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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 GERMANY

Adopted by GRECO at its 87th Plenary Meeting
(Strasbourg, 22-25 March 2021)

FOURTH
EVALUATION
ROUND

I. INTRODUCTION

1. The Interim Compliance Report assesses the measures taken by the authorities of Germany to implement the recommendations issued in the Fourth Round Evaluation Report on Germany (see paragraph 2) on "corruption prevention in respect of members of parliament, judges and prosecutors".
2. The [Fourth Round Evaluation Report on Germany](#) was adopted at GRECO's 65th Plenary Meeting (on 10 October 2014) and made public on 28 January 2015, following authorisation by Germany.
3. The [Compliance Report](#) was adopted by GRECO at its 75th Plenary Meeting (on 24 March 2017) and made public on 6 July 2017, following authorisation by Germany.
4. The [Second Compliance Report](#) was adopted by GRECO at its 83rd Plenary Meeting (on 21 June 2019) and made public on 12 August 2019, following authorisation by Germany. GRECO concluded that the overall very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decided to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asked the Head of the German delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i-iv and vi) as soon as possible, but at the latest by 30 June 2020, pursuant to paragraph 2(i) of that rule. The deadline was postponed to 30 December 2020.
5. As required, the authorities of Germany submitted a Situation Report on measures taken to implement the pending recommendations. This report was received on 18 December 2020 and served as a basis for the current Interim Compliance Report.
6. GRECO selected the Slovak Republic (in respect of members of parliament) and Switzerland (in respect of judicial institutions) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Ján KRÁLIK, on behalf of the Slovak Republic, and Mr Ernst GNÄGI, on behalf of Switzerland. They were assisted by GRECO's Secretariat in drawing up the Interim Compliance Report.

II. ANALYSIS

7. GRECO, in its Fourth Round Evaluation Report, addressed eight recommendations to Germany. In the Second Compliance Report, GRECO concluded that recommendations v, vii and viii had been implemented satisfactorily, recommendations i, iii and vi had been partly implemented and recommendations ii and iv had not been implemented.

Corruption prevention in respect of members of parliament

Recommendation i.

8. *GRECO recommended that the transparency of the parliamentary process be further improved, e.g. by introducing rules for members of parliament on how to interact with lobbyists and other third parties seeking to influence the parliamentary process.*
9. GRECO recalls that this recommendation remained partly implemented in the Second Compliance Report. Previously, in the Compliance Report, GRECO had already considered this recommendation to be partly implemented. It acknowledged at that time that the transparency of lobbying had been enhanced to some extent (in

particular, by the adoption of further rules to regulate access to the *Bundestag* premises by representatives of interest groups), but found that those measures only partly addressed the different concerns underlying the recommendation. In the Second Compliance Report, GRECO welcomed the formal endorsement by the Federal Government of the practice that all Federal Ministries publish the comments received by stakeholders from the private sector and civil society to legislative initiatives in 19th legislative term, but reminded the authorities that the recommendations specifically called for the transparency of the parliamentary process to be improved. It furthermore took note of a planned amendment¹ to the Implementing Provisions to the Code of Conduct of the *Bundestag*, but considered this to be unlikely to have a noteworthy impact on the transparency of the parliamentary process. As in any case a number of the concerns GRECO outlined in its Evaluation Report remained unaddressed, GRECO concluded that the recommendation remained partly implemented.

10. The German authorities report that, on 8 September 2020, a bill was introduced in the *Bundestag* by the parliamentary groups of the CDU/CSU and SPD (which together form a majority in the *Bundestag*) for an Act to Introduce a Register for Lobbyists at the German Bundestag and to Amend the Act on Regulatory Offences (*Lobbyregistergesetz* or Lobby Register Act). This bill envisages a registration duty for representatives of special interests (defined in section 1, paragraph 2, of the bill as any natural or legal person or partnership pursuing activities “for the purpose of directly or indirectly influencing the opinion-forming process of the German *Bundestag* along with its organs, members, parliamentary groups or other groups”), in other words a “lobby register”.² The bill stipulates in which cases the registration duty does not apply (e.g. natural persons pursuing personal interests exclusively), provides further details on how the register is to be maintained, the data to be collected and the consequences of any breaches of the statutory provisions and would introduce a requirement upon the “representatives of special interests” to adopt a code of conduct. It is envisaged that a violation for the duty to register would be a regulatory offence under the Act on Regulatory Offences (*Ordnungswidrigkeitengesetz* or *OWiG*), for which a fine can be imposed of up to EUR 50 000. Furthermore, the administration of the *Bundestag* foresees the creation of a new unit, which will be responsible for maintaining the register.
11. A first reading of the bill in the plenary of the *Bundestag* took place on 11 September 2020. The bill (together with the motions filed by other parliamentary groups) was subsequently, on 1 October 2020, subject to a hearing of the (leading) Committee for the Scrutiny of Elections, Immunity and Rules of Procedure. Further deliberations on the bill are currently on-going.
12. GRECO welcomes the parliamentary initiative for the registration of lobbyists and other third parties, beyond the current voluntary registration of associations in a public list kept by the President of the *Bundestag*. This represents an important step in the direction of providing more transparency of the activities of lobbyists and other third parties seeking to influence the work of the *Bundestag*. As the draft is not yet adopted and no other steps have been taken to improve the transparency of the parliamentary process, it follows that the recommendation is only partly complied with.

¹ These amendments would *inter alia* require Members of the *Bundestag* who could invoke a statutory right or contractual duty not to disclose certain information (in the information they need to submit to the President the *Bundestag* on certain ancillary activities) to not only indicate the type of activity but also the economic sector in which the client is active.

² To this end, section 1, paragraph 1, of the bill provides that “Anyone intending to pursue the representation of special interests vis-à-vis the German *Bundestag*, its member, parliamentary groups or other groups must state this by filing such data in a public register maintained by the *Bundestag* in all cases in which such representation either (1) is pursued on a regular basis; (2) is designed to be of a lasting nature; (3) is performed on behalf of third parties; or (4) resulted in more than fifty different contacts serving the purpose of representing special interests which were taken up in the course of the three months preceding the entry”.

13. GRECO concludes that recommendation i remains partly implemented.

Recommendation ii.

14. *GRECO recommended (i) that a requirement of ad hoc disclosure be introduced when a conflict between specific private interests of individual members of parliament may emerge in relation to a matter under consideration in parliamentary proceedings – in the Bundestag plenary or its committees – independently of whether such a conflict might also be revealed by members’ declarations of activities and income; and (ii) that members of parliament be provided written guidance on this requirement – including definitions and/or types of conflicts of interest – as well as advice on possible conflicts of interests and related ethical questions by a dedicated source of confidential counselling.*
15. GRECO recalls that this recommendation had not been implemented at the time of adoption of the Second Compliance Report. Earlier, in the Compliance Report, GRECO took note of the discussions held by relevant parliamentary committees, but expressed concern that two and a half years after the adoption of the Evaluation Report, no concrete steps had been taken to implement the recommendation. GRECO also stressed that the existing rules of the Code of Conduct, to which the authorities referred, had already been examined in detail in the Evaluation Report. In the Second Compliance Report (which was adopted more than four and a half years after the adoption of the Evaluation report), the authorities reported that no further developments could be reported.
16. The German authorities now report that no further developments can be reported.
17. GRECO concludes that recommendation ii remains not implemented.

Recommendation iii.

18. *GRECO recommended (i) that the existing regime of declarations of interests be reviewed in order to extend the categories of information to be disclosed to include, for example, information on significant assets – including shareholdings in enterprises below the current thresholds – and significant liabilities; and (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).*
19. GRECO recalls that this recommendation was partly implemented at the time of the Second Compliance Report. As regards the first part of the recommendation, it had earlier already noted with concern in the Compliance Report that the relevant parliamentary bodies had rejected any further extensions of the disclosure regime. In the Second Compliance report, it welcomed that a legal analysis of a possible duty for members of the *Bundestag* to disclose also significant assets and significant liabilities had been conducted, but regretted that this analysis did not seem to have been conducted with a view to looking for possibilities or legal solutions to extend the categories of information to be disclosed, but rather seemed to have looked for justifications for not doing so. GRECO did not concur with some of the findings of the study, in particular that the disclosure of significant assets and liabilities would violate provisions of the European Convention on Human Rights. As the existing regime of declarations of interests had not been reviewed in order to extend the categories of information to be disclosed, GRECO considered that this part of the recommendation had not been implemented. As regards the second part of the recommendation, even if GRECO would have expected a discussion or a more in-depth examination of the aforementioned legal analysis by the relevant commission in the *Bundestag*, it accepted in the Second Compliance Report that with the aforementioned legal

analysis consideration had been given to widening the scope of the declarations to also include information on spouses and dependent family members. It therefore considered this part of the recommendation to have been satisfactorily implemented.

20. The German authorities now report that no further developments can be reported.
21. GRECO concludes that recommendation iii remains partly implemented.

Recommendation iv.

22. *GRECO recommended that appropriate measures be taken to ensure effective supervision and enforcement of the current and future declaration requirements, rules on conflicts of interest and other rules of conduct for members of parliament, inter alia, by strengthening the personnel resources allocated by the Bundestag Administration.*
23. GRECO recalls that this recommendation remained not implemented at the time of adoption of the Second Compliance Report. Already at the time of the Compliance Report, GRECO had noted that an application had been made to increase the number of staff of the *Bundestag* Administration in support of supervision and enforcement of the Code of Conduct from two to three, but concluded that this was not sufficient to say the recommendation was even partly implemented. In the Second Compliance Report, it welcomed that this additional staff position had been applied for once again, to secure this position beyond the end of 2019. It also took note of the reflection process in the Commission on the Legal Status of Members of the *Bundestag*, which had led to a proposal for an amendment to the *Abgeordnetengesetz* (the law on members of the *Bundestag*) and the Code of Conduct (extending possibilities to impose a fine on members of the *Bundestag* for certain violations of the aforementioned law and code). It however considered that in light of the clear need for reform outlined in the Evaluation Report, with these initial – and in effect rather limited – steps it could not say that appropriate measures had been taken to ensure effective supervision and enforcement of the declaration requirements, rules on conflicts of interest and other rules of conduct for members of parliament, not even partly.
24. The German authorities now report that the application for an additional permanent staff member of the *Bundestag* Administration in support of supervision and enforcement of the Code of Conduct, as reported on in the Second Compliance Report, has now been granted. Furthermore, the proposed amendments to the *Abgeordnetengesetz* and the Code of Conduct, as reported in the Compliance Report, were adopted and entered into force on 19 November 2020. In addition to the already existing provisions on administrative penalties of up to half the annual remuneration of a member of the *Bundestag* for failing to report notifiable activities or income, these amendments allow the Presidium of the *Bundestag* to also impose such penalties if members of the *Bundestag* have not reported notifiable donations or have accepted benefits considered to be impermissible under section 44a(2) of the *Abgeordnetengesetz*.³
25. GRECO welcomes that an additional staff member in support of supervision of the Code of Conduct of the members of the *Bundestag* has been secured on a more structural basis and that possibilities for imposing a fine on MPs have now also been extended to the non-reporting of disclosable donations and for accepting

³ Accordingly Section 44a(4), sentence 2, of the *Abgeordnetengesetz* (Members of the *Bundestag* Act) now reads "If notifiable activities, donations or income are not reported or if there is a violation of duties under subsection 2, the Presidium may impose an administrative penalty of up to half of the Member's annual remuneration". In turn, Rule 8(4), sentence 1, of the Code of Conduct reads "After hearing once again the Member, the Presidium may impose a coercive fine pursuant to section 44a(4) sentence 2, of the *Abgeordnetengesetz*".

impermissible benefits. As regards these fines, given the observations of GRECO in the Evaluation Report on the rare application of sanctions, GRECO hopes that this provision will be effectively applied in practice in appropriate cases. More in general, in light of the nature of the concerns expressed in the Evaluation Report⁴, GRECO would once again have expected more extensive measures to be taken to ensure effective supervision and enforcement of the current and future declaration requirements, rules on conflicts of interest and other rules of conduct for members of parliament, as required by the recommendation. Nevertheless, it accepts that, with the strengthening of personnel resources allocated to the *Bundestag* administration and the extension of the possibility to impose fines for certain violations of the *Abgeordnetengesetz* and the Code of Conduct, steps towards compliance with the recommendation have been taken, allowing GRECO to now conclude that this recommendation has been partly addressed.

26. GRECO concludes that recommendation iv has been partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

27. *GRECO recommended that appropriate measures be taken with a view to enhancing the transparency and monitoring of secondary activities of judges. The Länder are to be invited to contribute to such a reform process.*

28. GRECO recalls that this recommendation had been partly implemented at the time of adoption of the Second Compliance Report. GRECO welcomed that for justices of the *Bundesverfassungsgericht* (Federal Constitutional Court) a new code of conduct had been adopted and that information on income received as a result of attending events or contributing to publications by justices of the Federal Constitutional Court was being published. It also welcomed that for one high-level federal court steps had been taken to improve the monitoring of secondary activities, following a review by the *Bundesrechnungshof* (Federal Court of Audit). However, as these measures only concerned two courts (with the rules on other professional activities already being more restrictive for justices of the Federal Constitutional Court than for other judges), GRECO concluded that the recommendation had been partly implemented.

29. The German authorities now report that the rules regarding secondary activities of judges are complemented by explanatory guidelines and compendia for judges on the application of those rules, both on the federal and the *Länder level*. All federal courts furthermore regularly distribute guidelines, notes or checklists regarding secondary activities which outline all aspects to be considered in assessing if a secondary activity would be admissible. One federal court developed, in January 2017, a comprehensive “note on secondary activities”⁵ with detailed explanations on the practical application of the legislative framework governing secondary activities

⁴ It is recalled that GRECO noted a lack of effectiveness of the administrative control mechanism, as shown by the non-timely submission of declarations of MPs, the rare application of sanctions, the low number of staff of the *Bundestag* administration and their lack of investigative powers, and the lack of scrutiny of the declarations beyond information that MPs themselves provided. It also noted that the question was raised “whether the administration was not too close to power in order to effectively monitor and, if need be, criticise MPs, and whether it would not be more appropriate to entrust an independent commission (...) with supervisory functions”.

⁵ Section 1 of this note lists possible reasons for which a secondary activity could be perceived by the public as threatening a judge’s independence, outlining that a judge may only exercise a secondary activity if this does not risk undermining the trust in the independence, impartiality and neutrality of the justice system. It is furthermore explained that such trust may be threatened if the ratio between the performance and counter-performance is unbalanced, if a judge receives considerable remuneration for a presentation given at an event which is tailored to the requirements of a particular interest group or organised by a law firm, tax or consulting company which could become counsel to a party before the court, or if a promotional event for a particular interest group is concerned. The note also outlines which lecture activities are subject to authorisation and which only need to be notified and which types of lecture activities are typically inadmissible.

for judges, with another federal court (which already took further measures following the review by the Federal Court of Audit, as reported in the Second Compliance Report) having now also revised the internal application form for the authorisation of secondary activities requesting more information to be provided.

30. In addition, all federal courts collect information on reported and authorised secondary activities of judges and submit an annual report to the competent federal ministry, either the Federal Ministry of Justice and Consumer Protection or the Federal Ministry of Labour and Social Affairs.⁶ These reports include information on the total number of federal judges having exercised secondary activities in the respective year, the type of secondary activities, the average time spent on secondary activities (as well as the maximum hours spent by any judge of the respective court), the average yearly remuneration and the maximum yearly remuneration received by a judge and per activity, and the contracting partners. Both ministries review the annual reports and scan them for irregularities. The reports are not made public due to data protection concerns (as it would be too easy to identify individual judges given the relatively small number of judges at federal courts).
31. Finally, the authorities report that, following the Second Compliance Report, the *Länder* Ministries of Justice were requested by letter of the Federal Ministry of Justice and Consumer Protection in March 2020 for further information about measures taken since 2014 to increase the transparency and supervision of secondary activities of judges at *Länder* level. Individual *Länder* Ministries of Justice reported that the legal framework governing secondary activities was broadly considered to be appropriate. Some *Länder* have nevertheless taken additional measures.⁷ Guidelines and notes regarding the admissibility of secondary activities have been made available to judges at the level of the *Länder* as well.
32. GRECO welcomes the explanatory guidelines made available on the application of the rules on secondary activities and the information that all federal courts submit an annual report on the secondary activities of their judges to the Federal Ministry of Justice and Consumer Protection or Federal Ministry of Labour and Social Affairs. It also welcomes the outreach on this issue towards the *Länder*. Even if the requirement to submit an annual report was already in place at the time of the Evaluation Report, GRECO accepts that by having the competent ministries review these annual reports for irregularities further control of secondary activities of judges is being exercised (something it was not made aware of at the time of adoption of the Evaluation Report). The monitoring of secondary activities will additionally be facilitated by the explanatory guidelines on the application of the rules on secondary activities. By contrast, it cannot readily accept that further measures have been taken to improve the transparency of secondary activities of judges, given that the information contained in these reports is not published. In this respect, GRECO takes note of the arguments of the authorities that data protection concerns form an obstacle to publishing this information, but at the same time recalls from the Second Compliance Report that such concerns have not been an obstacle for the Federal Constitutional Court (which publishes information on the remuneration received by individual judges for attending events or their publications). In light of the above, it can therefore not be concluded that this recommendation has now been fully complied with.

⁶ For three federal courts, for which this reporting obligation exists since 2011, this is the Federal Ministry of Justice and Consumer Protection. Two other federal courts, for which the reporting obligation exists since 2013, report to the Federal Ministry of Labour and Social Affairs.

⁷ For example, the *Land* of Brandenburg reported that, in 2019, a reform of the applicable regulatory framework took place. A new provision in the Law on Public Servants now makes all paid secondary activities and most unpaid secondary activities subject to prior authorisation. Some *Länder* have developed additional guidelines or codes of conduct for all judges or certain categories of judges. For example, the code of conduct for labour law courts outlines the possible impact of lecturing activities or certain work with attorneys in arbitration procedures on the judicial activities of a judge.

33. GRECO concludes that recommendation vi remains partly implemented.

III. CONCLUSIONS

34. **In view of the foregoing, GRECO concludes that Germany has implemented satisfactorily or dealt with in a satisfactory manner three of the eight recommendations contained in the Fourth Round Evaluation Report.** Of the five remaining recommendations, four have been partly implemented and one has not been implemented.
35. More specifically, recommendations v, vii and viii have been implemented satisfactorily, recommendations i, iii, iv and vi have been partly implemented and recommendation ii has not been implemented.
36. With respect to members of Parliament, GRECO is pleased with the initiative for a lobby register, which could represent an important step in the direction of providing more transparency of the activities of lobbyists and other third parties seeking to influence the work of the *Bundestag*. In addition, GRECO welcomes that an additional staff member in support of supervision of the Code of Conduct of the members of the *Bundestag* has been secured on a permanent basis and that now fines can also be imposed in case of the non-reporting of certain donations or for accepting impermissible benefits. While given the nature of concerns expressed in the Evaluation Report, GRECO would have expected a more comprehensive reform to be undertaken of the supervision and enforcement regime, it accepts that some steps towards improving the supervision and enforcement of the declaration requirements and rules of conduct for members of parliament have been taken, leading to the assessment that this recommendation has now been partly implemented.
37. By contrast, GRECO regrets that no further developments have been reported on the introduction of a requirement of *ad hoc* disclosure of situations in which private interests of a member of the *Bundestag* come into conflict with matters under parliamentary consideration and the provision of guidance and advice on these matters through confidential counselling. Similarly, no further developments have been reported on extending the categories of information to be disclosed by Members of the *Bundestag* in their financial declarations.
38. With respect to judges, GRECO welcomes the information that explanatory guidelines have been made available to judges on the application of the rules on secondary activities (which will additionally facilitate the monitoring of these rules) and that outreach on the issue of secondary activities of judges has taken place towards the *Länder*. It accepts that having the competent ministries review the annual reports of federal courts on the secondary activities of judges, additional control of these activities is being exercised. However, based on the information provided, it cannot say that adequate measures have now been taken to also enhance the transparency of secondary activities of federal judges, as required by the recommendation.
39. In the light of the foregoing, GRECO concludes that the current level of compliance with the recommendations remains “globally unsatisfactory” within the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. Pursuant to paragraph 2, sub-paragraph i, of Article 32 of the Rules of Procedure, GRECO asks the head of the German delegation to provide a report on the measures taken to implement the outstanding recommendations (namely recommendations i-iv and vi) as soon as possible, but at the latest by 31 March 2022.
40. In addition, in accordance with Rule 32, paragraph 2, sub-paragraph ii.a, GRECO invites its President to send a letter – with a copy to the President of the Statutory

Committee – to the head of the German delegation, drawing his attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving tangible progress as soon as possible.

41. Finally, GRECO invites the authorities of Germany 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.