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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

LUXEMBOURG

Adopted by GRECO at its 77th Plenary Meeting
(Strasbourg, 16-18 October 2017)

FOURTH
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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the Luxembourg authorities to implement the recommendations made in the Fourth Round Evaluation Report on Luxembourg (see paragraph 2), which deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. The Fourth Round Evaluation Report on Luxembourg was adopted at GRECO's 60th plenary meeting (21 June 2013) and made public on 1 July 2013, following authorisation by Luxembourg ([Greco Eval IV Rep \(2012\) 9E](#)). The corresponding Compliance Report was adopted at GRECO's 68th plenary meeting (19 June 2015) and made public on 1 July 2015 ([Greco RC-IV \(2015\) 5E](#)).
3. In accordance with GRECO's Rules of Procedure, the Luxembourg authorities submitted a Situation Report with additional information about measures taken to implement the 13 outstanding recommendations which, according to the Compliance Report, had either not been implemented or were only partially implemented. The Situation Report was received on 26 April 2017 and together with information communicated subsequently served as a basis for this Compliance Report.
4. GRECO selected 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 Ernst GNAEGI, for Switzerland, and Mr Georgi ROUPCHEV, for Bulgaria. They were assisted by GRECO's Secretariat in drafting the Compliance Report.

II. ANALYSIS

5. GRECO addressed 14 recommendations to Luxembourg in its Evaluation Report. In its subsequent Compliance Report, GRECO concluded that recommendation iii had been implemented satisfactorily, recommendations i, ii, iv, v, vii, ix, xi and xii had been partly implemented and recommendations vi, viii, x, xiii and xiv had not been implemented. Compliance with the 13 outstanding recommendations is therefore assessed below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that i) as intended with the current draft Code of Conduct, a set of ethical rules and standards is 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.*
7. GRECO notes that this recommendation had been partly implemented. Measures in respect of the first part of the recommendation had been taken, since a Code of Conduct for Luxembourg MPs relating to financial interests and conflicts of interest had been adopted by the Chamber of Deputies on 16 July 2014 and appended to the Rules of Procedure. It had entered into force on 14 October 2014 and pursuant to Rule 167 of the said Rules, MPs must comply with its provisions.¹ However, no measures had been taken to implement the second part of the recommendation, even though Article 9 of the Code also provides for the adoption of an implementing

¹ "Rule 167.- Members shall comply with the provisions of the Code of Conduct for Members of Parliament relating to financial interests and conflicts of interest as set out in the Appendix to the Rules, of which it forms part.", cf. publication in the official gazette, Memorial A No.201 of 29 October 2014, <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2014-201-fr-pdf.pdf>.

instrument by the Bureau. GRECO had emphasised the importance of such an instrument owing to the economy of language which characterises the Code.

8. The Luxembourg authorities now indicate that at the meeting held on 21 September 2016, the Bureau of the Chamber of Deputies decided to draw up an implementing instrument to clarify some of the provisions of the Code of Conduct, particularly in the light of the annual report of the Advisory Committee on MPs' conduct. The discussion of such a text is expected in October 2017 and its final adoption could take place in November.
9. GRECO notes that there have been no tangible further developments regarding the second part of the recommendation, despite the decision taken by the Bureau of the Chamber to draw up an implementing instrument (which might be adopted in the forthcoming weeks).
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.
11. *GRECO 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).*
12. GRECO notes that this recommendation had been partly implemented. The fact that the declaration system now applied to all parliamentarians under the 2014 Code (and the improvements advocated under recommendation i) was an important – yet incomplete – step forward. Concerning more specifically the second part of recommendation ii, the advisability of the measures advocated had been discussed during working meetings held between February and May 2014, even though it was ultimately decided not to extend to family members the obligation to declare assets, a decision which GRECO regretted. Concerning the first part of the recommendation, which called for specific changes as regards the extent of personal data to be published, MPs had not wished to introduce such changes, preferring instead a declaratory system modelled on that of the European Parliament.
13. The Luxembourg authorities indicate that there have been further consultations and discussions within the Institutions and Constitutional Review Committee with a view to reaching an agreement on possibly extending the declaration system for MPs in line with the recommended improvements. Unfortunately, despite the efforts of the Chair of the said Committee, it has not been possible to obtain majority support for broadening the scope of declarations of assets given that the majority of MPs were still opposed to the idea.
14. GRECO regrets the lack of further progress. It reiterates the observations made in the Evaluation Report and First Compliance Report as regards the inadequacy and imprecision of the information that has to be provided on financial interests, assets and income, and the sometimes excessive margin of appreciation left to the declarant.
15. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iv.

16. *GRECO 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.*
17. GRECO notes that this recommendation had been partly implemented thanks to some improvements as a result of the Code introduced in 2014. The Chamber of Deputies had acknowledged that influence could also be exerted on the Chamber (not the case at the time of the visit) and, under Article 5 of the Code, contacts with third parties (other than committee hearings or official meetings) must now be held outside the Chamber and must be disclosed in committee if they have a direct impact on legislation under discussion (Article 5). GRECO had deemed that these improvements were insufficient.
18. The Luxembourg authorities now report that this recommendation has been the subject of intense discussions within the Institutions and Constitutional Review Committee with a view to finding a solution for dealing with unofficial contacts with third parties which do not directly concern legislation being discussed. However, MPs consider that it is nigh-on impossible to prevent ordinary contacts of a political nature that are not linked with a bill or legislative proposal. According to them, implementation of GRECO's recommendation is highly problematic given the very broad definition of "interest group". In view of these practical difficulties, and for reasons of legal certainty, MPs preferred to continue with the system currently in place.
19. GRECO regrets that no further measures have been taken to manage MPs' contacts with third parties better. It points out that, contrary to what the Chamber appears to believe, the aim of this recommendation is not to prevent such contacts but to render them more transparent and more able to withstand influences which may target different areas of parliamentary work.
20. GRECO concludes that recommendation iv remains partly implemented.

Recommendation v.

21. *GRECO recommended the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of Conduct for parliamentarians.*
22. GRECO notes that this recommendation was considered partly implemented to date. A new monitoring mechanism, intended to be comprehensive and consistent, had been introduced in July 2014 to ensure compliance with the provisions of the Code of Conduct. It involved an advisory committee independent of MPs and placed restrictions on the discretionary powers of the President of the Chamber. However, these measures were still insufficient, and GRECO stressed, in particular, that the Code did not entrust the monitoring bodies with responsibility for checking the accuracy of declarations, and no details were given regarding the conditions/means for overseeing parliamentarians.
23. The Luxembourg authorities indicate that the Institutions and Constitutional Review Committee recommends that the Chamber of Deputies be given the necessary means of oversight to detect false or inaccurate declarations. Accordingly, the said Committee suggests that the implementing instrument in respect of the Code of Conduct grant the Advisory Committee on MPs' conduct the right to request further information in cases of suspected non-compliance with the Code. Furthermore, the Committee considers that the registry of the Chamber of Deputies should be entitled to draw MPs' attention to the need to comply with the provisions of the

Code. This idea will be discussed again in more detail when the aforementioned implementing instrument is being drawn up (cf. recommendation i.).

24. GRECO notes the proposals of the above-mentioned committee on increasing the control capacities of the Chamber of Deputies. It points out that effective oversight is just as important as having adequate rules on integrity and absolutely essential when it comes to the content of declarations of interests, income and assets. The possible follow-up given to the committee's proposals shall be examined in greater detail but for the time being, Luxembourg does not report on further concrete steps forward.
25. GRECO concludes that recommendation v remains partly implemented.

Corruption prevention in respect of judges

26. By way of introduction, the Luxembourg authorities indicate that on 16 March 2017 the Ministry of Justice presented the Government's proposals for reforming the justice system in the context of the constitutional review. Whereas until now the plan had been to reform the justice system in line with GRECO's recommendations with the introduction of a new constitution – a slow and fastidious process which is still underway and will probably take another few years, culminating in a referendum – the part relating to the justice system has now been separated from the rest of the constitutional reform project, making it possible to progress quite quickly.
27. In particular, as part of the reform of the justice system, a Supreme Judicial Council (CJS) will be established – cf. recommendations vi and xiv below – and the independence of the prosecution service (which already existed *de facto*) will be enshrined in law – cf. recommendation xiii. Preliminary draft bills implementing these two historic projects are being elaborated in the Ministry of Justice and no date has been set as yet for their formal submission to Parliament.

Recommendation vi.

28. *GRECO 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.*
29. GRECO notes that this recommendation was considered not to have been implemented, and that on account of the early elections in October 2013, it would be necessary to await adoption of the draft law establishing the National Judicial Council (NJC) responsible for implementing this recommendation.
30. The Luxembourg authorities point out that the judicial reforms were delayed by the constitutional review process taking place at the same time. As indicated in the introductory remarks in paragraphs 26 and 27, it was decided in March 2017 to separate the judicial reform from the constitutional reform. The Government therefore plans to table a bill in Parliament but a precise date has not been set as yet. It is aimed at setting up a Supreme Judicial Council (CSJ) (rather than a National Judicial Council), which will be responsible, in particular, for managing and supervising the recruitment and training of judges and prosecutors ("*magistrats*"). It will also propose appointments to judicial posts. In line with GRECO's expectations, the procedures governing promotions in respect of the different categories of judges and public prosecutors, including their access to the posts of president or vice-president of a court and State Prosecutor, will be reviewed and made more transparent in this context.

31. The authorities explain that the CSJ will be responsible for communicating in matters within the scope of its remit and powers, including in cases involving harm to the image of the justice system or the reputation of a member of the judiciary. The CSJ will consist of seven members, including the heads of the three judicial corps (President of the High Court of Justice, President of the Administrative Court, Principal State Prosecutor) and a judge or prosecutor elected by these peers. The Chamber of Deputies will appoint a leading academic and a prominent figure with professional experience relevant to the work of the CSJ. Lastly, a lawyer will be appointed jointly by the Bar Councils of Luxembourg and Diekirch.
32. GRECO takes note of the information above and the intention to reform the justice system without waiting until the end of the constitutional review process, which is still by no means over. On the whole, the draft bills seem to go in the right direction, but the situation will need to be studied in more detail once the law has been passed. For the time being, the drafts are still at an early stage of preparation in the Ministry of Justice (see paragraph 27) and many options are still open, as pointed out in the latest comments of the authorities. In the absence of tangible developments, GRECO cannot consider that the present recommendation has been implemented even partly. Incidentally, GRECO notes that only one of the seven members of the future Supreme Judicial Council (CSJ) would be appointed by his or her peers, which is contrary to the standards applied to the advisory bodies of European judges at the Council of Europe and GRECO's practices with respect to Fourth Round evaluations. In principle, at least half of the members of the relevant body should be elected or appointed by their peers. It would appear that this matter has also been the subject of controversy in Luxembourg.²
33. GRECO concludes that recommendation vi remains not implemented.
Recommendation vii.
34. *GRECO recommended 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.*
35. GRECO notes that this recommendation was considered to have been partly implemented. An email dated 11 May 2015 had reminded judges of some of the provisions of the law on the organisation of the courts (LOJ), according to which a) the High Court of Justice has a supervisory role in respect of the two district courts and the magistrates' courts and b) the presidents of these courts are responsible for ensuring compliance with the professional rules of conduct. However, GRECO was expecting more new measures, concerning more courts, in response to the different underlying concerns expressed in paragraphs 112 and 113 of the Evaluation Report, namely the need to strengthen the position of court presidents and their general supervisory role within the courts and the need to harmonise workload management, etc. The establishment of a self-governing body for the justice system seemed to be a key prerequisite for any more ambitious reform.
36. The Luxembourg authorities mainly refer to the content of certain provisions of the law on the organisation of the courts (LOJ), namely a) Article 67 on the role of the High Court of Justice in overseeing the two district courts and the magistrates' courts; b) Articles 155 and 157 on disciplinary misconduct and the applicable sanctions (warning given automatically or at the request of the public prosecution service by the different court presidents to judges under their responsibility); c) Article 165 which states that "the president of the court, the presidents of the district courts, public prosecutors, and chief magistrates shall notify the Principal

² <http://paperjam.lu/news/remous-dans-la-magistrature>

State Prosecutor of any facts that have come to their knowledge which could give rise to disciplinary action against a judge or magistrate". The Luxembourg authorities consider that this is a very clear indication of the concern to harmonise how the different courts are managed. They also refer to a judgment of 13 January 2017 of the High Court of Justice ordering a judge to retire on account of serious disciplinary misconduct and other failings. The plan to set up a Supreme Judicial Council would also be in line with this recommendation.

37. GRECO notes the absence of new measures. The aforementioned provisions of the LOJ concerning the disciplinary system were already taken into account in the 2013 Evaluation Report. Similarly, the fact that the High Court of Justice recently imposed a disciplinary sanction, for serious misconduct, is not in itself the sign of a new court management policy in response to the concerns raised in paragraphs 112 and 113 of the Evaluation Report.³ As emphasised by GRECO, management improvements would be a way, in particular, of reducing certain risks relating to the handling of sensitive cases. Luxembourg must pursue its efforts.

38. GRECO concludes that recommendation vii remains partly implemented.

Recommendation viii.

39. *GRECO recommended clarifying the status of the various rules on recusal applicable to members of the courts, and ensuring their uniform application to the various categories of persons required to decide cases, whatever the subject-matter.*

40. GRECO notes that this recommendation was considered not to have been implemented. The Luxembourg authorities had claimed that the situation regarding these questions was satisfactory, with no need for any changes, and had provided a 27-page table summarising the current rules governing recusal. Nonetheless, GRECO had reiterated its findings set out in paragraph 119 of the Evaluation Report: recusal rules dispersed in several different texts and unclear even for practitioners, rules that are inconsistent, etc. In the light of the information provided by Luxembourg, GRECO also noted that *"(t)he information and the summary table now submitted by the authorities do not really answer GRECO's expectations. On the contrary, they confirm that there are deficiencies in some cases: for example, no mention is made of any rules relevant to the ordinary courts of appeal and of cassation. In the case of the administrative courts, Article 24 of the Law of 21 June 1999 regulating the procedure before these courts merely contains a general reference to the applicability of the rules on recusal in civil matters, as can also be seen from the table supplied by the Luxembourg authorities. However, these issues are addressed by the New Code of Civil Procedure not just in Articles 521 et seq., but also – under different rules – in Articles 125 et seq. Furthermore, these matters are also dealt with by Articles 105 et seq. of the law on the organisation of the courts (LOJ), which may apply both to judges in general and to prosecutors. In fact, the Luxembourg authorities refer to the LOJ in the information they have provided in response to recommendation x below, which concerns a neighbouring matter. (...) The Luxembourg authorities have so far not mentioned any initiative at this level, and the summary table provided cannot constitute an alternative response in view of the nature of this document and the various issues that remain outstanding."*

³ The Report refers to a) the lack of a periodic appraisal system based on common, objective elements, b) the lack of a co-ordinated management and supervision policy for presiding judges and concerning supervision by the High Court of Justice, c) court management perceived as lacking in transparency and inefficient; for example, the rotating system prescribed by law for judges is not applied in practice, and judges apply their own reading of the case-law, with practices and procedures (including length of proceedings) apparently varying to abnormal degrees between divisions of the same court; the working culture seems to be based on independence taken to extremes and a refusal among colleagues to confront each other; the criteria for selecting certain judicial auxiliaries would not appear to allow for sufficiently regular renewal to avoid risks of collusion.

41. The Luxembourg authorities explain that the basic provisions governing recusal are Articles 521 to 539 of the New Code of Civil Procedure (NCPC). Moreover, the NCPC also contains special provisions governing the lower courts (magistrates' courts) (Articles 125 to 128 NCPC). Within the lower court system, there are in addition two kinds of special tribunals involving assessors who are not professional judges. While the social security tribunals have their own rules, recusal in employment tribunals is governed by Articles 521 et seq. of the NCPC, to which reference is made in the LOJ. Of course, the LOJ specifically mentions the assessors who are not professional judges and who do not exist in the ordinary courts.
42. The authorities consider that it is therefore not entirely accurate to say that the rules on the recusal of judges are dispersed in several texts or contradictory. On the contrary, there is a set of rules under the NCPC (Articles 521 to 539) that apply to more than 80% of judges, and there are two separate regimes for two specialised courts, namely the magistrates' courts and social security tribunals (the latter come under Articles 11 and 12 of the Grand-Ducal Regulation, as amended on 24.12.1993⁴). These provisions are the ones applicable also to members of the Appeal Court and Cassation Court, even though the structure of the different titles and chapters of the NCPC can indeed lead to some confusion (but their general logic and articulation must be borne in mind). The authorities add that the recusal of judges concerns the relationship between judges and parties and is both a right and a procedural safeguard for the latter, who may request recusal. It therefore makes perfect sense from the point of view of legislative drafting for this provision to be included in the NCPC. However, the law on the organisation of the courts (LOJ) and, in particular, Articles 105 et seq. of that law mentioned in the report concern the family or matrimonial links between judges themselves and between judges and lawyers and how they affect the organisation of the courts. It therefore also makes perfect drafting sense that these provisions, which have nothing to do with recusal, should be included in the LOJ and not in the NCPC. The same distinction between recusal and family links also applies in relation to the employment tribunals (Article 56-2 LOJ).
43. Concerning the administrative courts, the authorities explain that the provisions on recusal are merely references to the basic text governing recusal, in other words, the NCPC (see above). They point out that the applicable provisions are Articles 521 et seq. (and not Articles 125 et seq.) of the NCPC since the administrative tribunal is considered equivalent to the district court, from the viewpoint of jurisdictional degree.
44. Lastly, the authorities explain that given the special role of the Public Prosecutor in the judicial system, Article 524 of the NCPC also specifies the cases in which the provisions on recusal apply to the Public Prosecutor.
45. GRECO takes note of the information above. It appreciates the clarifications, explanations and additional information given by the authorities. The latter also point out, during the discussion of the present report, that consultations were held with the various courts in order to collect and discuss the above information, which in itself contributed to achieving the objectives of the present recommendation (the country counting only about 200 magistrates). Above all, the new training courses – cf. recommendation xii – already take into account the subject of recusals and a growing number of practitioners are thus giving an opportunity to address it in that context. Overall, Luxembourg has thus taken satisfactory measures in response to this recommendation. In due course, Luxembourg may nonetheless wish to review the consistency of rules on withdrawal / recusal based on the level of parental relationship; sometimes these refer to “relatives up to the 4th degree” and

⁴ www.legilux.public.lu/rgl/1993/A/2320/1.pdf

sometimes to “uncle / nephew” and these divergences would result from their drafting at different periods.

46. GRECO concludes that recommendation viii has been implemented satisfactorily.

Recommendation ix.

47. *GRECO recommended 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.*

48. GRECO notes that this recommendation was considered partly implemented. The problem underlying this recommendation is that although the 1979 General Civil Service Regulations also apply to judges and prosecutors, it is not possible to say to what extent exactly and, in particular, whether that is the case of the provisions of the said Regulations on managing conflicts of interest and systematically declaring certain secondary activities or interests (Articles 14 and 15 of the Regulations). The replies to the questionnaire sent in by Luxembourg before the 2013 on-site visit had not contained any information about the rules applicable with respect to conflicts of interest and referred to the special rules on recusals and incompatibilities that apply to judges, with apparent confusion between the two. In meetings during the on-site visit, it had not been possible to obtain satisfactory answers either, and generally speaking little was known about the actual content of the General Civil Service Regulations.

49. In the First Compliance Report, a partial improvement had been noted as a result of some legislative clarifications. Following amendments made by the law of 25 March 2015, in particular to the 1979 law laying down the General Civil Service Regulations, Article 1, paragraph 2, of the said Regulations had been modified as follows: *“The present Regulations apply also to magistrates, judicial assistants and justice personnel who are civil servants, with the exception of articles 4, 4bis, 4ter and 42, subject to the applicability of provisions contained in the law on the organisation of the courts, the law on the organisation of the administrative courts and the law on judicial assistants concerning the recruitment, filling of posts, training, non-removability, incompatibilities, place of residence, leave, holidays, the organisation of hearings and discipline.”* GRECO considered that further clarifications were needed specifically with regard to Articles 14 and 15 of the Regulations and how they apply to judges and prosecutors.

50. The Luxembourg authorities refer again to the amendments made in March 2015 to the General Civil Service Regulations and to the content of Article 1 as quoted above. They now confirm that Articles 14⁵ and 15⁶ of the said Regulations⁷ – which

⁵ Under this article, civil servants are banned from a) engaging in any secondary activity incompatible with their function, on behalf of the State, a municipality, an association of municipalities, a national or international public institution, a private company or private individual; b) holding any interest, personally or via an intermediary, in a company under the control of their administration or service, or related to their administration or service. The article also lays down a requirement to notify the “ministry” of any professional activity carried out by their spouse or partner, with the exception of professional activities carried out in the service of the State (with consequences possibly including change of residence); c) engaging in any commercial, craft or industrial activity, liberal profession or gainful employment in the private sector without the prior authorisation of the relevant ministry (except for activities such as scientific research, publishing, or trade union activity); d) taking part in the management, administration or supervision of a commercial undertaking or industrial or financial company without the authorisation of the ministry concerned; e) engaging in any gainful employment in the national or international public sector, without the authorisation of the ministry concerned.

⁶ Under this article, civil servants are obliged to inform their line manager of any cases in which they may have a personal interest which may compromise their independence (which can result in their removal from the case).

remain unchanged – are to be interpreted as applying also to “*magistrats*” (judges and prosecutors) and judicial assistants. Moreover, this article is not new and was already in the Regulations as from 1979, albeit in a different form. It applies to all “*magistrats*”, including those of the Constitutional Court, military courts and social security tribunals, except, of course, for the non-professional assessors in the social security tribunals.

51. GRECO welcomes the explanations given above. It remains to be seen which concrete consequences (for example in the field of training and the content of amendments) will be drawn from the fact that Articles 14 and 15 of the General Civil Service Regulations apply to judges, prosecutors and judicial assistants, and for which categories of persons exactly, since judges enjoy guarantees of non-removability. Particularly with regard to parallel activities such as participation in arbitration, situations that can give rise to a conflict of interest on account of the spouse’s or partner’s activity and/or when assigning cases to experts or professionals responsible for judicial liquidation/receivership measures.

52. GRECO concludes that recommendation ix remains partly implemented.

Recommendation x.

53. *GRECO recommended 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.*

54. GRECO notes that this recommendation was considered not to have been implemented to date, for the reasons set out in detail in the previous Compliance Report.

55. The Luxembourg authorities indicate that the rules on incompatibilities must be clear, consistent and comprehensible. Apart from the rules that apply under the General Civil Service Regulations (see recommendation ix), such rules will be defined in the law establishing the Supreme Judicial Council (cf. paragraphs 26 and 27). For the time being, the text remains an internal document and its content cannot be communicated.

56. GRECO notes the absence of any new developments to date, even though Luxembourg’s present intention to pass legislation is laudable.

57. GRECO concludes that recommendation x has not been implemented.

Recommendation xi.

58. *GRECO recommended that information on disciplinary procedures and the sanctions applied in respect of persons called upon to sit in court or work for the prosecution service be kept in a systematic and centralised manner.*

59. GRECO notes that this recommendation was considered to have been partly implemented. The Principal State Prosecutor had set up a special register for systematically keeping files on disciplinary cases involving judges and prosecutors, including the grounds for bringing proceedings and the outcome (it is the prosecution service which is responsible for starting disciplinary procedures in the most serious cases). It seemed, however, that some information was still not recorded, namely the warnings issued by the presidents of courts or chief prosecutors.

⁷ The General Civil Service Regulations are published on the Civil Service website: <http://www.fonction-publique.public.lu/fr/statut/index.html>

60. The Luxembourg authorities refer to the content of Articles 155 et seq. of the law on the organisation of the courts⁸ with regard to disciplinary cases involving judges and prosecutors. They also indicate that a memorandum of 2 June 2016 sent to the office of staff under the authority of the Principal State Prosecutor reiterates and states unequivocally that the latter is required to keep a central register containing, in addition to information about the career of each judge or prosecutor since recruitment, data concerning all disciplinary proceedings brought against them. The memorandum states that: *"A national register of all disciplinary proceedings which have been brought against a judge or prosecutor will also be kept in the same department; access to the register shall be direct and managed in its entirety by the same department; any complaints and any administrative proceedings or even judicial inquiries will be included in this national register so that all proceedings pertaining to a judge or prosecutor can be managed in an efficient and centralised manner."*
61. The authorities explain that the consequence of this is that the central authority can at any time access information about the professional situation of a judge or prosecutor, especially since in the event of disciplinary proceedings, all data about the proceedings go through the same office and the same department which centralises all the information. In their latest comments, the authorities point out that the above memorandum was complemented (and officialised) on 2 October 2017 with a view to spelling out clearly that information is to be kept irrespective of the outcome of disciplinary proceedings and that this refers also to warnings possibly issued by the heads of courts and prosecutorial services.
62. GRECO appreciates the fact that a memorandum dated 2 June 2016 was sent to the departments of the prosecution service responsible for managing files on judges and prosecutors concerning the keeping of a special register of all disciplinary proceedings and all complaints received. GRECO points out that it is important for the departments responsible for integrity policies to be able, where necessary, to produce an accurate picture of disciplinary cases and the risks involving judges and prosecutors in practice, based on reliable and comprehensive data. Such data are also important for assessing the extent to which disciplinary cases are handled in a uniform manner. GRECO therefore welcomes that the memorandum was updated on 2 October 2017 to include all necessary clarifications.
63. GRECO concludes that recommendation xi has been implemented satisfactorily.
- Recommendation xii.
64. *GRECO recommended that dedicated training programmes be established for the various persons required to sit in court or to work for the prosecution service, focusing on the questions of judicial ethics, conflicts of interest (including their management, recusal and withdrawal), the rules on gifts and other advantages, relations with third parties and the various other measures for preventing corruption and preserving integrity generally.*
65. GRECO notes that this recommendation was considered to have been partly implemented. The information given by Luxembourg showed that since October 2014, the standard training of judicial assistants (the judicial system's pool of future judges and prosecutors) had included a separate module specifically on corruption and professional ethics. GRECO once again stressed the need for similar measures in the context of in-service training for judges and prosecutors already in office.

⁸ Cf. <http://www.justice.public.lu/fr/legislation/textes-organisation-judiciaire/index.html>

66. The Luxembourg authorities indicate that it is planned, in particular, to encourage Luxembourg judges and prosecutors to attend relevant training courses abroad, in France or elsewhere; for example, in an email dated 3 March 2016, the Prosecutor General's Office invited all interested judges and prosecutors to take part in the 2016 Annual Forum on combating corruption in the European Union held on 21 and 22 April 2016 in Trier (Germany). Above all, a memorandum dated 2 June 2016 was sent to all judges and prosecutors informing them that since October 2014, there has been a special course for judicial assistants and that it has been decided, in order to comply with GRECO's recommendations of June 2015, that all judges and prosecutors must attend the special courses for judicial assistants on topics such as ethics in the justice system, conflicts of interest (including how to manage them, recusal and withdrawal), the rules on gifts and other advantages, and relations with third parties. In relation to the judicial year 2016/2017, nearly 9% of staff (magistrates) have thus attended training sessions on the deontology, corruption, conflicts of interest. It is planned to maintain participation at such a high level in future (the objective was already reached for the judicial year 2017/2018).
67. GRECO notes with satisfaction that measures are now being taken with a view to ensuring that all judges and prosecutors take part in training/awareness-raising activities on the topics of integrity and professional ethics. As already pointed out in the previous Compliance Report, the on-site visit had brought to light a great deal of ignorance about the rules and the fact that the rules themselves varied and were unclear. The efforts made in the field of awareness-raising are thus instrumental.
68. GRECO concludes that recommendation xii has been implemented satisfactorily.

Corruption prevention in respect of prosecutors

Recommendation xiii.

69. *GRECO recommended that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service's decisions be completed.*
70. GRECO notes that this recommendation had not been implemented. In the context of the constitutional review that began in 2009⁹ and the governmental agreement of December 2013, there were express provisions for reforming the Public Prosecution Service to guarantee its independence from political influence, in particular by abolishing ministerial instructions in specific cases. GRECO also stressed that there were certain positive practices adopted in terms of instructions within the prosecution service (submitting them in writing and entering them in the case file, possibility for the addressee to challenge the instruction, etc.) which deserved to be enshrined in law.
71. The Luxembourg authorities provide details about the aims of the reform currently taking place separately from the constitutional review (cf. paragraphs 26 and 27). With the draft law which will be tabled in Parliament, the plan is to revise the statutory provisions establishing a) the power of the Minister of Justice to order the Principal State Prosecutor to start legal proceedings or refer relevant written submissions to the competent court, b) the functioning of the prosecution service under the authority of the Ministry of Justice, c) the power of the Ministry of Justice, through the Principal State Prosecutor, to refer all acts whereby judges are alleged to have exceeded their powers by infringing laws and regulations to the Court of Cassation, or d) the possibility, depending on the seriousness of the case,

⁹ For the full legislative file, see: <http://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=6030>

for the Ministry of Justice to order the Principal State Prosecutor to serve injunctions, as required, on prosecutors guilty of improper conduct.

72. However, the prosecution service will remain a hierarchical organisation, while public prosecutors will continue to perform their duties in accordance with the law. Accordingly, the Principal State Prosecutor will retain authority over all public prosecutors, as well as the power to order public prosecutors to bring proceedings or to refer relevant submissions to the competent court.
73. GRECO notes the work undertaken with a view to tabling a bill, which appears to go in the direction suggested by the present recommendation and of GRECO's expectations. The situation will need to be examined in more detail once the bill has made its way through Parliament and been adopted. For the time being, the bills on the judiciary are still in the early phase of drafting in the Ministry of justice (see paragraph 27) and it would be premature to consider this recommendation implemented, even partly.
74. GRECO concludes that recommendation xiii remains not implemented.

Recommendation xiv.

75. *GRECO recommended that 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.*
76. GRECO notes that this recommendation had not been implemented, given that no tangible developments were noted in the previous Compliance Report. It was noted that the draft wording of the Constitution provided for measures in line with the first part of the recommendation (Art. 104). However, examination of the draft within the Ministry of Justice had still been at an early stage and establishment of the Supreme Judicial Council (CSJ) (cf. also recommendation vi) had been delayed. As for the second part of the recommendation, it appeared that its implementation also depended on the more general reform of the Constitution and the setting up of the CSJ.
77. The Luxembourg authorities indicate that, as explained in the introductory remarks (cf. paragraphs 26 and 27), it has been decided to speed up the reform of the judicial system independently of the constitutional review, and a bill will be tabled in Parliament soon. The draft law establishes a Supreme Judicial Council to be responsible, in particular, for overseeing the professional ethics of judges and prosecutors. In addition, the CSJ is responsible for bringing, investigating and ruling at first instance on disciplinary cases. Another of its remits will be to receive and to handle citizens' complaints about the administration of justice. It will also issue recommendations to the Chamber of Deputies and the Government on ways of improving the justice system. The CSJ will therefore clearly be in charge of supervision and disciplinary decisions with regard to prosecutors.
78. GRECO takes note of the on-going drafting of the aforementioned bill, which seems to be in line with GRECO's recommendation and expectations. The situation will need to be examined in more detail once the bill has made its way through Parliament and been adopted. For the time being, the bills on the justice system are still in the early drafting stage in the Ministry of Justice and GRECO cannot conclude that this recommendation has been implemented even partly.
79. GRECO concludes that recommendation xiv remains not implemented.

III. CONCLUSIONS

80. Based on the conclusions contained in the 4th Round Compliance Report on Luxembourg and in the light of the above, GRECO concludes that Luxembourg has implemented satisfactorily four of the fourteen recommendations contained in the Evaluation Report (i.e. three more since the First Compliance Report). Among the other ten recommendations, six have been partly implemented and four have not been given effect.
81. More specifically, recommendations viii, xi and xii are added to recommendation iii, which had been implemented satisfactorily at the time of the First Compliance Report. Recommendations i, ii, iv, v, vii and ix remain partly implemented and recommendations vi, x, xiii and xiv remain not implemented.
82. With regard to parliamentarians, GRECO notes that Luxembourg has not used the extra time since the previous report of June 2015 to make progress with the four recommendations still pending (i, ii, iv and v). GRECO regrets that the members of the Chamber have not been able to agree on improving the rules and their internal policy on important subjects like the content of declarations of income, interests and assets, and contacts with third parties. The Chamber of Deputies has announced that it intends to adopt certain additional measures with respect to an implementing instrument regarding the Code of Conduct for MPs, which would be in line with outstanding recommendations.
83. Concerning judges and prosecutors, the pace of the reform remains disappointing on the whole, since only three of the nine recommendations regarding the justice system have been fully implemented to date. Progress has taken place in regard to awareness-raising of judges and prosecutors on integrity and corruption-related matters, as well as in regard to the systematic and central collection of disciplinary data and to clarifying the rules on withdrawal / recusal. As for the rest, most of the expected changes have been delayed by the constitutional reform taking place alongside the judicial reform. To speed up the latter reform, Luxembourg decided in the spring to separate the two reforms and to prepare two bills in Parliament establishing a Supreme Judicial Council and strengthening the independence of the prosecution service. This is a welcome move, given that many of the expected improvements depend on the existence of the CSJ, which will play a crucial role in future in career and disciplinary decisions involving judges and prosecutors and how the judicial system operates generally. GRECO is still expecting many key changes such as, for example, confirmation of the managerial role of presiding judges or the introduction of a system of periodic appraisal. Clarifications are also expected on certain rules, such as those governing incompatibilities.
84. In the light of the above, GRECO concludes that the very low level of compliance with the recommendations at present is “globally unsatisfactory” within the meaning of Rule 31, paragraph 8.3, of its Rules of Procedure. It decides, therefore, to apply Rule 32 concerning members failing to comply with the recommendations contained in the mutual evaluation report and asks the Head of the Luxembourg delegation to submit a report on its progress in implementing the recommendations still pending (i.e., recommendations i, ii, iv and v for Theme I, and Recommendations vi, vii, ix, x, xiii and xiv for Theme II) as soon as possible and at the latest by 31 October 2018, pursuant to Rule 32, paragraph 2(i).
85. GRECO invites the Luxembourg authorities to authorise publication of this report as soon as possible and to make it public.