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Groupe d'États contre la corruption

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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

HUNGARY

Adopted by GRECO at its 81st Plenary Meeting
(Strasbourg, 3-7 December 2018)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Hungary](#) was adopted by GRECO at its 67th Plenary Meeting (27 March 2015) and made public on 22 July 2015, following authorisation by Hungary. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. As required by GRECO's Rules of Procedure, the Hungarian authorities submitted a Situation Report containing information on measures taken to implement the recommendations. GRECO selected Austria and Romania to appoint Rapporteurs for the compliance procedure.
3. In the Compliance Report, adopted by GRECO at its 76th plenary meeting (23 June 2017) which to date is still confidential, it was concluded that Hungary had implemented satisfactorily or dealt in a satisfactory manner only five of the eighteen recommendations contained in the Fourth Round Evaluation Report (recommendations vii, ix, xi, xiii and xviii). In the light of these results, GRECO also concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the Head of the Hungarian delegation to submit a report on progress in implementing the pending recommendations by 30 June 2018 (which was prolonged to 31 August 2018).
4. On 31 August, the Hungarian authorities submitted information regarding the actions taken to implement the pending recommendations, which served as a basis for the current Report, drawn up by the rapporteur, Mr Christian MANQUET, on behalf of Austria, assisted by the GRECO Secretariat.
5. This [Interim Compliance Report](#) assesses the implementation of the thirteen pending (i.e. recommendations i to vi, viii, x, xii and xiv to xvii) since the adoption of the Compliance Report, and provides an overall assessment of Hungary's level of compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendations i-vi.

6. GRECO recommended:
 - *(i) to ensure that all legislative proposals are processed with an adequate level of transparency and consultation and, (ii) that rules be introduced for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process; (recommendation i)*
 - *that a code of ethics/conduct for members of parliament be adopted, including in respect of their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts, lobbyists, accessory activities, post-employment situations, etc.) and that it be complemented by practical measures for its implementation, such as dedicated training and counselling; (recommendation ii)*
 - *that a requirement of ad hoc disclosure be introduced for members of parliament for situations of personal conflicts of interest which may emerge during the*

parliamentary proceedings and that rules for such situations be developed;
(recommendation iii)

- *to ensure (i) that the obligation upon members of parliament to disclose outside occupations and activities of a non-financial character are applied in practice; and (ii) that all declarations as submitted follow a format, which allows for adequate public scrutiny over time, preferably by using electronic means;* (recommendation iv)
- *that appropriate measures be taken in order to ensure that the procedures of lifting the immunity of parliamentarians do not hamper criminal investigations in respect of members of parliament suspected of having committed corruption related offences;* (recommendation v)
- *that appropriate measures be taken to ensure effective supervision and enforcement of the existing and yet to be established rules on the conduct, conflicts of interest and interest declarations of members of parliament and that adequate and proportionate sanctions be introduced to that end.*
(recommendation vi)

7. GRECO recalls that these six recommendations were not implemented at the time of the adoption of the Compliance Reports. The authorities reported that they had submitted a report on possible ways to implement GRECO's recommendations for interparty consultation, but that at the date of the Compliance Report only one party had responded, with negotiations only be able to start when all parties had made their position known.
8. In addition, guidelines on rules of conduct for MPs supplemented by a commentary were reported to be under preparation, which could have the potential of addressing various elements of the pending recommendations, specifically as regards recommendation i (on interactions with lobbyists), the recommendation ii (on a code of conduct), recommendation iii (on ad-hoc disclosures of conflicts of interest) and recommendation iv (on disclosure of outside activities of a non-financial character).
9. Furthermore, as regards recommendation v the authorities reported that the balanced composition of MPs in the Parliamentary Committee in charge of decisions on lifting the immunity of MPs ensured that these decisions were impartial, that in September 2016 the immunity of an MP had been lifted and that since 2010 the immunity of MPs had always been lifted within a short period of time, concluding that the procedure for lifting the immunity of an MP did not constitute an obstacle for criminal proceedings.
10. GRECO welcomed that a step towards implementation of some parts of recommendations i, ii, iii and iv was initiated with the preparation of guidelines on rules of conduct. However, as no concrete results had been achieved in this respect and additionally no further information had been provided on the other relevant parts of recommendation i and iv and on recommendation vi as a whole, GRECO ultimately concluded that recommendations i-iv and vi were not implemented. As regards recommendation v, GRECO stated that, even if the immunity of MPs is regularly lifted by Parliament, the procedure itself might prevent law enforcement agencies from carrying out investigations and could pose obstacles for the timely gathering of evidence. As no new substantial information had been provided on the measures taken to ensure that procedures for lifting the immunity of parliamentarians do not hamper criminal investigations, GRECO concluded that recommendation v was not implemented.

11. The Hungarian authorities now report that no further progress has been made regarding recommendations i-vi.
12. GRECO concludes that recommendation i-vi remain not implemented.

Corruption prevention in respect of judges

Recommendation viii, x and xii.

13. GRECO recommended:
 - *that the powers of the President of the National Judicial Office to intervene in the process of appointing and promoting candidates for judicial positions be reviewed in favour of a procedure where the National Judicial Council is given a stronger role; (recommendation viii)*
 - *that the power of the President of the National Judicial Office to re-assign ordinary judges without their consent be reduced to a minimum in time and only for precise and particular reasons of a temporary character; (recommendation x)*
 - *GRECO recommended that the immunity of ordinary judges be limited to activities relating to their participation in the administration of justice ("functional immunity"). (recommendation xii)*
14. GRECO recalls that these three recommendations were not implemented at the time of the adoption of the Compliance Report. As regards recommendation viii, GRECO took note that the President of the National Judicial Office (PNJO) does not have the most important role in the process of appointing candidates for judicial positions, that – in case the PNJO wishes to change the order of appointment among the three candidates listed by a judicial council – the National Judicial Council (NJC) has to give its consent and that the PNJO can only declare an appointment procedure unsuccessful for reasons provided in section 20 of Act CLXII of 2011 on the Legal Status and Remuneration of Judges (ALSRJ). GRECO however found that this information was for the most part already noted in the Evaluation report and in any case did not remedy its findings that it would be advisable that the NJC, as the highest collective body of the judiciary, be given the final say on recommendations for appointment.
15. As regards recommendation x, GRECO took note of the information provided, *inter alia* that judges can contest their temporary reassignment before a court, that the PNJO has not re-assigned any judge without his/her consent since 2012 and that in order to harmonise the practice of temporary secondment, the drafting of an internal regulation started in 2016. GRECO however did not find that this information could lead it to a different finding than the one in the Evaluation Report that it should not be possible to transfer so often given that the irremovability of judges is an important feature of their independence.
16. As regards recommendation xii, GRECO took note that the National Judicial Office was of the opinion that it is necessary to maintain the immunity of judges in its current form in order to protect judges from harassment through unfounded accusations and that similarly the authorities did not see a need to limit this to functional immunity. GRECO maintained its view that this immunity should be limited to the extent strictly necessary to carry out a judge's functions.
17. The Hungarian authorities now report that no further progress has been made regarding recommendations viii, x and xii.

18. GRECO concludes that recommendation viii, x and xii remain not implemented.

Corruption prevention in respect of prosecutors

Recommendation xiv.

19. *GRECO recommended that i) the possibility to re-elect the Prosecutor General be re-considered and ii) the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed by the Hungarian authorities.*
20. GRECO recalls that this recommendation was partly implemented at the time of the adoption of the Compliance Report. Consideration of the first part of the recommendation had duly taken place, but the second part of the recommendation had not been subject to any review by the Hungarian authorities.
21. The Hungarian authorities report that no further progress has been made regarding this recommendation.
22. GRECO concludes that recommendation xiv remains partly implemented.

Recommendation xv.

23. *GRECO recommended that the removal of cases from subordinate prosecutors be guided by strict criteria and that such decisions are to be justified in writing.*
24. GRECO recalls that this recommendation was partly implemented at the time of the adoption of the Compliance Report. It was satisfied with the information provided as regards the second part of the recommendation on a new provision having been added to Decree of the Prosecutor General No. 12/2012 (VI. 8) on the organisation of the Prosecution, prescribing that a brief reason for the removal of a criminal or administrative case from a prosecutor must be indicated in the case file. However, it was not provided with any information as to whether strict criteria (to avoid arbitrary decisions) had been put in place to avoid arbitrary decisions.
25. The Hungarian authorities report that no further progress has been made regarding this recommendation.
26. GRECO concludes that recommendation xv remains partly implemented.

Recommendation xvi.

27. *GRECO recommended that the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice ("functional immunity").*
28. GRECO recalls that this recommendation was not implemented at the time of the adoption of the Compliance Report, as the authorities considered it necessary to maintain the broad immunity of prosecutors in order to protect them from harassment by way of groundless accusations.
29. The Hungarian authorities report that no further progress has been made regarding this recommendation.
30. GRECO concludes that recommendation xvi remains not implemented.

Recommendation xvii.

31. *GRECO recommended that disciplinary proceedings in respect of prosecutors be handled outside the immediate hierarchical structure of the Prosecution Service and in a way that provides for enhanced accountability and transparency.*
32. GRECO recalls that this recommendation had not been implemented in the Compliance Report. GRECO took note of the developing practice within the Prosecution Service to engage a disciplinary commissioner in disciplinary proceedings, in addition to the superior prosecutor. As the direct superior prosecutor would still lead the overall procedure, GRECO found that the concern expressed by this recommendation was not sufficiently addressed.
33. The Hungarian authorities now report that an amendment to Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecutor Career (ASPGPC) has been prepared by the Office of the Prosecutor General, which aim at ensuring that a disciplinary commissioner is entrusted with investigating a breach of discipline (which is then followed by a decision on the merits of the case by the superior prosecutor, or – in the case of more severe disciplinary sanctions, such as the withdraw of a salary step, a lower rank or dismissal – the Prosecutor General). Up until now, the legislation provided for the possibility of involvement of a disciplinary commissioner, but the amended article 88 of the ASPGPC will make this compulsory. The draft amendment was submitted to Parliament on 19 October 2018 and it will enter into force on 1 January 2019.
34. GRECO welcomes the proposed amendment to the ASPGPC making the involvement of a disciplinary commissioner in disciplinary proceeding against prosecutors compulsory. That said, from the information submitted it would appear that the role of the disciplinary commissioner remains limited to investigating the case, with the superior prosecutor still leading the overall procedure. GRECO's concern, as reiterated in the Compliance Report, pointed to the need to exclude the direct superior prosecutor from dealing with disciplinary proceedings, in a procedure providing for enhanced accountability and transparency. For this reason GRECO advised in the Evaluation Report to have disciplinary proceedings dealt with by a collective impartial body, such as a Prosecutors' Council. Therefore, while a step towards implementation of this recommendation has been taken, GRECO cannot yet conclude that this recommendation has been fully addressed.
35. GRECO concludes that recommendation xvii has been partly implemented.

III. CONCLUSIONS

36. **In view of the foregoing, GRECO concludes that Hungary has still only implemented satisfactorily or dealt in a satisfactory manner five of the eighteen recommendations contained in the Fourth Round Evaluation Report.** With the exception of a step forward in respect of the implementation recommendation xvii, leading to the conclusion that this recommendation has been partly implemented, Hungary remains at the same level of implementation as in the Compliance Report.
37. More specifically, recommendations vii, ix, xi, xiii and xviii had been considered implemented satisfactorily or dealt with in a satisfactory manner in the Fourth Round Compliance Report on Hungary. Of the thirteen remaining pending recommendations, three recommendations have now been partly implemented and ten recommendations remain non-implemented.

38. It is particularly disappointing to GRECO that in respect of twelve out of the thirteen pending recommendations (with the exception being the information provided in respect of recommendation xvii) no further information was provided by the Hungarian authorities other than that no further progress had been made in almost a year and a half since the adoption of the Compliance Report, including as regards measures which at the time of the Compliance Report appeared to be on the way.
39. GRECO strongly urges the Hungarian authorities to take determined measures to improve the current integrity framework of Parliament, in particular to improve the level of transparency and consultation in the legislative process (including the introduction of rules on interactions with lobbyists), to adopt a code of conduct for members of parliament (covering in particular various situations that could lead to a conflict of interest), to introduce a requirement for *ad hoc* declarations of conflict of interest, to ensure a uniform format of asset declarations, to review the broad immunity enjoyed by MPs or to ensure the effective supervision and enforcement of rules of conduct, conflict of interest and asset declarations.
40. As regards judges, no further progress has been reported regarding the three remaining non-implemented recommendations. GRECO's findings on the powers of the President of the National Judicial Office (both as regards the process of appointing or promoting candidates for judicial positions and the process of re-assigning judges) remain of special significance. In this regard, GRECO notes with concern the developments in Hungary since the adoption of the Compliance Report, including allegations of pressure on members of the NCJ and challenges that have reportedly been made to the legitimacy of the NCJ. GRECO implores the authorities to address these issues as a matter of priority, to better protect the independence of the judiciary in Hungary.
41. The only area in which some progress has been made concerns disciplinary proceedings in respect of prosecutors, which is also the only recommendation in this whole report on which further information has been submitted by the Hungarian authorities. However, it would appear that disciplinary proceedings are still not handled outside the direct hierarchical structure. Furthermore, no progress has been achieved regarding the prolongation of the term of the Prosecutor General and the broad immunity enjoyed by prosecutors.
42. GRECO concludes that the overall low level of compliance with the recommendations remains "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
43. Pursuant to Rule 32 2. (i) of the Rules of Procedure, GRECO requests the Head of the Hungarian delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i to vi, viii, x, xii and xiv to xvii) as soon as possible, but at the latest by 31 December 2019.
44. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructs its President to send a letter – with a Copy to the President of the Statutory Committee – to the Head of Delegation of Hungary, drawing his attention to the need to take determined action with a view to achieving tangible progress as soon as possible.
45. However, given the lack of information provided and the lack of progress in implementing the recommendations, in accordance with Rule 32, paragraph 2(iii), GRECO also requests the authorities of Hungary to receive a high-level mission in order to discuss on the spot with all stakeholders concerned ways to expedite the legislative and policy changes highlighted by this Report.

46. Finally, GRECO invites the authorities of Hungary to authorise, as soon as possible, the publication of the present report as well as the previous compliance report, to translate them into the national language and to make those translations public.