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Groupe d'États contre la corruption

COUNCIL OF EUROPE



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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

NETHERLANDS

Adopted by GRECO at its 73rd Plenary Meeting
(Strasbourg, 17-21 October 2016)

I. INTRODUCTION

1. The Fourth Round Evaluation Report on the Netherlands was adopted at GRECO's 60th Plenary Meeting (17-21 June 2013) and made public on 18 July 2013, following authorisation by the Netherlands ([Greco Eval IV Rep \(2012\) 7E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. In the Compliance Report ([Greco RC-IV \(2015\) 6E](#)) which was adopted by GRECO at its 68th Plenary meeting (15-19 June 2015), it was concluded that only two of the seven recommendations had been implemented satisfactorily or dealt with in a satisfactory manner by the Netherlands. In view of this result, GRECO concluded that the low level of compliance 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 mutual evaluation report, and asked the Head of delegation of the Netherlands to provide a report on the progress in implementing the pending recommendations. This report was received on 29 August 2016 and served as a basis for the Interim Compliance Report.
3. It is recalled that in the Compliance Report, recommendation ii had been implemented satisfactorily and recommendation vii had been dealt with in a satisfactory manner. Recommendations i and vi had been considered partly implemented and recommendations iii-v not implemented. The current Interim Compliance Report assesses the further implementation of the pending recommendations since the adoption of the Compliance Report, and performs an overall appraisal of the level of the Netherlands' compliance with these recommendations.
4. It is recalled that GRECO had selected Lithuania and Greece to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed for the current report were Mr Paulius GRICIUNAS, on behalf of Lithuania and Ms Panagiota VATIKALOU, on behalf of Greece. They were assisted by GRECO's Secretariat in drawing up the Interim Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

5. *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).*
6. 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.

7. The authorities of the Netherlands report that as far as the question of regulating third party contacts and lobbying is concerned, to date neither of the two Chambers have established any rules since the recommendation was issued. That said, the authorities refer to an initiative by two members of the Second Chamber, which takes the form of a policy document, "*Lobbying in daylight: listening and showing*" (December 2015), which in turn builds on a previous consultation document on lobbying. The authorities submit that this initiative may result in draft legislation on lobbying and that the Government is currently considering possible actions in this area; however, a formal position of the Government in this respect has not been pronounced.
8. GRECO already stated in the Compliance Report that relevant rules established/revised by both Chambers respectively deal with the aspects identified in the recommendation, except that of MPs' contacts with third parties. GRECO cannot see why third party contacts could not be dealt with in the form of principle guidelines for MPs and wishes to stress that the aim of this part of the recommendation is not to oblige parliamentarians to report each and every contact with lobbyists and other third parties, but to be given appropriate guidance on "do's and don'ts" in such situations. GRECO takes note of the information that an initiative concerning a possible regulation of lobbying, coming from two individual members of the Second Chamber may lead to some form of regulation in this area in the future; however, this initiative is still at a very early stage.
9. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

10. *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.*
11. GRECO recalls that this recommendation was considered not implemented in the Compliance Report. 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.
12. The authorities have not submitted any new information in respect of this recommendation.
13. GRECO concludes that recommendation iii remains not implemented.

Recommendation iv.

14. *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.*

15. GRECO recalls that this recommendation was considered not implemented in the Compliance Report. As regards the first part of the recommendation, the Senate had taken the view that counselling should occur primarily within political groups and that the President of the Senate could have an advisory role in integrity matters. The House of Representatives, for its part, had decided to appoint a confidential integrity advisor, to whom the MPs could turn for advice on integrity issues; however, the appointment had not materialised at the time. Concerning the second part of the recommendation, neither of the Chambers had established any formal specific and periodic training of MPs in respect of questions relating to their integrity, despite proposals to that end from internal working parties of both Chambers.
16. The authorities of the Netherlands report in respect of the first part of the recommendation that the Senate has unanimously “opted for the possibility of the President of the Senate fulfilling the duties of a confidential counsellor, at least temporarily”, bearing in mind that the President is not the voice of the majority, but independent and impartial. On 30 June 2015, the members of the House of Representatives were informed of the appointment of a confidential counsellor on integrity. The counsellor, appointed on a permanent basis, is not an MP, but a member of the Council of State and the role of the counsellor is to provide advice on integrity issues in a broad sense, for example, in respect of disclosure of interests, ancillary positions etc. As far as the second part of the recommendation is concerned, the authorities report that it has been decided by the House of Representatives that all MPs will be offered training on matters relating to their integrity, following the elections of 2017. Nothing new has been reported as far as senators’ training is concerned.
17. GRECO takes note of the information provided. It welcomes the decision of the House of Representatives to establish a confidential counsellor available to all its MPs in respect of issues relating to matters on integrity, ethics and conduct under the Rules of Procedure. GRECO notes that the counsellor appointed is highly qualified with long experience of public administration and independent from the House of Representatives, as not being an MP. The communication with the counsellor is to be kept confidential. The measures taken in the Second Chamber are in line with the first part of the recommendation. Furthermore, GRECO notes that the Senate has temporarily given the task of a confidential counsellor to its President. GRECO has doubts as to this measure, as it would appear from the Evaluation Report that this is what already existed in the past (paragraph 63). Furthermore, it appears doubtful whether the President of the Senate is well placed to perform the tasks of a confidential counsellor, considering his principal role to lead the Senate. The first part of this recommendation is therefore only partly implemented. As far as the second part of the recommendation is concerned, GRECO notes that only the House of Representatives has submitted some information on training, namely that MPs belonging to the Second Chamber will be offered training on integrity following the 2017 elections. GRECO recalls that the recommendation refers to “specific and periodic” training. What has been submitted in respect of the Second Chamber does not reflect on the periodicity of such training, nor is the information supported by any documents reflecting the details to be included in such training. The first Chamber has not reported any action in this respect. Consequently, also the second part of the recommendation is only partly implemented.
18. GRECO concludes that recommendation iv has been partly implemented.

Corruption prevention in respect of judges

Recommendation v.

19. *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.*
20. GRECO recalls that this recommendation was not implemented at the time of the adoption of the Compliance Report. The authorities stated that the holding of a seat in Parliament was generally regarded as incompatible with the holding of judicial office and even advised against in the guidelines and codes of conduct of the judiciary; also that the simultaneous exercise of judicial office and parliamentary functions had not been encountered in practice in recent years. Nevertheless, a special working group was to consider the possibility of introducing a prohibition in the law.
21. The authorities report that a possible prohibition in law is currently under consideration by the Special Working Group, in which the Council for the Judiciary, presidents of courts and the Association for the Judiciary are represented. The Working Group is to present its findings in December 2016.
22. GRECO reiterates its concern that the lack of a legal prohibition on being, at the same time, judge and member of parliament raises questions in respect of the independence of justice and the separation of powers. As explained by the Dutch authorities and highlighted in the Evaluation Report (paragraph 96), such a combination is seen as undesirable in the guidelines applicable to members of the judiciary and, indeed, has not occurred in practice in recent years. However, it notes that such cases have occurred in the past. GRECO also reiterates that it is an internationally recognised principle that the independence of the judiciary should be guaranteed by domestic standards at the highest possible level and urges the authorities to give effect to the recommendation, which calls for legislation.
23. GRECO concludes that recommendation v remains not implemented.

Recommendation vi.

24. *GRECO recommended that regulations, guidelines and policies be reviewed to ensure that substitute judges have appropriate standards and guidance on conflicts of interest and other integrity-related matters.*
25. It is recalled that recommendation vi was considered partly implemented in the Compliance Report, based on the clarifications provided by the authorities. It was explained that legislation on the subject of integrity was equally applicable to judges and substitute judges, that statutory rules on accessory activities in force since the beginning of 2013 apply to deputy judges, as do, where possible, the "Guidelines for Judicial Impartiality and Ancillary Positions", the latter including specific recommendations for deputy judges, providing guidance on possible conflicts of interest. Moreover, a special working group of the judiciary had reviewed the necessity of establishing additional regulations, guidelines or policies for deputy judges, but had not yet delivered its conclusions.
26. The authorities report that the special working group, referred to above, in its review on whether additional regulations, guidelines or policies are required for substitute judges has reflected on ways to ensure that the existing regulations applicable to substitute judges can function better in practice. To this end, policy recommendations had been jointly adopted by the Council for the Judiciary and the Board of Presidents on 26 November 2015 and entered into force on

1 January 2016. This policy, aimed at ensuring greater uniformity on a national level and better regulation of the deployment of substitute judges within the short, middle and long term perspectives, forms an addition to the 'Guidelines for Judicial Impartiality and Ancillary Positions' and provides guidance linked to the Law on Legal Officials (*Wet rechtspositie rechterlijke ambtenaren*) and the Decision on Judicial officials (*Besluit rechtspositie rechterlijk ambtenaren*), which also cover substitute judges. The new policy regarding substitute judges is based on the fundamental principles of independence of the judiciary and impartiality of judges and comprises quality requirements of the substitute-judges and organisational requirements upon the courts regarding in-service training of substitute judges, requirements concerning the deployment of substitute judges within a specific department or team within the court, their participation in internal work-meetings and the appraisal of substitute judges. The new policy also comprises norms for using substitute judges, i.e. that these judges are to be scheduled for hearings, but not on a structural basis and the frequency of hiring such judges has been limited. The guidelines also contain a number of recommendations aiming at preventing conflicts of interests in relation to substitute judges' previous positions and activities as lawyers as well as reporting requirements upon substitute judges to the president of the court where s/he is employed. As a consequence, the implementation of the policy is to be monitored by the individual courts and the Council of the Judiciary.

27. GRECO takes note of the information provided. It welcomes the clarifications that basic legislation on the subject of integrity is equally applicable to judges and substitute judges and that rules on accessory activities as well as the "Guidelines for Judicial Impartiality and Ancillary Positions", providing guidance on possible conflicts of interest, also apply in respect of substitute judges, as detailed in the Compliance Report. In addition, GRECO welcomes the new policy which has been established in respect of substitute judges, aiming at ensuring that the statutory requirements concerning integrity aspects of this type of temporary judges are followed in practice. The policy includes quality aspects of substitute judges as well as organisational requirements for the courts to observe, such as internal training, the distribution of tasks, appraisals etc. The policy also establishes limits as to the use of substitute judges. The president of the court employing substitute judges has an overall responsibility as well as the Council of the Judiciary for the implementation of the new policy/guidelines. The measures taken meet the concerns behind the recommendation.
28. GRECO concludes that recommendation vi has been dealt with in a satisfactory manner.

III. CONCLUSIONS

29. **In view of the foregoing, GRECO concludes that the Netherlands has made progress in respect of some recommendations found not to be implemented or partly implemented in the Fourth Round Compliance Report. Currently, three of the seven recommendations have been implemented satisfactorily or dealt with in a satisfactory manner.** Of the remaining recommendations, two have been partly implemented and two have not been implemented.
30. More specifically, recommendations ii, vi and vii have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations i and iv have been partly implemented and recommendations iii and v have not been implemented.

31. With respect to members of parliament, the establishment of guidelines for their contacts with third parties remains an issue to be dealt with; a recent paper on lobbying, drafted by some members of the Second Chamber, is to be welcomed, however, this initiative is only at a very early stage. Further efforts are also expected in so far as the supervision and enforcement of MPs' rules of conduct are concerned. The establishment of integrity training of MPs appears to be underway but also in this respect further action is required. It is to be welcomed that the Second Chamber has appointed a confidential counsellor. 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. Finally, it is to be welcomed that the regulatory framework of substitute judges has been clarified and that a new policy in respect of this type of judges has been developed.
32. In view of the abovementioned positive developments, GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. It therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations issued in the Evaluation Report.
33. Pursuant to paragraph 8.2 of Rule 31 of the Rules of Procedure, GRECO requests the Head of delegation of the Netherlands to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i, iii, iv and v) by 31 July 2017, pursuant to paragraph 2(i) of that Rule.
34. 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.