



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

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

AUSTRIA

Adopted by GRECO at its 94th Plenary Meeting
(Strasbourg, 5-9 June 2023)

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I. INTRODUCTION

1. The Fourth Round Evaluation Report on Austria was adopted at GRECO's 73rd Plenary Meeting (21 October 2016) and made public on 13 February 2017, following authorisation by Austria ([GrecoEval4\(2016\)1](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. In the Compliance Report adopted by GRECO at its 81st Plenary Meeting (7 December 2018) and made public on 17 July 2019, following authorisation by Austria ([GrecoRC4\(2018\)15](#)), it was concluded that only one of the 19 recommendations contained in the Evaluation Report had been dealt with in a satisfactory manner, five recommendations had been partly implemented and thirteen had not been implemented. GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" and decided to apply its "non-compliance" procedure.
3. In the [Interim Compliance Report](#) adopted by GRECO at its 85th plenary meeting (25 September 2020) and made public on 1 March 2021. GRECO concluded that the low level of compliance with the recommendations remained "globally unsatisfactory".
4. In the [Second Interim Compliance Report](#) adopted by GRECO at its 89th plenary meeting (3 December 2021) and published on 20 April 2022, GRECO concluded that three of the nineteen recommendations contained in the Fourth Round Evaluation Report had been implemented satisfactorily or dealt with in a satisfactory manner. Of the remaining recommendations, nine have been partly implemented and seven have not been implemented. Consequently, the level of compliance with the recommendations at that stage was no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure and discontinued its "non-compliance" procedure under Rule 32. Pursuant to paragraph 8.2 of Article 31 of the Rules of Procedure, GRECO asked the head of the Austrian delegation to provide a report on measures to implement the outstanding recommendations. That report, submitted on 21 December 2022, and subsequent information, provided on 12 May 2023, form the basis of this report.
5. This [Second Compliance Report](#) evaluates the progress made in implementing the outstanding recommendations (recommendations ii-xii, xiv, xvi-xviii) since the previous Second *Interim* Compliance Report and provides an overall appraisal of the level of Austria's compliance with these recommendations.
6. GRECO selected Poland (on members of parliament) and Liechtenstein (on judges and prosecutors) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Katarzyna NASZCZYŃSKA, on behalf of Poland, and Ms Martina EDLUND, on behalf of Liechtenstein. They were assisted by GRECO's Secretariat in drawing up this Second Interim Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation ii

7. *GRECO recommended: (i) that a code of conduct (or ethics) be developed for members of parliament and communicated to the public; ii) ensuring there is a*

mechanism both to promote the code and to provide advice and counselling to MPs, but also to enforce such standards where necessary.

8. GRECO recalls that this recommendation remained partly implemented since the *Interim Compliance Report*: while new codes of conduct had been adopted and published by both chambers of parliament, supplementary guidance and enforcement mechanisms were still lacking, and no steps were foreseen to provide advice and counselling to MPs.
9. The Austrian authorities now submit that no further measures are to be reported at this stage.
10. GRECO concludes that recommendation ii remains partly implemented.

Recommendation iii

11. *GRECO recommended: (i) to clarify the implications for members of parliament of the current system of declarations of income and side activities when it comes to conflicts of interest not necessarily revealed by these declarations; and in that context (ii) to introduce a requirement of ad hoc disclosure when a conflict between specific private interests of individual MPs may emerge in relation to a matter under consideration in parliamentary proceedings – in the plenary or its committees – or in other work related to their mandate.*
12. It is recalled that this recommendation was partly implemented in the Second *Interim Compliance Report*. The rules on recusal applicable to members of supervisory committees of the two chambers of parliament had been adopted, but their application was limited and needed to be broadened to cover all MPs, as well as other parliamentary activity. These measures addressed only some aspects of part (ii) of this recommendation, while no steps had been taken to implement part (i).
13. The Austrian authorities submit that no further measures are to be reported at this stage.
14. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv

15. *GRECO recommended that internal rules and guidance be provided within parliament on the acceptance, valuation and disclosure of gifts, hospitality and other advantages, including external sources of support provided to parliamentarians, and that compliance by parliamentarians be properly monitored, consistent with the rules on political financing.*
16. It is recalled that this recommendation remained not implemented in the Second *Interim Compliance Report*.
17. The Austrian authorities now report that amendments to legislation relating to funding of political parties¹ and parliamentary groups² entered into force as of 1 January 2023. In particular, the amendments explicitly prohibit parliamentary groups from accepting donations (including payments and benefits in kind or living subsidies,

¹ The text of the amendments of the Political Parties Act is accessible via the following link: Federal Law Gazette I no. 125/2022 (German only)

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2022_I_125/BGBLA_2022_I_125.html

² The text of the amendments to the Parliamentary Groups Funding Act is accessible via the following link: Federal Law Gazette I no. 142/2022 (German only)

https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2022_I_142/BGBLA_2022_I_142.html

such as personnel provided), except contributions to the parliamentary groups to cover the costs incurred the performance of parliamentary duties, (expenditures on personnel, infrastructure, IT or public relations), membership dues, funds by political parties, and other non-discriminatory public funds for specific purposes. The ban for MPs on accepting donations (Article 6, paragraph 6 of the Political Parties Act) stipulates that no donations may be accepted from, for instance, parliamentary groups and public corporations (such as the Federal Republic, i.e. the Parliamentary Administration). Further, in 2022, the Compliance Department has published guidelines for MPs on dealing with benefits, aiming to provide practical guidance on the handling of gifts and other benefits granted or offered in connection with their official activities, including identifying actions that may lead to criminal liability, and those of no gravity. According to the authorities, the guidelines also contain case examples and are intended as a "living document" to be kept under review by the Compliance Department and updated, as necessary.

18. GRECO takes note of the information provided by the authorities. It notes with satisfaction the adoption of the guidelines by the Compliance Department on how MPs should deal with gifts and other advantages, which are said to also contain examples and aim to assist MPs in handling such situations. This is a welcome step, which appears to address one part of this recommendation. However, the internal rules regarding acceptance, disclosure and valuation of gifts by MPs have still not been adopted, and are not even in the making. In GRECO's view, new restrictions on funding of political parties and parliamentary groups, prohibiting certain donations, cannot be seen as a substitute to internal parliamentary rules on gifts, their valuation and disclosure. Therefore, it cannot consider this recommendation as implemented more than partly.
19. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v

20. *GRECO recommended that the legal framework applicable to lobbying be reviewed so as to (i) improve the transparency of such activities (also for the public) and the consistency of requirements including the legal prohibition for parliamentarians themselves to act as lobbyists, and to ensure proper supervision of these declaratory requirements and restrictions (ii) to provide for rules on how members of parliament have contacts with lobbyists and other persons seeking to influence parliamentary work.*
21. GRECO recalls that this recommendation was not implemented in the Second *Interim* Compliance Report. A working group established by the Ministry of Justice was to evaluate the Austrian Lobbying and Advocacy Transparency Act with a view to informing possible alignment of lobbying activities of the MPs, but the evaluation had not been completed at the time.
22. The Austrian authorities now submit that no further measures are to be reported.
23. GRECO concludes that recommendation v remains not implemented.

Recommendation vi

24. *GRECO recommended: (i) that the existing regime of declarations be reviewed in order to include consistent and meaningful information on assets, debts and liabilities, more precise information on income (ii) that consideration be given to widening the scope of the declarations to also include information on spouses and dependent family members (it being understood that such information would not necessarily need to be made public).*

25. It is recalled that this recommendation was partly implemented in the Second *Interim Compliance Report*. No measures were taken to address part (i) of the recommendation. As to part (ii), following some consideration, a parliamentary working group rejected the idea of broadening the scope of information about MPs incomes to also cover spouses and dependent family members. However, a broader and more formal consideration of this matter was deemed necessary.
26. The Austrian authorities report no new developments as regards the present recommendation.
27. GRECO concludes that recommendation vi remains partly implemented.

Recommendation vii.

28. *GRECO recommended that: (i) that the future declarations of income, assets and interests be monitored by a body provided with the mandate, the legal and other means, as well as the level of specialisation and independence needed to perform this function in an effective, transparent and proactive manner and (ii) that such a body be able to propose further legislative changes as may be necessary, and to provide guidance in this area.*
29. GRECO recalls that this recommendation was not implemented in the Second *Interim Compliance Report*. Authorising the incompatibility committees of both chambers of parliament to demand MPs additional financial information was considered as falling short of the requirements of either part of this recommendation.
30. The Austrian authorities provide no new information regarding the implementation of the present recommendation.
31. GRECO concludes that recommendation vii remains not implemented.

Recommendation viii

32. *GRECO recommended that infringements of the main present and future rules in respect of integrity of parliamentarians, including those concerning the declaration system under the Act on incompatibilities and transparency, carry adequate sanctions and that the public be informed about their application.*
33. It is recalled that this recommendation was not implemented in the Second *Interim Compliance Report*, as the possibility of introducing additional sanctions had been discussed by parliamentary working group, but no such sanctions were introduced.
34. The Austrian authorities submit that no further measures are to be reported since the previous compliance report.
35. GRECO concludes that recommendation viii remains not implemented.

Corruption prevention in respect of judges

Recommendation x

36. *GRECO recommended that the recruitment requirements be increased and formalised for judges when they are to become candidate-judges (Richteramtsanwärter) and administrative court judges, and that this includes proper integrity assessments as*

well as objective and measurable criteria on professional qualifications to be applied by the independent selection panels involved.

37. It is recalled that this recommendation remained partly implemented in the Second *Interim* Compliance Report. GRECO had noted the formalisation of recruitment requirements and procedures for ordinary judges, the practice of involving other stakeholders in hearings with candidate-judges for ordinary courts, as well as the transfer of power regarding appointments from presidents of Higher Regional Court to “external senates”, composed of a majority of elected members of the judiciary. However, these procedures were yet to be adopted in law. In addition, no information was provided regarding appointments of administrative judges.
38. The Austrian authorities now report that the recently adopted legislative amendments provide participation of the president of the Higher Regional Court (in person or by delegated judges), the senior public prosecutor's office, the Association of Austrian Judges and the Public Service Union in the “external senate” at the Higher Regional Court.³ Further, the new legislation (in force as of 1 January 2023) provides that the “external senate” submits proposals for judicial appointments to the Federal Minister of Justice. Further, the authorities specify that this procedure also applies to selection and appointment of candidate-judges.
39. GRECO notes with satisfaction the adoption of legislation to formalise judicial appointment procedures and to transfer the power of proposing candidates for judicial appointments to a selection panel, composed of a majority of representatives of the judiciary. However, it would appear that these arrangements do not apply to administrative court judges. In view of the above, this important aspect of the present recommendation remains to be addressed.
40. GRECO concludes that recommendation x remains partly implemented.

Recommendation xi

41. *GRECO recommended that staff panels be involved more broadly in the selection and career evolution of ordinary and administrative court judges, including the presidents and deputy-presidents, and that the proposals of the panels become binding for the executive body making appointments (recommendation xi).*
42. It is recalled that recommendation xi remained not implemented in the Second *Interim* Compliance Report, as the amendments to the Service Act for Judges and Prosecutors had not advanced beyond a first draft law.
43. The Austrian authorities now report that legislative amendments to the Service Act for Judges and Prosecutors have entered into force on 1 January 2023, revising the appointment procedure for the President and the Vice-President of the Supreme Court⁴. In particular, the appointment procedure to these posts is now similar to all other positions in the ordinary judiciary – through a proposal by a staff panel, which is to include five elected members of the External Senate at the Supreme Court – representing the entire federal territory and having extensive experience in the selection of staff. The staff panel is to be chaired by the longest-serving president of the Higher Regional Court.
44. GRECO takes note of the information provided by the authorities. Following recent legislative amendments, staff panels are now involved also in the appointment

³ See § 3 of the Service Act for Judges and Public Prosecutors.

⁴ See § 32, § 33a and §180 of the Service Act for Judges and Public Prosecutors (RStDG).

procedures of the President and Vice-Presidents of the Supreme Court⁵ (which was already the case in appointments of ordinary judges and administrative court judges). One part of this recommendation has therefore been complied with. That said, the proposals of staff panels to the executive body making appointments remain consultative, and may not be followed by the appointing authority. This part of the present recommendation remains to be addressed.

45. GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii

46. *GRECO recommended that a system of periodic appraisals be introduced for judges, including the presidents of the courts, and that the results of such appraisals be used in particular for decisions on career progression (recommendation xii).*
47. It is recalled that recommendation xii was not implemented in the Second *Interim Compliance Report* due to the lack of measures taken.
48. The authorities now report that in 2020 the Federal Ministry of Justice launched a process to reform the appraisal system in respect of judges. After discussions at various levels involving all relevant stakeholders in the judiciary, draft legislation has been circulated for comments from the judiciary and in January 2022 a survey has been conducted among judges by the Association of Judges. The survey revealed that a majority of judges were critical of the changes proposed to the current appraisal system. As the new regulation touches upon such a sensitive matter, the authorities consider that it should garner sufficient support from among the judiciary prior to implementation. Therefore, further discussions are required with the stakeholders concerned, which has not yet been achieved. However, the Ministry of Justice is supportive of amending the current appraisal system of judges and continues working in the direction of the recommendation.
49. GRECO takes note of the information submitted by the authorities. In spite of some initiatives and draft legislation prepared by the Ministry of Justice, the system of periodic appraisal of judges has still not been introduced and no tangible progress could be reported.
50. Therefore, GRECO concludes that recommendation xii remains not implemented.

Recommendations ix, xiv and xvi

51. *GRECO recommended that i) adequate legislative, institutional and organisational measures be taken so that the judges of federal and regional administrative courts be subject to appropriate and harmonised safeguards and rules as regards their independence, conditions of service and remuneration, impartiality, conduct (including on conflicts of interest, gifts and post-employment activities), supervision and sanctions; ii) the Länder be invited to support those improvements by making the necessary changes which fall within their competence (recommendation ix).*
52. *GRECO recommended that: (i) to ensure that all relevant categories of judges, including lay judges, are bound by a Code of conduct accompanied by, or complemented with appropriate guidance and (ii) that a mechanism is in place to provide confidential counselling and to promote the implementation of the rules of conduct in daily work (recommendation xiv).*

⁵ See paragraph 91 of GRECO's Fourth Evaluation Report on Austria, accessible via the following link: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f2b42>

53. *GRECO recommended that the persons responsible for the implementation and supervision of the various obligations laid upon judges - notably on professional secrecy, gifts, accessory activities and management of conflicts of interest – be properly identified and known to all, and that they be required to introduce the proper procedures needed for these obligations to become effective (recommendation xvi).*
54. It is recalled that recommendations ix and xiv remained partly implemented and recommendation xvi remained not implemented.
55. The Austrian authorities provide no new information regarding progress in the implementation of these recommendations.
56. GRECO notes the absence of progress and in view of the above, concludes that recommendations ix and xiv remain partly implemented and recommendation xvi remains not implemented.

Corruption prevention in respect of prosecutors

Recommendations xvii and xviii

57. *GRECO recommended that the statute of prosecutors be further approximated with the one for judges recommended in the present report, particularly with regard to decisions on appointments and career changes including for the highest functions (the role of the executive should be limited to the formal appointment and should not include the choice of the candidate), as well as with regard to periodic appraisals for all prosecutors and the incompatibility of their function with a political function in the executive or legislature (recommendation xvii).*
58. *GRECO recommended that (i) that all prosecutors are bound by a code of conduct accompanied by, or complemented with, appropriate guidance and (ii) that a system be put in place to provide confidential counselling and to support the implementation of the code in daily work (recommendation xviii).*
59. It is recalled that recommendations xvii and xviii were partly implemented in the Second *Interim* Compliance Report.
60. The Austrian authorities provide no new information on any measures taken to address the above recommendations.
61. GRECO notes the absence of progress and concludes that recommendations xvii and xviii remain partly implemented.

Corruption prevention regarding judges and prosecutors

Recommendation xix

62. *GRECO recommended that an annual programme be put in place for the in-service training of judges and prosecutors, including administrative judges and lay judges, which would include integrity-focused elements concerning the rights and obligations of these professionals.*
63. It is recalled that this recommendation was partly implemented in the Second *Interim* Compliance Report. GRECO took note of the training sessions delivered and various planned activities. However, the new training tools were not made available to lay judges at the time.

64. The Austrian authorities now report that in the course of 2022, the network of compliance officers continued receiving training in various compliance issues. By way of example, the authorities refer to a training on the topic of “social media” conducted in September 2022. In addition to the regular judicial training courses for judges and public prosecutors dealing with compliance and anti-corruption issues, the Federal Administrative Court implemented a monthly one-hour long online training in February 2021 allowing all members of the Federal Administrative Court to deepen their knowledge of compliance and anti-corruption. The authorities also report that by 30 November 2022, the course was completed by some 153 members of the Federal Administrative Court. In addition, the mandatory e-Learning program “Compliance” for judges, public prosecutors and other court staff, which has been implemented since 2021, has been completed by 4008 persons⁶.
65. In addition, the authorities once again describe the of status, functions and position of lay judges, as accessory to the judicial system, not seen as part of the judiciary as such. In their view, due to numerous practical reasons, it appears to be impossible to set up comprehensive training arrangements for lay judges (*inter alia*, a very high number of stand-by lay judges and a very limited time when they are called to perform judicial functions). Nevertheless, the authorities submit that the Ministry of Justice is currently working on an e-learning tool to be made available to lay judges (on a voluntary basis). It is intended that the e-learning tool will be based on guidelines that are already available online to lay judges and will include, in particular, topics of impartiality, independence and the obligation to comply with the law, as well as confidentiality.
66. GRECO takes note of the steps taken to provide training to judges on integrity issues and anti-corruption. While various training activities for judges continue, such training is still not offered to lay judges. The new initiative to provide lay judges with an e-learning tool to cover integrity matters is promising, but this work is not yet completed.
67. GRECO concludes that recommendation xix remains partly implemented.

III. CONCLUSIONS

68. **In view of the foregoing, GRECO concludes that Austria has implemented satisfactorily or dealt with in a satisfactory manner three of the nineteen recommendations contained in the Fourth Round Evaluation Report.** Of the remaining recommendations, eleven have been partly implemented and five have not been implemented.
69. More specifically, recommendations i, xiii and xv have been dealt with in a satisfactory manner, recommendations ii, iii, iv, vi, ix, x, xi, xiv, xvii, xviii and xix have been partly implemented and recommendations v, vii, viii, xii and xvi have not been implemented.
70. With respect to members of parliament, only a modest progress has been made in implementing recommendations. No steps have been reported to introduce confidential advice and counselling to parliamentarians. No progress has been made to clarify implications for parliamentarians for failure to reveal conflicts of interest in their declarations and the recusal rules remain limited to members of supervisory committees only, failing to cover all parliamentary activities. Guidelines are now available for the MPs on how to handle situations regarding gifts, benefits and other advantages offered in connection with their official activities, but the rules on the acceptance, valuation and disclosure of gifts, hospitality and other advantages, and

⁶ Compared to 1929 persons at the end of 2021.

on parliamentarians' interaction with lobbyists have still not been adopted. Finally, no new measures are reported regarding the reviewing of the regime of declarations, consideration to include information on spouses and dependent family members, as well as introducing sanctions for infringement of integrity rules.

71. Some progress has also been made as regards recommendations concerning judges and prosecutors. Even though legislation was adopted to transfer the power of proposing candidates for judicial appointments to a selection panel, composed of a majority of representatives of the judiciary, these arrangements do not appear to apply to administrative court judges. Further, staff panels are now also involved in the appointment procedures of the President and Vice Presidents of the Supreme Court, but the appointment proposals are still not binding for the executive, and the reform of the appraisal system in respect of judges has still not materialised. Furthermore, while the online in-service training programmes for judges and prosecutors have been launched in 2021, training arrangements are not yet available to lay judges. Finally, no new developments are reported on the remaining recommendations.
72. In light of the foregoing, GRECO notes that Austria has not made sufficient or decisive progress in fully implementing the above recommendations. Since the vast majority of recommendations remain partly implemented or not implemented, GRECO has to conclude that the current level of compliance with the recommendations is again "globally unsatisfactory" within the meaning of Rule 31 paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report and asks the head of the Austrian delegation to provide a report on the progress made in implementing recommendations ii to xii, xiv, xvi, xvii, xviii and xix and as soon as possible, however – at the latest – by 30 June 2024.
73. Finally, GRECO invites the authorities of Austria to authorise, as soon as possible, the publication of this report, to translate it into the national language and to make the translation public.