GRECO

Group of States against Corruption

COUNCIL OF EUROPE



FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

NETHERLANDS

Adopted by GRECO at its 79th Plenary Meeting
(Strasbourg, 19-23 March 2018)

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I. INTRODUCTION

1. The Second Compliance Report assesses the measures taken by the authorities of the Netherlands to implement the four pending recommendations issued in the Fourth Round Evaluation Report on the Netherlands (see paragraph 2) covering "Corruption prevention in respect of members of parliament, judges and prosecutors".

2. The Fourth Round Evaluation Report on the Netherlands was adopted at GRECO's 60th Plenary Meeting (on 21 June 2013) and made public on 18 July 2013, following authorisation by the Netherlands.

3. The Compliance Report was adopted by GRECO at its 68th Plenary Meeting (on 19 June 2015) and made public on 26 August 2015, following authorisation by the Netherlands. It was concluded that the Netherlands had implemented satisfactorily or dealt with in a satisfactory manner only two of the seven recommendations contained in the Fourth Round Evaluation Report. GRECO concluded that the low level of compliance with the recommendations was "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the evaluation report, and asked the Head of delegation of the Netherlands to provide a report on the progress in implementing the pending recommendations.

4. An Interim Compliance Report was adopted by GRECO at its 73rd Plenary Meeting (on 21 October 2016) and made public on 8 December 2016, following authorisation by the Netherlands. GRECO concluded that the Netherlands had made progress in respect of some recommendations: three of the seven recommendations had been implemented satisfactorily (ii, vi and vii), two recommendations had been partly implemented (i and iv) and two recommendations remained not implemented (iii and v). GRECO therefore concluded that the level of compliance with the recommendations was no longer "globally unsatisfactory". Application of Rule 32 was discontinued and the Netherlands was requested to submit additional information regarding the implementation of the outstanding recommendations. This report was received on 31 August 2017 and served as a basis for this Second Compliance Report.

5. The current Second Compliance Report evaluates the progress made in implementing the pending recommendations since the previous Interim Report (i.e. recommendations i, iii, iv and v) and provides an overall appraisal of the level of compliance with these recommendations.

6. GRECO selected Lithuania and Greece to appoint rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Živilė ŠADIANEC, on behalf of Lithuania and Ms Panagiota VATIKALOU, on behalf of Greece. They were assisted by GRECO's Secretariat in drawing up this report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that codes of conduct for the members of both Chambers of Parliament be developed and adopted with the participation of their members and be made easily accessible to the public (including notably guidance on prevention of conflicts of interest, gifts and other advantages, accessory activities and financial*

interests, disclosure requirements, misuse of information, contacts with third parties such as lobbyists).

8. GRECO recalls that this recommendation was considered partly implemented in respect of both the Senate (First Chamber) and the House of Representatives (Second Chamber); GRECO welcomed the fact that both Chambers had - as a follow-up to this recommendation - revised their respective rules of procedure, except in as far as the particular question relating to "contacts with third parties, such as lobbyists" was concerned. The authorities explained that the amended integrity rules were of a rather general character and that further details were to be established by the various political groups represented in Parliament. An initiative by two members of the Second Chamber took the form of a policy document, "*Lobbying in daylight: listening and showing*" (December 2015) was thought by the authorities as susceptible to lead to draft legislation on lobbying. However, GRECO noted that this initiative was still at a very early stage at the time of adoption of the Interim Compliance Report.

9. The authorities of the Netherlands now report that on the basis of the "*Lobbying in daylight: listening and showing*" policy document, the House of Representatives requested the Presidium to develop a policy to provide access passes to lobbyists. In the summer of 2017, the Presidium decided on criteria for granting these passes, with a focus on transparency, security and accessibility. This admission policy, as a result of which lobbyists do not have access with the non-public zone of the House of Representatives without an appointment, has entered into force. Moreover, the revolving door policy applicable to ministers was tightened in May 2017: a two-year ban on lobbying was issued for former ministers and state secretaries on matters regarding their former policy area.

10. The authorities also submit that the Senate has not reported any new development regarding this recommendation. It believes that regulations regarding contacts with lobbyists are the responsibility of the various parliamentary groups. It also believes that setting up a register of lobbyists would not be useful, as senators are part-time politicians who are only present in the Senate on Tuesdays. Most contacts with third parties therefore take place outside of the Senate. A year ago, the Committee of Senior Members decided to await developments on this matter on-going in the House of Representatives and decided to take no further steps itself. Contacts with lobbyists are to be discussed in yet to be scheduled meetings of the Committee of Senior members on integrity.

11. GRECO regrets the lack of progress regarding this recommendation. It reiterates its position expressed in the previous reports that the purpose of this recommendation is not to deal with the situation of lobbyists and whether or not a register of lobbyists should be introduced, even though such an initiative has merits from a transparency point of view. Rather, it is to provide guidance to parliamentarians on "do's and don'ts" in their relations with lobbyists, inside or outside Parliament. GRECO still cannot see why third party contacts could not be dealt with in the form of principle guidelines for MPs, as all other issues highlighted in this recommendation have already been addressed in such a way.

12. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

13. *GRECO recommended that appropriate measures be taken to ensure supervision and enforcement of the existing and yet-to-be established declaration requirements and other rules of conduct of members of Parliament.*

14. GRECO recalls that this recommendation was considered not implemented in the previous reports. The authorities submitted, *inter alia*, that while both parliamentary chambers had examined the issue of supervision and enforcement of the integrity rules, it would not be possible under the Constitution to suspend or force MPs to resign for not having acted in accordance with integrity rules. The supervision and enforcement of MPs' ethical conduct would rather be of a political nature to be dealt with by the political groups and/or parties. GRECO took issue with this position and could not see why softer sanctions, such as a reprimand or suspension from participating in certain sessions or meetings, could not be introduced in a similar way as was actually foreseen for certain other violations of the Rules of Procedure of both Chambers, e.g. in respect of breaches of confidentiality.

15. The authorities now indicate that the House of Representatives is of the view that the current internal guidelines are adequate and sufficient and that there is no need for additional internal rules regarding supervision and enforcement. A draft bill that simplifies the criminal prosecution of MPs for office-related offences – including certain integrity violations – is expected to be presented soon to the House. This bill aims at simplifying the procedure for investigating alleged misbehaviour of MPs – and other officials – such as violations of the oath of office. In preparation for this bill, another bill was submitted to the House in January 2018[1] in order to remove the most serious obstacles and ambiguities.

16. The authorities also submit that the temporary Senate committee set up in 2014 to study GRECO's Fourth Round Evaluation Report recommended introducing a system of intra- and inter-collegial supervision, the so-called 'peer supervision'. According to the committee, hard cases regarding proper conduct and integrity could be discussed in the Committee of Senior Members and the President of the Senate could play an advisory role. This system was subsequently endorsed by the entire Senate and reportedly works well in everyday practice. The Committee discusses a handful of integrity-related cases each year. Most of them deal with the handling of confidential documents and conflicts are solved through deliberation and consensus. The President of the Senate also provides advice in a limited number of cases each year. Under the current Rules of Procedure, s/he may order a senator who uses offensive language during a debate to yield the floor. This actually happened on one occasion.

17. GRECO notes that the House of Representatives still has no plan to introduce a system for supervision and enforcement of the integrity rules. This is regrettable, and a recent case[2] has shown the need for the House to oversee the implementation of the rules and provide authoritative interpretation on them. As regards the Senate, the 'peer supervision system' could be an appropriate manner of ensuring appropriate supervision and enforcement of the declaration requirements and rules of conduct, as required by the recommendation. However, in practice, the Committee of Senior members does not seem to have adopted a proactive approach in order to deal with possible integrity breaches other than those regarding confidentiality and appropriate behaviour in sessions – issues that were already addressed at the time the Evaluation Report was issued.

18. GRECO concludes that recommendation iii remains not implemented.

[1] Amendment to the law of April 22, 1855, regulating the responsibility of the Chiefs of Ministerial Departments (Government Gazette 1855, 33) and adaptation of related provisions in the Code of Criminal Procedure and the Penal Code in connection with bringing some modernisation

[2] An MP had failed to declare a 135.000 € apartment he had received as a gift, claiming that the gift had been received in his private capacity. However, the integrity guidelines of the House of Representative do not mention that only gifts received in connection with the parliamentary duties have to be declared. See https://www.nrc.nl/nieuws/2017/12/19/wel-de-chocoladereep-niet-de-flat-a1585589?utm_source=NRC&utm_medium=related&utm_campaign=related2

Recommendation iv.

19. *GRECO recommended in respect of both Chambers of Parliament, (i) the establishment of a specific source of confidential counselling with the mandate to provide parliamentarians with guidance and advice on ethical questions and possible conflicts of interests in relation to specific situations; and (ii) the provision of specific and periodic training for all parliamentarians on ethical questions and conflict of interests.*

20. GRECO recalls that this recommendation was considered partly implemented in the Interim Compliance Report. It had welcomed the establishment in the House of Representatives of an independent confidential counsellor dealing with issues of integrity, ethics and conduct under the Rules of Procedure. However, it had expressed doubts about the Senate giving its President the duties of a confidential counsellor; GRECO had noted that the President already exercised this role at the time of the Evaluation Report and that the President did not seem well placed to exercise such duties, given his/her principal role was to lead the Senate. Regarding the second part of the recommendation on specific and periodic training, the Second Chamber had reported plans to offer all MPs training on integrity matters following the 2017 election. However, no details were offered on the content or the periodicity of such training. The Senate had not provided any new information.

21. The authorities of the Netherlands report in respect of the first part of the recommendation that the Senate stressed that the appointment of the President as a confidential counsellor is a decision supported by the entire Senate. The President is not actually "leading" the Senate, nor representing the opinions of the Senate majority. Rather, s/he is the face and figurehead of the Senate, both internally and externally. S/he cannot be regarded as representing the opinion of the Senate majority, but fulfils his/her duties both independently and impartially. The authorities emphasise that so far no parliamentary group or individual senator has expressed any desire to change the current arrangement.

22. As far as the second part of the recommendation is concerned, the authorities report that in 2017, after the parliamentary elections, the House of Representatives offered introductory courses to all newly (re-)elected MPs. The integrity guidelines in the Rules of Procedure and the obligation to keep certain public records were discussed. These courses have been repeated several times and will be part of a continuous program. They are also open to MPs' staff. For its part, the Senate reports that even without the provision of formal periodic training sessions, integrity is a constant focal point in the meetings of the Committee of Senior Members. All new members are provided with an introduction file, which gives specific information about the integrity regulations. All senators have recently been informed again about the current regulations regarding accessory activities, gifts and travels. In the autumn of 2017, a meeting on integrity with external speakers was organised for the Committee of Senior Members.

23. GRECO welcomes the information provided by the House of Representatives as regards specific and periodic training on integrity, which seems to satisfy the requirements of the second part of the recommendation. Thus, the House of Representatives has now taken the required measures in respect of both parts of the recommendation.

24. The Senate, however, has not taken any new measure in respect of the recommendation. The information provided is essentially the same as before and GRECO sees no reason to modify its previous assessments on this matter. As regards the first part of the recommendation, GRECO reiterates its doubts about the President of the Senate providing confidential counselling. As regards the

second part of the recommendation, although some awareness measures have taken place, but no specific and periodic training on integrity-related issues in respect of all senators has been organised. The Senate, therefore, has not taken the required measures in respect of either part of the recommendation. As a whole, the recommendation remains partly implemented.

25. GRECO concludes that recommendation iv remains partly implemented.

Corruption prevention in respect of judges

Recommendation v.

26. *GRECO recommended that a restriction on the simultaneous holding of the office of judge and that of member of either Chamber of Parliament be laid down in law.*

27. GRECO recalls that this recommendation was not implemented at the time of the adoption of the Interim Compliance Report. A possible legal prohibition of the simultaneous holding of a judicial office and a seat in Parliament was being studied by a special working group in which the Council for the Judiciary, presidents of courts and the Association for the Judiciary were represented. The working group was to present its findings in December 2016.

28. The authorities now report that the working group issued its opinion on the implications of GRECO's recommendation in December 2016. As broad support on this subject is necessary, this opinion has been discussed in all sections of the judiciary. As a result, it has become clear that one round of discussions was not sufficient to reach a common understanding. The working group is currently investigating how to gain the widest possible support within the judiciary. It is considering several options to this end, such as a conference between all sections involved, research on regulations abroad and a final decision-making meeting. The working group expects that this process may take some time.

29. As soon as shared views within the judiciary are reached, the working group will advise the Council for the Judiciary. The Council, together with the presidents of the courts and the Association for the Judiciary, will present an opinion to the Government, on the basis of which the Government will determine its position.

30. GRECO welcomes the inclusive process that seeks to reach a consensus within the judiciary on this issue and hopes that it will enable the implementation of this recommendation. Meanwhile, it cannot but consider that this recommendation remains not implemented.

31. GRECO concludes that recommendation v remains not implemented.

III. CONCLUSIONS

32. **In view of the conclusions contained in the previous Fourth Round Compliance Reports on the Netherlands and in view of the above, GRECO concludes that the Netherlands has implemented satisfactorily in total three of the seven recommendations contained in the Fourth Round Evaluation Report.** Out of the remaining recommendations, two have been partly implemented and two have not been implemented.

33. More specifically, recommendations ii, vi and vii have been implemented satisfactorily, recommendations i and iv have been partly implemented and recommendations iii and v have not been implemented.

34. With respect to members of parliament, there is very limited progress, with only the House of Representatives having introduced specific and regular integrity training for MPs. The establishment of guidelines for contacts with third parties remains an issue to be dealt with in both chambers, as is the supervision and enforcement of MPs' rules of conduct. In so far as the judiciary is concerned, the lack of a clear prohibition for judges to simultaneously be members of parliament remains a strong concern. GRECO hopes that the inclusive process currently underway will enable a consensus towards such a prohibition to emerge.

35. In view of the fact that four (out of seven) recommendations are yet to be implemented, GRECO in accordance with Rule 31, paragraph 9 of its Rules of Procedure asks the Head of the delegation of the Netherlands to submit additional information, namely regarding the implementation of recommendations i, iii, iv and v by 31 December 2018, pursuant to paragraph 2(i) of that Rule.

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