



GRECO
Group of States against Corruption
Groupe d'États contre la corruption



COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

6 December 2019

GrecoRC4(2019)22

FOURTH EVALUATION ROUND

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

ADDENDUM TO THE SECOND COMPLIANCE REPORT NETHERLANDS

Adopted by GRECO at its 84th Plenary Meeting
(Strasbourg, 2-6 December 2019)

F
O
U
R
T
H

E
V
A
L
U
A
T
I
O
N

R
O
U
N
D

I. INTRODUCTION

1. The Addendum to 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 revised, 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.
5. The [Second Compliance Report](#) was adopted by GRECO at its 79th Plenary Meeting (on 23 March 2018) and made public on 14 June 2018, following authorisation by the Netherlands. GRECO concluded that the Netherlands had made very limited progress since the adoption of the Interim Compliance Report (four recommendations remained pending). The Netherlands was requested to submit additional information regarding the implementation of the outstanding recommendations. The information was received on 25 June 2019 and served as a basis for this Addendum.
6. The current [Addendum to the Second Compliance Report](#) evaluates the progress made in implementing the pending recommendations since the previous Interim Report and Second Compliance Report (i.e. recommendations i, iii, iv and v) and provides an overall appraisal of the level of compliance with these recommendations.
7. 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

8. GRECO, in its Evaluation Report, had addressed seven recommendations to the Netherlands. In the Second Compliance Report recommendations ii, vi, and vii had been implemented satisfactorily, recommendations i, and iv had been partly implemented and recommendations iii and v had not been implemented. Compliance with the four pending recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

9. *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).*
10. It is recalled that this recommendation was partly implemented in the Second Compliance Report. GRECO welcomed the revision of the rules of procedure of both Chambers (First Chamber and Second Chamber), except on the issue of contacts with third parties such as lobbyists which remained pending. GRECO recalled that guidance was needed for parliamentarians on “do’s and don’ts” in their relations with lobbyists, inside or outside Parliament.
11. The authorities of the Netherlands now report that, on 21 May 2019, the Senate adopted a code of conduct for its members¹ which entered into force and was published on 11 June 2019 (the day on which the new Senate was inaugurated). The Code of Conduct provides guidelines on contacts with third parties, including lobbyists (Article 3). It stipulates that senators should be on their guard against undue influence from third parties and should be transparent about their contacts. The explanatory notes clarify that senators are free in their choices of contacts with third parties and in the use of information obtained through such contacts (including information provided by professional, paid lobbyists). Moreover, senators are required to be open about their contacts with third parties concerning specific bills or other matters. The explanatory notes also indicate that senators should be aware that accepting gifts, in particular from lobbyists, can make it appear that a conflict of interests exists.
12. The authorities also report that the House of Representatives has decided to discuss, with a view to adoption, a code (accompanied by explanatory notes) for parliamentarians (based on the recommendations of a dedicated working group and of the subsequent proposals from the Presidium), which is intended to reflect the largest common denominator of the existing integrity rules. The code is to cover in particular relations between MPs and lobbyists and rules on gifts. It will require *inter alia* that MPs refrain from promising to act in a given way following an offer (not information) by a lobbyist. The Presidium has submitted a draft code to the members of the House of Representatives for their approval.
13. GRECO welcomes the adoption of a code of conduct for Senate members, which contains certain rules regarding their contacts with third parties and lobbyists. As far as the Senate is concerned, the recommendation has been complied with. Furthermore, GRECO notes that a process to adopt a code of conduct for members

¹https://www.eerstekamer.nl/id/vkz9gbzhm5wp/document_extern/gedragscode_integriteit_geldend/f=/vkz9gc6q4oi.pdf

of the lower chamber (House of Representatives) is now underway and looks forward to its finalisation.

14. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

15. *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.*
16. It is recalled that this recommendation was not implemented in the Second Compliance Report. The authorities had submitted that under the Constitution the supervision and enforcement of MPs' ethical conduct could be only of a political nature and that MPs could not be forced to resign for failure to comply with integrity rules. The House of Representatives did not plan to introduce a system for supervision and enforcement of the integrity rules. GRECO considered it possible to introduce softer sanctions, such as a reprimand or suspension from participating in certain sessions or meetings, similarly to the sanctions applying for certain other violations of the Rules of Procedure of both Chambers, e.g. in respect of breaches of confidentiality. As regards the Senate, GRECO considered that 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 did 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.
17. The authorities of the Netherlands now report that the new Code of Conduct for the Senate members provides for a system of supervision and enforcement. Article 10 charges the Internal Committee, of which the President and both Vice-Presidents of the Senate are members, to monitor compliance with the Code. Upon a request from one or more members, or at its own initiative, the Internal Committee can decide whether the Code of Conduct has been violated in specific cases. The Internal Committee can also issue recommendations. Senators who disagree with a Committee decision can ask the plenary for a decision. The plenary can only uphold or reject the decision. As soon as it is definitive, the decision is made public. The authorities underline that the Senate has deliberately chosen recommendations over sanctions. In their opinion, formal sanctions such as blanket suspensions and stripping a senator of his or her membership would violate the free mandate that members of the Senate have and that is protected by the Constitution. If, however, a senator violates the provisions on confidentiality (articles 7-9), he or she can be temporarily denied access to certain committee meetings or be excluded from receiving confidential documents (Article 11 of the Code of Conduct).
18. Moreover, the authorities indicate that following a motion of the House of Representatives, the Presidium is elaborating a proposal concerning supervision and enforcement. In this respect, a role for the Speaker and the Presidium is being considered.
19. GRECO welcomes the provisions on supervision and enforcement contained in the new code of conduct for the Senate members whereby the Internal Committee is to monitor the compliance with the Code and to issue recommendations in case of violations. GRECO notes that unlike for violations of confidentiality requirements, the Senate opted rather for recommendations than for direct sanctions for violations of the rules of conduct. Even though this may at first sight appear rather soft, GRECO

accepts that the system aims at enforcing compliance with the Code of Conduct. This part of the recommendation is dealt with in a satisfactory manner.

20. GRECO notes that the House of Representatives is introducing a system of supervision and enforcement and looks forward to seeing it functional.
21. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

22. *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.*
23. It is recalled that this recommendation was considered partly implemented in the Second Compliance Report. GRECO 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. GRECO also noted the specific and periodic training on integrity provided by the House of Representatives. Both parts of the recommendation were thus implemented with respect to the House of Representatives. However the Senate had not taken any new measure concerning the recommendation. GRECO had doubts about the President of the Senate providing confidential counselling (a role that was exercised by the President already at the time of the adoption of the Evaluation Report). Although some awareness measures had been taken, no specific and periodic training on integrity-related issues in respect of all senators had been put in place.
24. In respect of the first part of the recommendation, the authorities of the Netherlands now report that pursuant to the new Code of conduct for Senate members (Article 12) the Senate is responsible for appointing an independent confidential counsellor, upon proposal by the Internal Committee. The confidential counsellor cannot be a member of the Senate, nor an official working for the Senate's Secretariat. The Senate advertised the post of the confidential counsellor in October 2019. Interviews with selected candidates were held on 19 November 2019 and the final interview with the intended candidate was held on 26 November 2019. The appointment of the confidential counsellor is expected to be finalised in December 2019 and he/she is expected to start operating from 1 January 2020. Furthermore, the authorities report that with the purpose of strengthening the integrity policy, an independent adviser was appointed in the House of Representatives to support and advise the members of the House of Representatives on integrity related matters and the application of the existing rules. MPs can decide to make such advice public. This new model replaces the current model of confidential counselling. The integrity adviser can make recommendations for improvement or clarification of the existing rules. The independent adviser will start operating as of 1 January 2020.
25. As far as the second part of the recommendation is concerned, the authorities report that the new Code of Conduct of the Senate was brought to the attention of both new senators and senators who have already served one or more terms. A briefing for all senators, with a presentation by the Secretary General of the Senate about the Code, was held on 26 November 2019. The Committee of Senior Senators (which comprises all the leaders of the parliamentary parties) has decided to organise sessions on integrity twice every year, which will allow senators to exchange experiences and best practices. The senior senators may invite external experts, if necessary. The

first of a series of regular integrity sessions by the Committee of Senior Senators will take place in January 2020.

26. GRECO welcomes the provisions of the new Code of Conduct for Senators on confidential counselling and the measures taken by the Senate to appoint a confidential counsellor and to conduct regular training / awareness raising activities for senators on integrity-related issues. GRECO also notes that a new model of confidential counselling is being introduced in the House of Representatives to reinforce the current model. GRECO looks forward to seeing the confidential counselling mechanisms fully operational within two Chambers of Parliament and the dedicated training in the Senate provided on a regular basis.
27. GRECO concludes that recommendation iv remains partly implemented.

Corruption prevention in respect of judges

Recommendation v.

28. *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.*
29. GRECO recalls that this recommendation was not implemented in the Second Compliance Report. GRECO noted the inclusive process seeking consensus on this matter in the judiciary. The outcomes would form the basis for advice by a specially created working party to the Council of the Judiciary which was expected to lead to an opinion by the Council to serve as a basis for a government decision on this matter.
30. The authorities of the Netherlands now report that the insight has grown within the judiciary about the need to strictly separate the judicial office from the parliamentary mandate. Against this background the Council for the Judiciary, the Presidents of the courts and the Association for the Judiciary, the Minister for Legal Protection and the Minister of the Interior and Kingdom Relations informed the Parliament that a bill providing for the prohibition of the simultaneous exercise of the function of judge and membership in Parliament will be prepared. This bill is expected to be submitted for consultations in the first half of 2020.
31. GRECO notes the outcome of the consultations in the judiciary, which led to a positive opinion of the Council for the Judiciary on the principle of the need for a prohibition on judges in office simultaneously being members of parliament. GRECO also notes that legal amendments to this end appear to be underway. As the amendments remain to be elaborated and adopted the current recommendation cannot yet be considered even partly implemented.
32. GRECO concludes that recommendation v has not been implemented.

III. CONCLUSIONS

33. **The Netherlands has made some further progress in implementing the pending recommendations. Three of the seven recommendations contained in the Fourth Round Evaluation Report have been implemented satisfactorily, three recommendations have now been partly implemented and one recommendation remains not implemented.**
34. More specifically, recommendations ii, vi and vii have been implemented satisfactorily, recommendations i, iii, iv have been partly implemented and recommendation v has not been implemented.

35. With respect to members of parliament, GRECO welcomes the new code of conduct for senators containing provisions on contacts with lobbyists, on supervision and enforcement, and on confidential counselling. GRECO looks forward to the expected appointment of a confidential counsellor and the introduction of regular training for senators on integrity-related issues. The House of Representatives is still expected to adopt a code of conduct covering MPs' relations with lobbyists and a system of supervision and enforcement of the rules of conduct. It has adopted a new reinforced model of confidential counselling to be operational from 2020.
36. As far as the judiciary is concerned, GRECO notes the consensus within the judiciary and the government concerning the introduction of a prohibition on judges in office simultaneously being members of parliament. GRECO looks forward to the elaboration and adoption of the relevant legal provisions in this respect.
37. GRECO notes that reforms are underway in respect of the pending recommendations. In view of the fact that four (out of seven) recommendations are yet to be fully implemented, GRECO in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure asks the Head of the delegation of the Netherlands to submit additional information regarding the implementation of recommendations i, iii, iv and v by 31 December 2020.
38. 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.