



Group of States against Corruption

Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Adoption: 21 June 2024

Publication: 5 July 2024

Public

GrecoRC4(2024)8

FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

SAN MARINO

Adopted by GRECO at its 97th Plenary Meeting
(Strasbourg, 17-21 June 2024)

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I. INTRODUCTION

1. The Second Compliance report assesses the measures taken by the authorities of San Marino to implement the recommendations issued in the [Fourth Round Evaluation Report on San Marino](#), dealing with "Corruption prevention in respect of members of parliament, judges and prosecutors". The Evaluation Report on San Marino was adopted at GRECO's 85th plenary meeting (25 September 2020) and made public on 29 September 2020, following authorisation by San Marino.
2. The [Compliance Report](#) was adopted by GRECO at its 91st Plenary Meeting (Strasbourg, 13-17 June 2022) and made public on 17 June 2022, following authorisation by San Marino.
3. As required by GRECO's Rules of Procedure, the authorities of San Marino submitted a Situation Report on measures taken to implement GRECO's recommendations. This report was received on 1 February 2024 and, together with information supplied subsequently, served as the basis for the Second Compliance Report.
4. GRECO selected Montenegro (with respect to parliamentary assemblies) and Switzerland (with respect to judicial institutions) to appoint rapporteurs for the compliance procedure. The rapporteurs appointed were Mr Boris VUKAŠINOVIĆ, on behalf of Montenegro, and Mr Olivier GONIN, on behalf of Switzerland. They were assisted by the GRECO's secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

5. GRECO addressed 14 recommendations to San Marino in the Evaluation Report. In its Compliance Report, GRECO concluded that San Marino had implemented satisfactorily or dealt with in a satisfactory manner ten of the fourteen recommendations contained in the Fourth Round Evaluation Report (i.e. recommendations i, iii, iv, vii, viii, ix, x, xi, xii and xiv). Of the remaining recommendations, three had been partly implemented (i.e. recommendations ii, vi and xiii) and one had not been implemented (i.e. recommendation v). Compliance with the four outstanding recommendations is examined below.

Corruption prevention in respect of members of parliament

Recommendation ii

6. *GRECO recommended that a code of conduct, accompanied by explanatory comments and/or concrete examples (including provisions and guidance on e.g. conflicts of interest, gifts and other advantages, misuse of information and of public resources, contacts with third parties and lobbyists, preservation of reputation, as well as limitations on certain activities), be adopted for the members of the Great and General Council and that it be brought to the knowledge of the public.*
7. GRECO recalls that this recommendation was partly implemented. The Great and General Council had adopted a Code of Conduct for its members, which was widely published. While an Annex to the Code of Conduct provided guidance on conflicts of interest, the Advisory Committee, once it became operational, would draw from its experience to develop further guidance on the interpretation and application of the Code of Conduct.
8. The authorities of San Marino refer to the Annex to the Code of Conduct, which provides explanatory comments and examples of conflicts of interest. To date, there have been two reported situations of conflicts of interest which have been covered by the examples described in the Annex. In one case, members of the Great and

General Council, who are employed by the Central Bank, abstained from voting for the appointment of the President of the Central Bank. In another case, the Advisory Committee, in reliance on Article 3 (2) of the Code of Conduct, considered that there was no conflict of interest when a member of the Great and General Council, who is employed in the private sector, participated in deliberations concerning economic and pension-related aspects of private sector employees, as the discussions concerned a broad category of persons.

9. GRECO welcomes that situations of conflicts of interest have been reported by members of the Great and General Council and recognises the involvement of and opinions given by the Advisory Committee. As required by Article 7 (7) of the Code of Conduct, GRECO encourages the Advisory Committee to draw from its current and future experience and produce guidelines on the application and interpretation of the Code of Conduct for distribution to each member of the Great and General Council. In these circumstances, GRECO maintains that this recommendation remains partly complied with.
10. GRECO concludes that recommendation ii remains partly implemented.

Recommendation v

11. *GRECO recommended that measures be taken to ensure effective supervision and enforcement of integrity-related rules (declaration requirements and standards of conduct) for parliamentarians.*
12. GRECO recalls that this recommendation was not implemented. The authorities had decided that, within the national context, given the close relationship between elected representatives and their voters, political responsibility would be effective enough to assure abidance by the integrity-related rules.
13. The authorities of San Marino report that self-regulatory instruments, such as the Code of Conduct, establish a set of moral principles that would constitute a model of conduct for members of the Great and General Council. The Code of Conduct is a living instrument which could be easily amended and updated to respond to any critical issues, remove any obstacles to its application and ensure greater effectiveness. Should the Great and General Council deem it necessary, and in the light of experience acquired in this area, it may promptly introduce sanctions in the Code of Conduct, which would apply in case of non-compliance with its provisions.
14. GRECO takes note of the information provided by the authorities and considers that the situation has remained the same. It underscores the importance of setting up clear and consistent procedures for monitoring breaches of integrity-related rules, investigating misconduct and punishing wrongdoers for the occurrence of any integrity-related breaches. The introduction and application of sanctions will boost accountability of parliamentarians and trust in the public that any wrongdoing will come to light and receive the appropriate sanction.
15. GRECO concludes that recommendation v remains not implemented.

Recommendation vi

16. *GRECO recommended (i) that training and awareness-raising measures be introduced for parliamentarians on corruption prevention and integrity-related matters and (ii) that a dedicated source of confidential counselling be established to*

provide advice on ethical questions and possible conflicts of interest in relation to their functions and duties.

17. GRECO recalls that this recommendation was partly implemented on account of the setting-up of an awareness-raising and advisory system, the operation of which would be ensured by the to-be established Advisory Committee.
18. The authorities of San Marino report that the Advisory Committee was set up on 4 July 2022, consisting of three full members and two alternate members. It has adopted the forms for the declaration of interests of members of the Great and General Council. Since its first meeting, the Advisory Committee has been consulted only once, on 15 March 2023, when it unanimously confirmed that, if a member of the Great and General Council obtained an advantage by virtue of being a member of a broad category of persons, that did not concern a conflict of interest (see also paragraph 8 above).
19. GRECO welcomes the constitution of the Advisory Committee. It considers that the need for parliamentarians to receive training and awareness-raising remains. Through such activities, parliamentarians will be informed of integrity-related matters and the possibility of seeking confidential counselling, not least because the Advisory Committee has provided advice to a member of the Great and General Council only once. In these circumstances, this recommendation remains partly complied with.
20. GRECO concludes that recommendation vi remains partly implemented.

Corruption prevention in respect of judges and/or prosecutors¹

Recommendation xiii

21. *GRECO recommended that (i) an updated code of conduct for judges, accompanied by explanatory comments and/or practical examples (with a particular emphasis on conflicts of interests and incompatibilities), be adopted and made easily accessible to the public; (ii) that it be coupled with support measures for its supervision and enforcement; and (iii) that dedicated training on ethics and integrity matters be offered on induction and at regular intervals thereafter.*
22. GRECO recalls that the first and second parts of this recommendation were implemented on account of the adoption of a Code of Ethics and the engagement of disciplinary liability for breaches of its provisions. However, as regards the third part of the recommendation, trainings and advisory services still awaited effective implementation.
23. The authorities of San Marino report that the training programme for 2024, as approved by Resolution No. 1/2024 of the Judicial Council, provides for the need for magistrates, especially *Uditori Commissariali*², to attend dedicated courses on professional ethics. Moreover, all magistrates will be required to attend two theoretical and practical seminars in 2024, dedicated to ethics, and organised by the Italian School for the Judiciary and the San Marino Legal Institute. The first seminar on "An Overview of the new Code of Ethics for San Marino magistrates" will be held on 23 October 2024, and the speakers will be the Head of the Court and the Scientific Director of the San Marino Legal Institute. The second seminar on "Disciplinary proceedings: cases and issues" will be organised on 11 December 2024 and the

¹ It is recalled that in San Marino prosecutors and judges belong to the same professional order of "magistrates".

² Pursuant to Constitutional Law no. 1/2021, *Uditori Commissariali* are trainee magistrates.

speakers will be a judge for extraordinary remedies in criminal matters and a judge of appeal for civil liability actions of magistrates.

24. In addition, the Judicial Council, on the recommendation of the Head Magistrate, has initiated four sets of disciplinary proceedings against magistrates for alleged breaches of the Code of Ethics. In the first set of proceedings, the concerned magistrate has been sanctioned with a reprimand; in the second with a censure, against which an appeal has been filed with the Constitutional Court (the Guarantors' Panel on the Constitutionality of Rules - *Collegio Garante della costituzionalità delle norme*). The investigation is ongoing for the remaining two sets of proceedings.
25. GRECO observes that disciplinary proceedings have been instituted against magistrates for alleged breaches of the Code of Ethics, which attest to its supervision and enforcement by the Judicial Council as well as the importance of the rules on ethics. It acknowledges that dedicated trainings on integrity and ethics have been scheduled to be provided to magistrates in December 2024, whereas no similar trainings appear to have been organised in 2023. GRECO encourages the authorities to pursue the organisation of trainings to magistrates on induction and at more regular intervals with vigour in the future. In these circumstances, GRECO considers that this recommendation remains partly complied with.
26. GRECO concludes that recommendation xiii remains partly implemented.

III. CONCLUSIONS

27. **In view of the foregoing, GRECO concludes that San Marino has implemented satisfactorily or dealt with in a satisfactory manner ten of the fourteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, three have been partly implemented and one has not been implemented.
28. More specifically, recommendations iii, vii, ix, x, xi and xiv have been implemented satisfactorily, recommendations i, iv, viii and xii have been dealt with in a satisfactory manner, recommendations ii, vi and xiii have been partly implemented, and recommendation v has not been implemented.
29. With respect to members of parliament, it is welcomed that the Advisory Committee has been constituted and has started giving opinions on situations of conflicts of interest. GRECO expects that the Advisory Committee, drawing from its experience, will issue guidelines on the interpretation and application of ethical and integrity rules, and will develop training and awareness-raising activities for parliamentarians. Effective supervision and enforcement of integrity rules, including the introduction of sanctions, has yet to be established.
30. As far as magistrates are concerned, only one recommendation remains outstanding, which requires more training on ethics and integrity to be offered on induction and at regular intervals.
31. The adoption of this Second Compliance Report terminates the Fourth-Round compliance procedure in respect of San Marino. The authorities of San Marino may, however, wish to inform GRECO of further developments regarding the implementation of the outstanding recommendations ii, v, vi and xiii.
32. Finally, GRECO invites the authorities of San Marino to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make this translation public.