations in the Follow-up to the Ad hoc (Rule 34) Report.**

92. More specifically, recommendations ii, v, vii, viii, x, xi and xii have been implemented satisfactorily or dealt with in a satisfactory manner. Recommendations i and xiii have been partly implemented and recommendations iii, iv, vi and ix remain not implemented.

93. Rule 34 recommendations i, ii and iv have been implemented satisfactorily or dealt with in a satisfactory manner and Rule 34 recommendations iii and v have been partly implemented.

94. With respect to members of parliament, a slight improvement has been noted with the introduction of a code of conduct for MPs with a system for its enforcement and efforts have been made to address the lifting of immunities of MPs. However, overall, the transparency of the parliamentary process needs to be further improved and the use of urgent procedures should be reduced. In addition, more needs to be done to address conflicts of interest and rules on how MPs engage with lobbyists need to be introduced. Finally, a system of independent counselling for MPs to seek advice on integrity matters needs to be put in place.

95. With respect to both judges and prosecutors, one main issue that has been dealt with is the dismantling of the special prosecutor's section for the investigation of offences in the judiciary, the creation of which was strongly opposed to by GRECO. Efforts have been made to increase the role of the Supreme Council of Magistracy and the Judicial Inspectorate in responding to risks for the integrity of judges and prosecutors through, *inter alia*, training and access to information. Efforts have also been devoted to the establishment of new legislation for judges and prosecutors to provide for their independence. The adoption of the new Law on the Status of Judges and Prosecutors, the new Law on Judicial Organisation and the new Law on the Superior Council of Magistracy by the Senate on 17 October 2022 and their enactment on 15 November 2022 by the President of Romania, are important steps forward, which needs to be followed up by a number of implementing measures.

96. GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.

97. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of Delegation of Romania to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii, iv, vi, ix and xiii of the Fourth Round Evaluation Report and recommendations iii and v of the Follow-up to the Ad hoc Report (Rule 34) Report) by 31 December 2023.

98. Finally, GRECO invites the authorities of Romania to authorise, as soon as possible, the publication of this report, to translate it into the national language and to make the translation public.