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Groupe d'États contre la corruption

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

EVALUATION REPORT PORTUGAL

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EXECUTIVE SUMMARY

1. Corruption is seen as a problem by Portuguese society. Perceived levels of corruption declined between 2006 and 2009 (on Transparency International's Corruption Perception Index – from (66) in 2006 to (58) in 2009), rose slightly thereafter and have remained relatively stable since 2012 (i.e. (63) in 2012, (62) in 2013 and (63) in 2014).

2. In 2011, Portugal accepted an EU-IMF economic adjustment programme that included demands for structural reforms aimed at reducing public debt and red tape. As part of the programme, a reform conceived to raise the efficiency of the judicial system has been implemented since September 2014. It has involved an overhaul of the country's judicial map and resulted in cuts to judicial budget and staff. Some observers anticipated that certain other elements, namely the privatisation of state-owned assets and the re-negotiation of public-private partnerships would engender corruption risks due to the proximity of private and public interests.

3. A legislative framework and a number of institutions and tools intended to deter corruption in respect of the three professional groups under review are in place. These encompass advance and periodic declaration of conflicts of interest, a regime pertaining to incompatibilities and disqualifications, and asset disclosure (in the case of members of parliament). The various elements of the system are, however, disconnected, and the legal framework is fragmented, sometimes incoherent, and has not always been sufficiently thought through. The fragmentation is said to do little to mitigate the risks of corruption as it causes uncertainty – both for the public and for the three professional groups – as to the rules that apply. Above all, there is very little focus on corruption *prevention*.

4. Insufficient attention to the issues of integrity, accountability and transparency is inherent to the regimes that apply to the three professional groups. No rules on professional conduct have yet been established. Currently, in parliament the individual conscience of MPs is relied on, and within the judiciary only the general principles pertaining to the office of judge or prosecutor (and, on a subsidiary basis, the principles governing civil servants) can be referred to. The accountability of MPs has been undermined by the too permissive conflicts of interest regime and contentious incompatibilities rules which allow MPs to practise as lawyers. The perception that parliament's activities are only ostensibly transparent persists due to the lack of regulation of MPs' contacts with third parties and the insufficient openness of the law-making process to other stakeholders. As for judges and prosecutors, the concealing of certain details of the outcome of disciplinary procedures hinders their accountability as well as that of the judicial and prosecutorial councils.

5. Further contentious points, specific to each of the three professional categories have also come to light. The need to evaluate the effectiveness and reinvigorate the entire system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest with the Assembly is apparent. The procedure for the declaration of conflicts of interest and of incompatibilities and disqualifications requires streamlining, and oversight is to be strengthened. Moreover, for greater coherency, asset disclosure is to become an integral component of the policy for managing MPs' conflicts of interest. Various failings – including a lack of timely and in-depth monitoring – of the mechanism for disclosure and verification of MPs' assets will also need to be addressed. Last but not least, a review of the procedure for lifting the immunity of deputies of the regional legislative assemblies – which constitutes a barrier to prosecuting criminal acts, including corruption – is also suggested.

6. As for the judicial system, its vulnerability to undue political interference is significant due to the composition of the judicial councils responsible for the appointments, promotion and disciplinary action in the ordinary, administrative and tax

courts. Also, the lack of financial autonomy of courts and of the Public Prosecution Service and the fact that the budget of a prosecutor's office forms part of that of the respective court (or a judicial county) to which it is attached is problematic and undermines the status of the judiciary as a separate state power and of the Prosecution Service as an autonomous body. Additionally, although the new judicial map was introduced in September 2014, neither the statute of judges nor the statute of prosecutors has been aligned to it. This has resulted *inter alia* in discordant regulation of the re-allocation of cases amongst judges and of the transfer of judges within district courts and, for prosecutors, in an erosion of the required strict hierarchical subordination.

7. In conclusion, the authorities are called upon to instil a clear corruption prevention perspective into the regulations pertaining to the three professional groups, to consolidate the existing legal framework, to reinforce, as appropriate, the powers, impartiality or effectiveness of the oversight institutions, and otherwise promote a cohesive and systematic approach to corruption prevention so as to attain tangible results and sustained enforcement.

I. INTRODUCTION AND METHODOLOGY

8. Portugal joined GRECO in 2002. Since its accession, Portugal has been subject to evaluation in the framework of GRECO's First (in November 2002), Second (in November 2005) and Third (in May 2010) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

9. GRECO's current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round, which examined, in particular, the public administration, and the Third Evaluation Round, which focused on corruption prevention in the context of political financing.

10. Within the Fourth Evaluation Round, the same priority issues are addressed in respect of all persons/functions under review, namely:

- ethical principles, rules of conduct and conflicts of interest;
- prohibition or restriction of certain activities;
- declaration of assets, income, liabilities and interests;
- enforcement of the applicable rules;
- awareness.

11. As regards parliamentary assemblies, the evaluation focuses on members of national Parliaments, including all chambers of Parliament and regardless of whether the members of parliament are appointed or elected. Concerning the judiciary and other actors in the pre-judicial and judicial process, the evaluation focuses on prosecutors and on judges, both professional and lay judges, regardless of the type of court in which they sit, who are subject to national laws and regulations.

12. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2015) 5E) by Portugal, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Portugal from 29 June to 3 July 2015. The GET was composed of Ms Vita HABJAN BARBORIČ, Chief Project Manager for Corruption Prevention, Centre for Prevention and Integrity of Public Service, Commission for the prevention of corruption (Slovenia), Mr Alexandru CLADCO, Prosecutor, Head of Unit for analysis and implementing of ECHR, General Prosecutor's Office (Republic of Moldova), Mrs Dominique DASSONVILLE, First Counsellor, Department of Legal Affairs, Senate (Belgium) and Mr Hugh GEOGHEGAN, Retired as Judge of Supreme Court (Ireland). The GET was supported by Ms Liubov SAMOKHINA from GRECO's Secretariat.

13. The GET interviewed members of the Parliament (*Assembleia da República*) and representatives of five political parties. Meetings were also held with representatives of the judiciary, notably of the High Council of the Judiciary, of the Supreme Council of Administrative and Tax Courts, of the Supreme Court of Justice, of the High Council of the Public Prosecution Service, of the Public Prosecution at the Constitutional Court and at the Supreme Court, other judges and prosecutors. Moreover, the GET met representatives of the Centre for Judicial Studies, of the Portuguese Union's Association of Judges and of the Portuguese Public Prosecutors Union. Moreover, interviews were organised with the Ministry of Justice, the Council for the Prevention of Corruption, the Portuguese Bar Association, business associations (the Portuguese Confederation of Commerce and the Confederation of Industry of Portugal), civil society organisations

(TIAC – Transparency and Integrity, Civic Association, and OBEGEF – Economy and Fraud Management Observatory) and the Portuguese Association of the Press.

14. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Portugal in order to prevent corruption in respect of members of parliament, judges and prosecutors and to further their integrity in appearance and in reality. The report contains a critical analysis of the situation in the country, reflecting on the efforts made by the actors concerned and the results achieved, as well as identifying possible shortcomings and making recommendations for further improvement. In keeping with the practice of GRECO, the recommendations are addressed to the authorities of Portugal, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Portugal shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

15. Portugal joined the European Union in 1986 and the Eurozone in 2002. In 2011, in view of the sovereign debt crisis, the country accepted an EU-IMF economic adjustment programme that included demands for structural reforms aimed at reducing public debt and red tape. A set of agreed policies and measures was established in a Memorandum of Understanding on Specific Economic Policy Conditionality, some of which, such as the privatisation of state-owned assets and the re-negotiation of public-private partnerships, have been regarded by some observers as capable of engendering corruption risks due to the closeness of private and public interests¹.

16. Corruption is seen as a problem by Portuguese society. Perceived levels of corruption declined between 2006 and 2009 (on Transparency International's Corruption Perception Index – from (66) in 2006 to (58) in 2009), rose slightly thereafter and have remained relatively stable since 2012 (i.e. (63) in 2012, (62) in 2013 and (63) in 2014). In 2013, 90% of respondents to Eurobarometer considered corruption to be widespread, 72% believed it had increased and 36% claimed to have been personally affected by it². These perceptions are said to be shaped to some degree by the media who are said to assail citizens daily with reports on “new corruption scandals, recurring obstacles in pending investigations, crimes that go unpunished, and new and ineffective anti-corruption policies”³. At the same time, Portugal features among those EU member States where people are least likely to agree that it is acceptable to give a gift (9%⁴) or money (6%). Another study shows that foreign companies operating in Portugal do not identify corruption as an obstacle to business⁵.

17. The perception that parliament is a “representation office” of business interests or that “lobbying is done within parliament by its own MPs” is said to be a common one⁶. In 2013, 76% of respondents to Eurobarometer believed that close links between business and politics were among the main reasons behind corruption and 59% held the view that taking and giving bribes, and abuse of positions of power for personal gain were widespread among politicians at all levels (the same score was also noted for political parties)⁷. Yet, according to other sources, allegations of bribery or corruption with respect to MPs are rare, while it is estimated that there is a real risk of capture of the legislature by interest groups, in particular major consultancy and law firms⁸.

18. The judicial system is regarded as relatively independent but lacking in efficiency. In recognition thereof, a reform was conceived as part of the EU economic adjustment programme addressing *inter alia* the problem of procedural delays. The reform is on-going and has resulted in important cuts to budget and staff, generating, among others shortages of judges, prosecutors and clerks. The other specific implications for judges and prosecutors are explained in the relevant sections of this report. As for the independence of the judiciary from undue influence, in 2012, 45% of respondents to a national survey held the view that court decisions were not independent from financial and economic interests; 42% had the same perception regarding the influence of political interests⁹. In the 2013-2014 World Economic Forum's Global Competitiveness Report, the issue of the independence of the judiciary from the influence of members of government,

¹ Transparency International's National Integrity System Assessment (2012) http://www.transparency.org/whatwedo/nisarticle/portugal_2012.

² See ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf.

³ Transparency International's National Integrity System Assessment (2012).

⁴ Alongside, Denmark (8%) and Finland (6%), see ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf.

⁵ Business Anti-Corruption Portal: Portugal Country Profile (2014) – See <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/portugal/snapshot.aspx>.

⁶ “Lifting the lid on lobbying. The influence market in Portugal” (TIAC 2014), p. 16.

⁷ See ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf.

⁸ “Lifting the lid on lobbying. The influence market in Portugal” (TIAC 2014), p. 3-4.

⁹ Transparency International's National Integrity System Assessment (2012).

citizens or companies was given a 4.2 score, on a 7-point scale, by business executives¹⁰. Another business report indicated that “most citizens consider the Portuguese judiciary to be highly corrupt but almost none report paying bribes”¹¹.

19. In July 2010, an anti-corruption law package was passed, introducing *inter alia* increased penalties for bribery (both active and passive) and extending the statutes of limitation for certain corruption-related crimes, such as bribery and abuse of official position. A bill proposing the criminalisation of illicit enrichment has been debated but failed to obtain the approval of the Constitutional Court. The Public Prosecution Service furthermore prepared a draft Action Programme against Corruption, with chapters on prevention, punishment, organisation and training.

20. Public confidence in the criminal justice system is not too strong. In 2013, 77% of respondents to Eurobarometer felt that high-level corruption was not pursued sufficiently, 17% were of the opinion that there were sufficient prosecutions to deter corrupt practices and 15% qualified Government efforts to tackle corruption as effective. In terms of trust in the system’s capacity to deal with a potential corruption case, 49% of the interviewees showed trust in the police, 16% in the justice system, 8% in specialised anti-corruption agencies and 1% in a political party representative (parliament or local council). Generally, less than five per cent of all corruption-related proceedings reportedly end in a conviction¹². Although since 2014, some 30 former government officials have been charged with graft, money-laundering and influence-peddling in cases dating to 2009¹³, there have so far been no convictions¹⁴. The complexity of the judicial system and delays in case-handling are said to be among the most significant obstacles to the effective prosecution of corruption, coupled with the lack of judges trained in economic and financial crimes and the absence of courts specialised in corruption crimes¹⁵. The complexity of the facts to be investigated, especially those concerning white collar crime, which often require meticulous economic and financial investigations and assistance from foreign and international institutions, is also a factor.

¹⁰ 1 being “extremely inefficient and 7 “highly efficient”. See - http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

¹¹ Business Anti-Corruption Portal: Portugal Country Profile (2014), see <http://www.business-anti-corruption.com/country-profiles/europe-central-asia/portugal/snapshot.aspx>.

¹² De Sousa, L. (2010) A corrupcao participada em Portugal 2004-2008. Resultados globais de uma pesquisa em curso, [Final Report]. Lisbon: PGR/DCIAP and CIES-ISCTE. Cited from Money, Politics, Power: Corruption Risks in Europe (2012 TI).

¹³ Heritage Foundation’s Country Report (2014) – see <http://www.heritage.org/index/pdf/2014/countries/portugal.pdf>.

¹⁴ On 17 November 2015, the former Minister of the Interior was formally indicted by the Public Prosecution Service for four misconduct of public office and trading in influence offences. He had resigned one year earlier following searches by the police in the premises of the Ministry (see e.g. <http://portugalresident.com/ex-minister-miguel-macedo-formally-accused-of-four-crimes> and <http://observador.pt/2015/11/17/vistos-qold-miguel-macedo-acusado-prevaricacao-traffic-influencia/>).

¹⁵ Transparency International’s National Integrity System Assessment (2012).

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

21. Portugal is a parliamentary republic with a multi-party system. Its Constitution dates from 1976 and was last amended in 2005. The unicameral Assembly of the Republic (*Assembleia da República*) is composed of 230 Members elected for a four-year term through general, equal and direct suffrage by secret ballot in the country's twenty-two constituencies. In each constituency, closed lists of candidates are put forward by political parties or their coalitions, and votes are converted into seats using the proportional representation system and d'Hondt highest average rule. Any citizen over 18 years of age can stand for election with certain exceptions (e.g. judges, active military personnel, diplomats).

22. The Assembly has political, legislative and supervisory competencies. It represents all Portuguese citizens. Each MP represents the whole country, not the constituency for which s/he was elected, as well as the national public interest according to the electoral programme of his/her political party.

23. A parliamentarian's mandate terminates if s/he fails to take up the seat, if the established number of absences is exceeded, in case of registration as a member of a party other than the one for which s/he stood for election, ineligibility or incompatibility, resignation, a conviction for one of the specific crimes political office holders may be held liable for and that was committed in the exercise of official parliamentary duties, and participation in organisations propagating racist or fascist ideology. If appointed to a governmental post, the mandate is suspended but not terminated.

24. The Constitution, the Rules of Procedure and the Members of the Assembly Statute (MAS) lay down the competences of the Assembly, its *modus operandi* and the rights and duties of MPs. The Assembly's President and other Bureau members (four Vice-Presidents¹⁶, four Secretaries and four Vice-Secretaries) are elected by an absolute majority of MPs in full exercise of their office. The functions of the President, Vice-President and Bureau members are deemed to be incompatible with holding the position of president of a parliamentary group. The Assembly also elects from among its members standing, *ad hoc*¹⁷ and inquiry committees.

25. Since the most recent elections (4 October 2015), i.e. held after the on-site visit, the Assembly has been composed of the following political parties: Social Democratic Party (89 seats), Socialist Party (86), Left Bloc (19), People's Party (18), Portuguese Communist Party (15), Ecologist Party "the Green" (2) and People-Animals-Nature (1). Of those elected, 76 are women. In the previous legislature, the President (Speaker) of Parliament was a female MP elected by her peers.

Transparency of the legislative process

26. The right to initiate legislation is vested in each deputy, parliamentary group, the Government and, under certain conditions, groups of registered voters (35 000 persons). Legislation of relevance to the autonomous regions of Madeira and the Azores can be initiated by the respective regional legislative assembly.

27. Once it has been admitted by the President of the Assembly, duly registered and numbered, a bill is sent to a specialised standing committee for consideration and opinion. The legislative process comprises: 1) a plenary debate and a vote on general principles; 2) a debate and a vote in the plenary or a committee article by article; and 3)

¹⁶ Elected on proposal of the four largest parliamentary groups.

¹⁷ The initiative to establish such committees may be exercised by at least 10 MPs or any parliamentary group.

a final overall plenary vote. The adoption of bills in an accelerated procedure (within 48 hours) is possible. As soon as they are delivered for admittance by the President, bills are made public on the Assembly's website (www.parlamento.pt) and published in its Official Journal ("*Diário da Assembleia da República*"), i.e. even before they are dispatched to the responsible committee.

28. Plenary sittings are always held in public and seats are reserved for accredited journalists. As a rule, bills are adopted by a simple majority vote. However, for the overall final vote on organic laws an absolute majority vote of MPs in full exercise of their office is required (the same applies to matters pertaining to the territorial delimitation of regions). Each sitting is recorded in full and the transcript is published in the Official Journal.

29. Committee sittings are public but can be held *in camera* if justified by the classified nature of the matters under consideration. Decisions are taken by more than half of all members in full exercise of their office. The minutes drawn up contain information on presences/absences, a summary of the subjects discussed, the positions taken by MPs and parliamentary groups, the voting results and details of the individual or collective votes cast.¹⁸ An MP can request that how s/he voted is recorded in the minutes. If a committee meeting is held in public, the minutes are published in full on the Assembly's website. A committee may also decide that a meeting is recorded in full or in part. The media has unimpeded access to all documents distributed for each sitting unless they contain classified information.

30. Besides being open to the media, both plenary and committee meetings are broadcast live online and on ARtv, the cable-based parliamentary TV channel now also available in open signal. All parliamentary votes are also disclosed and all plenary debates and all committee deliberations and documents are made public (i.e. accessible online in real time, published in the Assembly's Journal and broadcast on ARtv)¹⁹.

31. A public discussion may be held on a matter of special importance upon a committee's decision. The adoption of labour-related bills necessitates the involvement of social partners (i.e. workers' committees, trade unions and employers' associations). If a bill concerns local authorities, municipalities and parishes must be consulted. Any committee may solicit advice from independent experts, specialised bodies and individuals (their names/titles are to be disclosed on the website) and hold individual and collective hearings. Any citizen may furthermore be invited to participate in a committee's work by the committee's chair who notifies the Assembly's President.

32. MPs are not obliged to disclose contacts with third parties, including lobbyists, in connection with draft legislation. A bill on lobbying applicable to government members, not MPs, was in the making at the time of the on-site visit but later abandoned for the Government decided not to go ahead with it, in view of the forthcoming elections.

33. If a bill is passed, it becomes an Assembly decree and, once signed by the President of the Assembly, is sent to the President of the Republic for enactment. The latter has a right to veto it. If that right is exercised, the Assembly can amend the bill and send it again for enactment. It can also vote to overrule the veto, as a rule by an absolute majority of sitting members, in which case the President of the Republic must enact the bill within eight days. The decree then becomes law and is sent to the

¹⁸ This refers to the rule which states that votes are considered by parliamentary groups and not individually (cf. Articles 94 (1) (d) and (3) and 98 of the Rules of Procedure), as "standing" and "sitting" constitutes the usual form of voting and the results shall be calculated in accordance with each parliamentary group's share of the Assembly's seats.

¹⁹ Article 113 of the Rules of Procedure stipulates that "All acts and documents whose publication in the Official Journal is mandatory, as well as all documents whose production is required and the procedures for which are laid down in these Rules, must be made available on the Assembly's web site and Intranet on a real-time basis."

Government to be counter-signed by the Prime Minister and is then officially published in the Official Gazette ("*Diário da República*").

34. A normative framework governing the law-making process is in place and the process itself is to a large extent transparent. The impressive strides made by the Assembly to enhance access to its activities are widely acknowledged and merit express recognition. Parliamentary documents such as rules, agendas, minutes, full texts of proceedings, draft legislation and expert opinion reports are regularly published on-line, while webcasting enables the real time broadcast of plenary and committee meetings. The visibility of individual MP's activities has also been heightened: each deputy has a personal profile on the Assembly's website, which brings together information on his/her initiatives, agendas, absences, etc. Still, the perception that the Assembly's activities are only ostensibly transparent persists. This suggests that more could be done to augment it as well as the quality, inclusivity and accountability of the law-making process.

35. As previously mentioned, draft legal acts are adopted via ordinary or accelerated procedure. The latter seldom occurs: in the most recent legislature only two legal acts have been adopted in this way. However, under the ordinary procedure, a significant backlog of bills, mostly emanating from the government, is said to accumulate at the end of each session and parliamentary term and as a consequence these are often debated and voted without regard being had to the time lines prescribed by the Rules. For example, at the end of the parliamentary term that coincided with the dates of the on-site visit, 47 government bills were under discussion in committees, and in 30 of those cases the established timelines had not been respected. This state of affairs is worrisome as a hasty process is not only likely to jeopardise the quality of the parliamentary review but also effective public oversight in a context where the effective management of conflicts of interest faced by MPs is lacking and the disclosure and verification of their assets is deficient (on these see further below). It is therefore essential that the legislative backlogs are dealt with and that the Assembly's and committees' planning allows for an in-depth and quality discussion of all draft legal acts, particularly when these would merit being brought to a public debate.

36. Putting a bill to public discussion however is not compulsory but at the discretion of each committee and only if a bill's subject matter carries "special importance", which is a term that is not defined and open to interpretation. Although in their written submission provided prior to the visit the authorities stated that parliamentary committees enjoyed an open relationship with citizens and relied on a strong tradition of public consultations²⁰, this information was not confirmed while onsite. As asserted by the GET's interlocutors from outside the Assembly, the bulk of consultations held by parliament had fallen short of a genuine public debate and the objective criteria for selecting those whose contribution is actively solicited were lacking. Therefore, moving towards a law-making process that allows for equality and diversity of access and for the contribution of all interested parties remains a pressing necessity.

37. Above all, undue hidden influence is believed to be exerted on the law-making process to such an extent that credible allegations of "legislative capture" were made while on-site. The GET was told that the highest risks are said to be generated from within the Assembly itself and stem from the fact that the parliamentary mandate is not exclusive. Certain outside activities, notably practicing law, are permissible (on this see further below). Moreover, MPs' contacts with third parties, including those who might wish to drive the law-making process towards the fulfilment of partial interests, are unregulated. Information on those who might be in contact with MPs formally or informally, except for consultants who officially attend committee hearings or provide written expertise to them is not available and this allegedly breeds suspicions of conflicts

²⁰ These were said to occur during the first stage of the law-making process, i.e. after a text was referred to the competent committee and before the discussion and vote were held on its general principles.

of interest, trading in influence and insider trading²¹. In view of the concerns expressed in paragraphs 35-37 and in order to promote an accountable, open, participative and fully transparent legislative process, **GRECO recommends that i) measures are taken to ensure that the timelines established by the Rules of Procedure for the various stages of the law-making process are adhered to; and ii) provision is made for ensuring equal access of all interested parties, including civil society, to the various stages of the law-making process.** As for the adoption of rules governing MPs' contacts with lobbyists and other third parties seeking to influence the parliamentary process, this issue is covered by the recommendation on MPs' professional conduct (cf. paragraph 47).

38. On a general note, the Assembly's law-making process of relevance to the prevention and fight against corruption attracts criticism from the civil society for the lack of a comprehensive approach. Bills and amendments are said to be adopted without due preparation, in anticipation of elections, in reaction to scandals or as a result of "legislative panic attacks". The result has been a patchy, incoherent and not well thought through legal framework, which is moreover subject to frequent amendments. In terms of preventing corruption specifically amongst parliamentarians, the GET had the clear impression that the fragmentation of the legislation creates problems both for the public, due to uncertainty as regards the rules that apply, and for the deputies given that their rights and duties are scattered across several legal acts. It was therefore suggested by the GET's interlocutors that the consolidation of legislation would lead to easier reading and enhanced legal certainty. Also, the preparatory stages of the law-making process would benefit from wider engagement of experts, civil society and the press.

Remuneration and economic benefits

39. MPs are bound to work full time, to attend plenary and committee sittings and to perform the offices/functions for which they are elected or appointed. Their monthly salary and representation expenses are defined in the law²² and are as follows:

Amounts resulting from the application of the remuneration reductions defined by Article 11 of Law nr 12-A/2010, of 30 June 2010 and Articles 2 and 4 of Law nr 75/2014, of 12 September 2014

Office	Gross salary (€)	Representation expenses (€)	Total gross remuneration (€)
President of the Assembly	5,335.13	2,180.46	7,515.59
Vice-President	3,334.46	851.75	4,186.21
Member of the Board of Administration	3,334.46	851.75	4,186.21
President of a Parliamentary Group	3,334.46	681.4	4,015.86
Secretary of the Bureau	3,334.46	681.4	4,015.86
A Committee Chairman	3,334.46	511.05	3,845.51
Vice-President of a Parliamentary Group (with at least 20 Members)	3,334.46	511.05	3,845.51

²¹ See also "Lifting the lid on lobbying. The influence market in Portugal" (TIAC 2014).

²² Law nr 4/85 of 9 April 1985 with subsequent amendments defines the remuneration statute of political office holders.

Vice-Secretary of the Bureau	3,334.46	511.05	3,845.51
Deputy (on an exclusive basis ²³)	3,341.96	341.46	3,683.42
Deputy	3,360.48	0.00	3,360.48

In addition, MPs, as all other public officials, receive two extra monthly salaries per annum.²⁴ In April 2014, the average annual salary in Portugal stood at €11,385.72, and the monthly salary – at €949.

40. Absence from a plenary or a committee sitting without a valid reason leads to the deduction of 1/20 of the monthly salary for each of the first three absences and 1/10 for any subsequent absence up to four for each legislative session. Further absences from a plenary result in the loss of the mandate. Failure to attend a committee sitting leads to the deduction of 1/30 of the monthly salary for up to four absences per committee and per legislative session and, ultimately, to the loss of the seat on the committee.

41. Deputies are also entitled to a number of benefits: 1) travel and subsistence allowances for official travel abroad, including life insurance; 2) collective insurance cover for each MP that includes health insurance; 3) participation in the general social security scheme; and 4) (optional) participation in the general retirement system. Until October 2005,²⁵ MPs who had been in office for over 12 years had received a lifelong monthly grant on leaving parliament.

42. Travel within mainland Portugal and other constituencies is reimbursed, and precise rules apply for the calculation of the per diem and travel expenses. Eligibility is verified in respect of each deputy by consulting the attendance register. Each working/official trip, whether within Portugal or abroad, is to be authorised by the Assembly's President, and reimbursement depends on the presentation of travel documents, invoices, etc. The current and former Assembly's Presidents, Vice-Presidents, the President of the Administration Board and the Office of the Bureau's Secretaries can choose whether to use an official vehicle or to receive a travel allowance (this applies to all trips carried out on the Assembly's behalf).

43. Each MP is provided with an office, an assistant, a dedicated electronic mailbox and an individual web page. Expenses borne by parliamentary groups, mainly for support staff, are paid from the state budget within the established ceilings and calculated based on the election results. The Assembly's budget and accounts are managed by the Administration Board which is chaired by an MP representing the largest parliamentary group and composed of MPs representing each of the parliamentary groups, the Secretary General and a staff member. The Board prepares the Assembly's annual reports and accounts which can only be adopted once the opinion of the Audit Court (external controller) is received. Information on MPs' remuneration and benefits is public and can be found on the Assembly's website. Information on non-attendance of plenary sittings (and the respective justifications provided) is also published.

Ethical principles and rules of conduct

44. At present, the obligations established in respect of MPs can be found in the following legal acts: the Constitution (incompatibilities and disqualifications, immunity),

²³ Such MPs receive a 10% representation allowance under condition that they declare that they do not regularly exercise any remunerated, economic or self-employed activity (under Article 16(6) of the Statute governing Remuneration of Political Officeholders).

²⁴ Pursuant to Law nr 82-B/2014 of 31 December 2014 and Law nr 4/85 of 9 April 1985

²⁵ This grant was revoked by Law nr 52-A/2005 of October 2005.

the Members of the Assembly Statute (declaration of private interests, incompatibilities and disqualifications, immunity), the Law on the Legal Regime Governing Incompatibilities and Disqualifications of Public and Senior Public Officeholders, the Law on Public Control of the Wealth of Political Officeholders, the Law on the Constitutional Court (duties in connection with a breach of the rules on incompatibilities and disqualifications and on asset disclosure) and the Penal Code (which prohibits accepting an undue advantage, active and passive bribery, trading in influence and false declaration). There are however no specific standards of conduct applicable to MPs besides Article 14 MAS that demands respect for the dignity of the Assembly and its members.

45. The vast majority of MPs interviewed by the GET were satisfied with the comprehensiveness and clarity of the MAS in terms of establishing MPs' duties and obligations, attested to a sound knowledge thereof and indicated that, in case of doubts as regards their interpretation, advice could be sought from the MAS' guardian - the Assembly's Committee on Ethics, Citizenship and Communication (Ethics Committee). As concerns the desirability of elaborating standards of ethical conduct, reaching inter-party consensus has been a long-standing challenge. As most parties represented in parliament do not have internal ethical rules, the need for such rules in parliament is not felt. Moreover, many MPs have refused the idea of establishing a code in the belief that the advisory nature of such a code would be less effective than detailed binding regulations which are more likely to ensure compliance.

46. From the GET's perspective, however, the set of obligations applicable to MPs remains incomplete and its enforcement has been deficient. For example, the MAS fails to articulate key principles for the performance of parliamentary duties, namely impartiality, accountability, transparency, protection of the public interest and the prevention of conflicts of interest, the latter, in particular, being a thorny issue (on this see further below). Also, aspects such as the scope of permissible contacts between MPs and third parties and the acceptance of gifts, hospitality and other benefits²⁶ are unregulated. Furthermore, certain obligations are fixed by separate legal texts, which results in the linkages between them being blurred or not immediately obvious (for example, asset disclosure is not regarded as part of the system for managing conflicts of interest). This explains some proposals to consolidate the texts by which MPs are bound. Moreover, Article 14 MAS is said to be of symbolic import only and, although inquiries may be conducted by the Ethics Committee into situations that might involve the honour and dignity of an MP²⁷, this has never happened in practice, allegedly because misbehaviour is rare. Although this might indeed be the case, the GET also notes that the MAS does not envisage any sanctions (disciplinary or other) by which any improper acts can be punished. As concerns standards of conduct, some MPs have asserted that the Ethics Committee had provided guidance on ethical dilemmas upon request but the Committee could not confirm this was the practice nor does it have competence in this area. Given the foregoing and that the notions of "ethics" or "ethical conduct" are not formally recognised within parliament, the reference to "Ethics" in the Committee's title looks artificial and is misleading. As the GET was informed, the title was changed in response to low public trust but a revision of the Committee's mandate was not prompted at the same time. The absence of well-articulated integrity standards for MPs gives rise to public concern.

47. Reliance on the personal conscience of individual deputies as the cornerstone of the Assembly's corruption prevention policy is an approach that is not conducive to mitigating corruption-related risks and vulnerabilities. The GET is firmly convinced that building a sturdy and robust integrity system is imperative and that several elements are to be integrated therein. First of all, MPs' behaviour is to be framed by bringing together

²⁶ On this see further below.

²⁷ At the latter's request or on the Assembly's decision - Article 27-A(j) MAS.

in a single text – whether a code of conduct or a regulation – the principles that are to underpin the performance of parliamentary duties, the whole set of MP’s obligations and the standards of conduct befitting their status as elected representatives. The previously mentioned gaps in the MAS are to be closed. Also, since one of the central objectives of the integrity system is to promote public confidence in the parliamentary decision-making processes and in MPs as public office holders, it is indispensable to publicise the principles and standards of conduct broadly so as to inform the public of the comportment they can legitimately expect from MPs. Furthermore, the soundness of the system will depend on effective enforcement, including consistent implementation, identification of any misconduct and the application of adequate sanctions. Last but not least, coherent and sustained adherence to the principles and standards of conduct would be facilitated if newly elected and more experienced deputies are provided access to awareness raising and training events, and counselling – including confidential – on ethical dilemmas and other issues that might potentially give rise to public concern. In view of the foregoing, **GRECO recommends that i) clear, enforceable, publicly-stated principles and standards of conduct for MPs are adopted and equipped with an efficient supervisory mechanism; and that (ii) awareness of the principles and standards of conduct is promoted amongst MPs through dedicated guidance, confidential counselling and training on issues such as appropriate interactions with third parties, the acceptance of gifts, hospitality and other benefits and advantages, conflicts of interest and corruption prevention within their own ranks.**

Conflicts of interest

48. The following obligations are meant to prevent conflicts of interest in the exercise of a parliamentarian’s mandate: (1) compliance with the incompatibility and disqualification rules (see further below); and (2) registration of private interests. As for the latter, in accordance with the MAS, within 60 days of assuming office and subsequently within 15 days of a change in the circumstances declared²⁸, MPs are to submit a register of interests providing a list of activities that are exercised, and in particular:

- public and private positions, functions and activities exercised in the last three years;
- public and private positions, functions and activities that will be exercised concomitantly with the parliamentary mandate;
- significant financial interests, including all actions that directly or indirectly generate income, in particular: a) public and private legal persons to which services have been provided; b) membership of consultative boards, councils, audit boards and other collegial bodies, when provided for by law or during the exercise of the audit or control of public funds; c) holding capital shares in companies either personally or via a spouse from whom an MP is not legally separated; d) financial subsidies or support received by an MP or his/her spouse from whom the MP is not legally separated, or via a company in whose capital they hold a share; e) attendance of conferences, talks, short-term training events and other similar activities;
- other significant interests, in particular: a) remunerated participation in commissions, committees or working groups; b) participation in civil associations receiving public funds; c) participation in professional associations or associations representing interests.

All acts and activities that may give rise to an incompatibility or a disqualification must also be reported.

²⁸ Between 2012 and 2015, on average eight declarations were filed per month amending the registers submitted previously.

49. The register is filed with the Assembly's Ethics Committee. A paper and a digital version (signed with an MP's identity card) are to be kept. Once the contents of the register have been validated by the Committee's sub-group, all registers are made accessible on the Assembly's website, normally within a short time following their submission. Filing a false register is qualified as a crime.

50. Additionally, when presenting a bill or intervening in a committee or a plenary sitting, an MP must declare any private interests *in advance*. The following, in particular, are deemed to cause a possible conflict of interests: a) if an MP, his/her spouse or relative or equivalent person to whom s/he is related directly or to the second degree of a collateral line, or a person with whom s/he lives in the same household, holds rights or shares in any legal business or contract/transaction the existence, validity or the effects of which might be altered as a direct consequence of laws or resolutions passed by the Assembly; and b) if the same persons are members of a corporate organ, an agent or attorney, an employee or permanent staff member of a company or a not-for-profit legal entity whose legal situation might directly be modified by a law or a resolution to be passed by the Assembly. Declarations are to be made either during an MP's first intervention in the parliamentary procedure or activity concerned if the said procedure or activity is recorded or minutes are taken, or transmitted to the Assembly's Bureau or the Ethics Committee prior to the procedure or activity that gives rise to them²⁹.

51. Most of the GET's interlocutors, including many MPs, were unanimous in underscoring the overall inadequacy of the Assembly's conflicts of interest management. The GET largely concurs with this assessment. The flaws in the system are numerous and are capable of engendering a significant deficit of trust in parliamentarians. As for the legal framework, Chapter IV MAS on the "Register of interests", which establishes an MP's duty to disclose private interests in advance and periodically, fails to define a "conflict of interests" and a "significant financial interest". Also, it does not pronounce clearly and explicitly that the overarching goal of the Assembly's policy is to attain the earliest possible and most effective *prevention* of conflicts of interest. The extension of relevant provisions to MPs' close family members is fairly limited and the narrow circumscription of cases justifying an advance reporting may hinder the effective disclosure of all situations that could potentially qualify. Furthermore, obligations arising from Chapter IV MAS are not subject to adequate sanctions. Only the submission of a false register, which is a crime, triggers a sanction (reportedly, never applied in practice), while all other irregularities, including failure to declare interests in advance or the submission of an incomplete or incorrect register, do not incur any penalty. This explains the references made to a "toothless" or "permissive" regime that were often heard while on-site³⁰.

52. Moreover, the contents of the register of private interests which is to be submitted on entry to office overlap to a large degree with those of the *two separate* declarations on compatibility with the post that are to be filed on broadly similar terms and, partly, with the same bodies (on this see further below). This makes the reporting system burdensome and complex and portions of the reported information redundant. In the opinion of the GET, streamlining and simplification would not only rid the MPs of duplicative reporting but also facilitate oversight and render conflicts of interest management more trustworthy and comprehensible to the public. As for the reporting of private interests in advance governed by Article 27 MAS, it is seldom made in practice as compliance with this obligation is not monitored. Although the Assembly's Bureau and the Ethics Committee are statutorily bound to *collect* such declarations in certain cases, no evidence was presented of this actually happening in practice nor of reported cases being analysed. In the context described above and with due regard being had to other

²⁹ Article 27 MAS.

³⁰ By contrast, the rules on incompatibilities and disqualifications are equipped with a progressive list of sanctions (see further below).

problematic issues, namely the highly controversial incompatibilities regime, weak and lenient oversight, the absence of regulation of MPs' contacts with third parties, which are all addressed in the relevant sections of this report, and also bearing in mind that it is not MPs' practice to withdraw from voting in case of a conflict of interests, it is of paramount importance that the effectiveness of the totality of the conflicts of interest rules and regulations, including those on incompatibilities and disqualifications, be properly assessed. Moreover, a unified and coherent conflicts of interest management policy presupposes the integration therein also of the mechanism for disclosure and verification of MPs' assets. In view of the foregoing, **GRECO recommends i) carrying out an independent evaluation of the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs, including specifically the adequacy of incompatibilities and disqualifications, and the impact that this system has on the prevention and detection of corruption, and taking appropriate corrective action (e.g. further developing and refining the regulatory framework, strengthening oversight, introducing dissuasive sanctions, etc.); and ii) ensuring that MPs' reporting of private interests – whether advance or periodic – is subject to substantive and regular checks by an impartial oversight body.**

Prohibition or restriction of certain activities

Incompatibilities, accessory activities and post-employment restrictions

53. The Constitution, the MAS and the Law on the Legal Regime Governing Incompatibilities and Disqualifications of Public and Senior Public Officeholders define the "incompatibilities" and "disqualifications" that preclude the exercise of an MP's mandate applicable to MPs.³¹

54. Holding a parliamentarian's mandate is incompatible with the following positions: President of the Republic, member of Government, representative of the Republic in an autonomous region; member of the Constitutional Court, the Supreme Court of Justice, the Supreme Administrative Court, the Court of Audit, the Supreme Judicial Council, the Supreme Council of the Administrative and Fiscal Courts, Attorney General and Ombudsman; member of the European Parliament; member of the self-governing organ of an autonomous region; ambassador, except career diplomats; (deputy) civil governor; (deputy) mayor, his/her legal substitute and municipal councillor, either full or part-time; employee of the state or another public legal person (except for carrying out – without charge – teaching assignments in higher education establishments, research and similar activities of important social interest recognised as such on a case-by-case basis by the Assembly's Ethics Committee³²); member of the National Electoral Commission; member of a ministerial office or legally equivalent position; holder of a senior international office or function, if this prevents the exercise of the mandate, or employee of an international organisation or of a foreign state; (vice) president of the Economic and Social Council; member of the Media Regulatory Body; member of the board of directors of a public-sector company, a company with public capital or in which the State holds a majority stake, or of an autonomous public institute.

55. "Disqualifications" arise from:

- a) membership of a corporate organ of a public legal entity, a company whose capital is wholly or in majority held by the state, or a company that holds a public service

³¹ Article 154 (2) and (3) of the Constitution, 20-22 MAS and 7-A of the Legal Regime Law

³² The concept of an "important social interest" is ascertained by the Committee and included in its decisions. For example, in 2011, a request was considered from an MP wishing to work on a voluntary basis at the Celorico de Basto Health Centre.

- concession, except for a consultative, scientific or pedagogical organ or one that forms part of an autonomous institutional administration;
- b) acting as a remunerated expert or arbiter in proceedings involving the state or other public-law legal person;
 - c) accepting a government appointment without authorisation by a competent parliamentary committee;
 - d) the direct or indirect exercise of commercial or industrial activities with a spouse from whom an MP is not legally separated, or on his/her behalf or with an entity in which s/he holds a significant stake, particularly one exceeding 10% of the entity's capital, entering into contracts with the state or other public-law legal persons, or taking part in competitive calls for tender with regard to the supply of goods or services, or work contracts or concessions issued by the state or other public-law legal persons with companies whose capital is wholly or in majority held by the public sector, or by the holders of public service concessions;
 - e) legal representation of a plaintiff in a civil suit brought against the state under any jurisdiction;
 - f) acting as the sponsor of foreign states;
 - g) membership of a corporate organ of a public legal person or a company whose capital is wholly or in majority held by the state or an autonomous public institute, with certain exceptions;
 - h) benefiting personally and improperly from acts or entering into contracts in which the process leading to the act or contract involves the intervention by organs, departments or services over which an MP has direct influence;
 - i) appearing in or in any way participating in commercial advertising.

Additionally, the Assembly's authorisation is necessary for MPs to act as jurors, expert witnesses, witnesses and arbitrators (the latter, in proceedings involving the state or any other public law legal person). Those activities are to be carried out free of charge. In the first three cases, the Assembly's consent is to be sought by the competent judge or an official responsible for the relevant committal proceedings.

56. Within 60 days of assuming office, MPs are to make a declaration on compatibility with the post (i.e. on the absence of incompatibilities and disqualifications) which, pursuant to the MAS, is to be filed with the Ethics Committee and, separately, and on a different form, with the Constitutional Court, pursuant to the Law on the Constitutional Court and the previously mentioned Legal Regime Law. The declarations filed with the Court must also incorporate all permissible offices, functions and professional activities performed. An infringement (failure to file a declaration, or the identification of an incompatibility or a disqualification) triggers a warning, suspension of an MP's mandate for at least 50 days, reimbursement by the MP of the full remuneration for the exercise of public functions received from the moment the disqualifying situation occurred, and, ultimately, loss of mandate. While the declarations filed with the Ethics Committee are made public on the Assembly's web-site, those submitted to the Constitutional Court can only be consulted at the Court's premises.

57. Although there is an apparent contradiction between the obligation imposed on MPs to work full time and the non-exclusive nature of their mandate, a different salary regime applies depending on whether the deputy registers him/herself as having an exclusive or non-exclusive mandate (cf. table in paragraph 39). The latter and specifically that MPs are permitted to practice law, is controversial and at the origin of widespread allegations that undue influence is exerted on the law-making process from within the Assembly. At least a third of MPs are said to combine their representative office with work as a barrister or consultant, often in direct or indirect connection with powerful law firms³³. Reportedly, it is not uncommon for such MPs to be involved in preparatory work in the context of their employment with a firm that has been commissioned by

³³ See also "Lifting the lid on lobbying. The influence market in Portugal" (TIAC 2014).

parliament to draft a bill or study, for example³⁴, and then to legislate on the same matter in parliament. Multiple latent conflicts of interest thus generated, in particular, in relation to privatisation, banking, energy, agriculture and health, remain undisclosed and not properly sanctioned. The urgent need to broaden the incompatibilities rules was reportedly debated by the penultimate legislature but with mixed results³⁵. While on-site, the majority of the GET's interlocutors, including many MPs, also spoke in favour of a more restrictive incompatibilities' regime with regard to practicing law. In light of these allegations, it could indeed be advisable to further narrow the scope of activities permissible for MPs. That being said, the approach whereby, in the regulation of incompatibilities and disqualifications, the principles of openness and transparency are given precedence over those of restriction and control also remains valid. Therefore, irrespective of the stance that the Assembly might take on this issue, GRECO reiterates the exigency of evaluating the effectiveness and reinvigorating the entire system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest, as recommended in paragraph 52.

58. As public officials, MPs have legal obligations concerning professional confidentiality and secrets that continue to apply after they have left office. However, no specific post-public employment restrictions have been established in their regard.

Gifts

59. The acceptance of gifts by MPs is not regulated, with one exception: the attendance at conferences, talks, short-term training events and other similar activities, *if it generates income directly or indirectly*, is to be reported via a register of interests³⁶. Additionally, Article 372 (1) of the Penal Code (PC) makes it unlawful for an MP, as a public official, to demand or accept any undue advantage. That is punishable by imprisonment of up to five years or a fine equivalent to up to 600 days' salary. Furthermore, Articles 373 and 374 PC lay down criminal penalties for offering and receiving bribes: a prison sentence of between one and eight years and a fine, equivalent to up to 360 days' salary.

60. As is obvious from above, a clear and unambiguous gift policy is currently missing in the Assembly: the notion of "gift" is not defined, reasonable thresholds are not established for accepting courtesy gifts, internal procedures are not in place to value, report and return unacceptable gifts, and an oversight mechanism is not designated. Not surprisingly, there was no consensus among the MPs met on the desirability of introducing formal regulation of gifts or on the actual practice within the Assembly. In the understanding of some deputies, presents given to them as a sign of respect for their office do not need to be reported or registered, while substantial gifts are punishable under the Penal Code. Some stated that they only accept gifts of a symbolic nature or of low value. Yet others were in favour of regulating the issue of gifts and stressed that invitations from foreign States should also qualify as gifts. They also pointed out that MPs' use of Facebook and other social media will often reveal more than registers of private interests. The idea of setting up a parliamentary museum for the collection of gifts – as practiced in many States – also had support. GRECO takes the view that it would be appropriate for gifts and hospitality, including any enforcement aspects, to be regulated as part of the broader standards for MPs' conduct that are to be established pursuant to the recommendation in paragraph 47. A separate recommendation on gifts would therefore be redundant.

³⁴ The GET was told that the new public management model adopted by Portugal encourages the outsourcing to law firms of the drafting of legislative proposals and the carrying out of legal expertise.

³⁵ Based on these discussions, acting as a lawyer *against* the state is now prohibited, and a consensus appears to have emerged around the need to disqualify also those MPs who *defend* the state and those recruited by law firms under contract with the state or which act as intermediaries in transactions involving public resources.

³⁶ Article 26 (4) MAS

Misuse of confidential information

61. Article 383 PC forbids MPs from revealing, without due authorisation, confidential or secret information obtained in the exercise of their duties for the purpose of obtaining for themselves or for a third party an advantage or of causing harm to the public interest or to the third party. This criminal offence is punishable by a sentence of up to three years and a fine.

Misuse of public resources

62. There are no rules specific to MPs on the misuse of public resources.

Declaration of assets, income, liabilities and interests

63. Pursuant to the 1983 Law on Public Control of the Wealth of Political Officeholders (LPCW), MPs are to submit a declaration of income, assets, corporate and associative positions as follows: i) within 60 days of taking up office; ii) when there is an effective increase by more than fifty minimum monthly salaries in the assets declared; and iii) within 60 days from the end of a mandate or from re-election (the final declaration must reflect the change in assets during the term of office to which it refers). Declarations cover: 1) the total gross income as set out in the last tax return; 2) assets held in Portugal and abroad (real estate, shares in civil and commercial enterprises, rights to boats, aircraft and vehicles, securities, term bank accounts, equivalent financial instruments and, if their amount exceeds fifty times the minimal monthly wage, current bank accounts and credit rights); 3) financial liabilities, particularly towards the state, lending institutions and any public sector or private enterprise in Portugal and abroad; 4) corporate and associative positions held currently and in the two years preceding the declaration, in Portugal and abroad, in enterprises, public law foundations and associations, and if the positions are/were remunerated, in private law foundations and associations.

64. Declarations are transmitted on paper to the Constitutional Court (even though an electronic template has been available since June 2014). Failure to declare triggers a notification and a request to comply within 30 days. Culpable failure to do so, established by a competent court (see further below for an explanation of the procedure) will result in an MP losing his/her seat. False, including incomplete or inaccurate, declaration is furthermore punishable as a crime under the Penal Code.

65. The declarations are available for consultation³⁷ in the office of the Constitutional Court. The identity of persons wishing to consult them has to be registered. If a properly founded request is filed, the secretariat of the Court will issue "a document certifying the declaration or details of it". An MP can object to disclosure and request that part or the entire declaration be sealed if there are significant grounds to do so – for example, in order to protect third party interests. The Court in plenary considers the validity of the reasons submitted. Disclosure of the contents of the declaration is not possible from the moment an objection is lodged until the Court has reached a decision on whether any of the information is to be sealed or not. Any violation of the privacy of the personal life of an MP is punishable under Articles 192 and 193 of the Penal Code.

66. While on-site, it was confirmed that the contents of MPs' asset declarations are accessible for consultation by all interested parties almost immediately upon their receipt by the Constitutional Court. As for an MP's right to demand a full or partial sealing of his/her declaration, apparently it has been given a narrow interpretation, as evidenced by many of the Court's 13 rulings issued specifically on the matter which are all in the public domain. Although an objection to divulge filed with the Court automatically seals a

³⁷ The contents of the declarations are qualified as "freely disclosable" in Article 6 LPCW.

declaration's contents until a decision on the validity of the objection is taken, no allegations were heard while on-site of this legal provision being misused and any objections are said to be adjudicated expeditiously by the Court. Those positive aspects aside, the effectiveness of the asset disclosure mechanism was estimated on-site in ambivalent terms. Some parliamentarians joined by the representatives of the oversight body, hailed its introduction as a "courageous step" and esteemed that it is capable of catching discrepancies and identifying illegal wealth that might be accumulated during an MP's term in office. Others were sceptical for two principal reasons. First, the reporting obligation only applies to MPs, not their spouses/partners or other close/dependent family members; this was felt to frustrate the purpose of the whole exercise. Second, the related sanctioning regime is rigid. Although non-declaration and false declaration trigger a sanction, the allegedly widespread cases of inaccurate or incomplete reporting have to date never been punished even though they are prohibited under Article 256 of the Penal Code (on false declaration). The GET takes the view that the existing procedures that have reportedly never been initiated in practice might be too complex and ill-suited for holding MPs accountable for minor breaches of their asset reporting obligation, therefore the introduction of more flexible administrative sanctions might be usefully contemplated, including specifically for incomplete and erroneous reporting. Furthermore, the introduction in 2014 of an electronic template has not resulted in declarations being uploaded on a publicly accessible website and only consultation at the premises of the Constitutional Court has been retained. The GET takes the view that, for the sake of enhanced accessibility, greater transparency and strengthened accountability of MPs, this opportunity to provide for on-line public access to all MPs' declarations should be seized. Consequently, **GRECO recommends that i) adequate sanctions are established for minor breaches of the asset reporting obligation, including incomplete and inaccurate reporting; and ii) MPs' asset declarations are made publicly available on-line.** It would be appropriate to tackle the issue of the limited scope of the categories of persons to whom the asset disclosure obligation applies as part of the broader reflection on the effectiveness of the Assembly's conflicts of interest policy which is recommended in paragraph 52, it being understood that information on MPs' close family members would not necessarily need to be made public.

Supervision and enforcement

Conflicts of interest

67. Oversight of MPs' compliance with the rules on the periodic and advance disclosure of interests, established by virtue of Chapter IV MAS, is exercised by the previously mentioned Assembly's Committee on Ethics, Citizenship and Communication (Ethics Committee). The Committee is composed of an odd number of deputies appointed by the parliamentary groups, reflecting the proportional distribution of seats. The Committee is empowered: a) to receive and record declarations that point to possible conflicts of interest; b) at the request of the President of the Assembly or a declarant, to ascertain the existence of a conflict and to issue an opinion thereon; c) to ascertain the existence of a conflict of interests that has not been disclosed and to issue an opinion; and d) to consider whether a register of private interests should be corrected *ex officio* or upon a duly substantiated request by any citizen. A Working Group on the Register of Interests has been established within the Committee to analyse the registers filed and any amendments thereto. If it identifies an inaccuracy or incomplete information, it is to ask the parliamentary services to contact the MP in question and to demand that the inaccuracy be corrected. If it comes across an undeclared conflict of interests, the Group is also empowered to issue an opinion. In the current legislature, only one report was allegedly published with some statistical data concerning the number of registers filed, the number of irregularities detected and the major questions raised by the Committee.

68. The shortcomings inherent in the Assembly's conflicts of interest management are already highlighted in paragraphs 51-52. An analysis of the regulatory framework and

the information collected on-site suggest that the relevant supervisory mechanism suffers from serious failings as well. Although Article 27-A MAS is unequivocal in terms of empowering the Ethics Committee to ascertain actual and potential conflicts of interest faced by MPs and to issue opinions thereon, the Committee's internal rules are contradictory. Article 2 thereof requires the Committee to state its position on *all* matters pertaining to conflicts of interest, whereas Article 3 stipulates that its opinions are to be issued only "when necessary". Moreover, it transpired from the interviews held with the Committee's members that the Committee has limited its action to assisting MPs in their reporting obligation, i.e. filling in registers of interests and amendments thereto and correcting any inaccuracies³⁸. By contrast, practical ascertainment of conflicts of interest has been almost non-existent, since no opinions or examples of practical cases could be provided. The Committee's impartiality was also put into doubt. The GET was told that, in its previous composition, which did *not* mirror the political break down within the Assembly, the Committee had been more systematic and assertive in inspecting and clarifying the declarations' contents. Most of the GET's interlocutors outside the Assembly were of the opinion that the Committee's present composition and powers had to be revised and responsibilities in the other two areas (Communication and Citizenship) relinquished. In GRECO's view, the weakness of oversight is apparent and the leniency of the Committee and its sub-structure only fuels public mistrust and exacerbates perceptions of the overall inefficiency of the Assembly's conflicts of interest management. Since the recommendation in paragraph 52 already calls for the entire system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest to be reconsidered, *inter alia* by strengthening the effectiveness and impartiality of oversight, GRECO refrains from addressing this issue in a separate recommendation.

Incompatibilities

69. As mentioned previously, two mechanisms are in place to oversee MPs' compliance with the rules on incompatibilities and disqualifications. One is embodied in the Assembly's Ethics Committee and is legal and political in nature. The other is jurisdictional and entrusted to the Constitutional Court (as well as to the Public Prosecution Office at that Court).

70. The Ethics Committee is competent: a) to verify cases of incompatibility or disqualification, to initiate proceedings and to issue related opinions; and b) to consider whether an MP's declaration of compatibility with the office has to be corrected *ex officio* or upon complaint. If the existence of an incompatibility or a disqualification is ascertained by the Committee and the Assembly approves its opinion, the MP concerned is to be notified and asked to put an end to such an activity within 30 days. For certain disqualification-related breaches, including failure to notify the Constitutional Court of an auxiliary activity performed, a parliamentarian's mandate may be suspended for as long as the irregularity persists and in any event for at least 50 days, and s/he will be obliged to reimburse the amount equal to the whole of his/her remuneration for the exercise of public functions from the moment the disqualification arose.

71. As for the supervision by the Constitutional Court, pursuant to Sub-chapter VII on "Procedures concerning incompatibility and impediment of holders of political office" of the Law on the Constitutional Court, the Court is competent to register, file and examine MPs' declarations on compatibility with the post. In respect of each declaration, a file is opened for examination by the Public Prosecution Office at that Court which may request the Court's intervention if an infringement is identified. In the latter case, the Court President is to notify the declarant, who is to respond within 20 days and, if necessary, produce any documentary evidence. Following this, if the Court finds grounds to suspect that an incompatibility exists, it will order the situation to cease within a fixed deadline.

³⁸ Inaccuracies are mostly identified by comparing the declared information with that available to the Assembly's Human Resources Department.

72. While on-site, no particular issues arose regarding the quality of supervision of MPs' incompatibilities and disqualifications. Reportedly, no MP has ever lost his/her seat as a result of one or the other. However, the Ethics Committee has occasionally had to decide whether to change the salary regime that applies depending on whether the deputy has an exclusive or non-exclusive mandate (cf. the table in paragraph 39). From the GET's perspective, however, the existence of a dual monitoring suggests the possibility to institute, in case of an infringement, two parallel proceedings leading potentially to the two different outcomes. Such a scenario is plausible given that the system in place does not provide for the Ethics Committee and the Constitutional Court sharing with each other information on the procedures underway. Therefore, it would be prudent to keep this matter under review and to give it proper re-consideration if and when the rules on incompatibilities and disqualifications are changed as the information provided in paragraph 57 seems to suggest.

Declarations of assets, income, liabilities and interests

73. As mentioned previously, MPs' asset declarations are submitted to the Constitutional Court and examined by the Public Prosecutor's Office at that Court (PPO). The Court may only pronounce itself if an MP has doubts on the scope of his/her reporting obligation or if an MP requests that the full or partial disclosure of his/her declaration be withheld. Apart from issuing a certificate of "non-compliance" or "false declaration", which are to be handed over to the PPO for the purpose of a 24-hour referral to the prosecution service at the court of first instance with jurisdiction to hear the case, the Constitutional Court is not involved in the related enforcement procedures. In such instances exclusive jurisdiction has been granted to a first instance administrative court (in cases of non-compliance, i.e. failure to present the initial, updated or final declaration) or a first instance criminal court (in cases of false declaration). Verifications are carried out by the PPO, under the supervision of the President of the Constitutional Court. Pursuant to Article 5-A LPCW, the Office "shall annually analyse the declarations submitted after the terms of office have ended or the respective holders have ceased their functions." All inaccuracies or omissions communicated to the Court are to be reported by its President to the PPO. If there are grounds for launching a criminal investigation, the PPO is to transfer the file to a competent public prosecutor's office but it cannot conduct investigations itself.

74. Despite its fairly long history, public supervision of the wealth of political officeholders, including MPs, remains a sensitive issue, and its assignment to the Constitutional Court is viewed by many as the result of a political compromise³⁹. Although the impartiality of the Court and that of the PPO have reportedly never been put into doubt – for the latter may neither be active in the criminal nor in the administrative process – some MPs the GET met were in favour of a *stricto sensu* administrative body being attached to the Court. Besides valid concerns about the separation of powers, such a position might be ascribed to the recent change of approach as regards the regularity and the scope of checks. The GET was told that, for a very long while, the role of the Court was reduced to that of serving as an archive (register). In 2008, however, the aforementioned Article 5-A was added to the LPCW, thus creating new responsibilities for the PPO, namely to carry out verifications at the end of an MP's term of office. Furthermore, in 2010, apprehensive of the extent to which omissions and inaccuracies might have evaded scrutiny previously, an internal decision was taken by the PPO to complement end-of-office checks with checks carried out at the beginning and during an MP's mandate, even though this is not formally envisaged by law, and to apply such checks to the entire Assembly's membership.

³⁹ In addition to being the natural authority to rule on matters pertaining to the legal status of holders of high ranking public offices, including notably MPs, the Court also controls the finances of political parties in Portugal.

75. Today, the MPs' declarations are examined by chronological order, following a complaint, or *ex officio*. The chronological principle implies a certain time lapse between the evaluation of (all) MPs' declarations and the reference period. At the time of the on-site visit (July 2015), the checks had been completed in respect of the declarations filed in 2012. This delay is primarily explained by the insufficiency of the PPO's resources. At the time of the on-site visit, the Office employed only four prosecutors⁴⁰ who, in addition to scrutinising the asset declarations of some 15 000-16 000 political office holders, including 230 MPs, were also in charge of ensuring compliance of broadly the same group with the incompatibility and disqualification rules. In a candid exchange of views with the GET, the PPO representatives acknowledged the need for further specialised expertise and for reinforced inter-institutional co-operation allowing, in particular, for direct access to key data sources as well as, possibly, to MPs' bank accounts⁴¹. The only checks that are carried out are the comparisons of the initial, intermediate and end-of-office declarations. To what extent information is sought and promptly received from public registers, other state institutions or banks, was not clear to the GET. Also, no internal guidelines prioritise the checks of specific categories of declarants or modes of data processing, although, as a rule, most exposed persons, such as MPs, and complaints are said to be given priority. Under the law, formal proceedings can only be initiated in the case of non-declaration or false declaration, which has not yet happened in practice.

76. The foregoing strongly suggests that the oversight of MPs' assets can hardly be considered effective. The periodicity of checks *as envisaged by law* is unsatisfactory as it is ill-suited to elected officials with a limited term of office. The legal framework therefore has to be revised so as to allow not only for end-of-office but also more regular in-depth checks within a reasonable timeframe. This is fully congruent with the principle followed within GRECO that elected officials, as compared to other categories of public officials, should be subject to more stringent accountability standards. Also, it would be essential for the law to clarify that *all* MPs' declarations are subject to periodic and end-of-office checks. Furthermore, in order to ensure that the oversight body can carry out its functions in a responsible manner and demonstrate concrete, timely and reliable results, it would be indispensable to equip it with adequate resources and to facilitate its co-operation with other relevant state institutions, in particular, those exercising control over MPs' conflicts of interest. In conclusion, confidence in and the credibility of MPs' asset disclosure – as a tool capable of preventing and bringing to light corruption, latent conflicts of interest or illicit enrichment – depends to a great extent on rigorous, operative and in-depth monitoring. In order to attain this fundamental objective and, in view of concerns expressed in paragraphs 74-76, **GRECO recommends that i) asset declarations of all MPs undergo frequent and substantive checks within a reasonable timeframe in accordance with law; and that ii) commensurate human and other resources are provided to the independent oversight body, including any of its auxiliary structures, and the effective co-operation of this body with other state institutions, in particular, those exercising control over MPs' conflicts of interest, is facilitated**⁴².

Immunity

77. MPs are not civilly or criminally liable or subject to disciplinary sanctions for the votes cast or opinions expressed in the exercise of their duties ("non-liability"). Unless they are found guilty of an intentional crime punishable by a maximum term of more than three years or when caught *in flagrante delicto*, MPs may not be detained, arrested

⁴⁰ After the on-site visit, the PPS team was reinforced with the addition of a fifth prosecutor.

⁴¹ At present, the law does not provide for access to such sources/financial information.

⁴² GRECO is conscious that the above recommendation, which calls for vesting of supplementary powers in the independent oversight body, might provoke a debate on the desirability of reconsidering the status of the structure that is currently attached to the Constitutional Court or of designating different supervisory organ altogether. Provided that the impartiality of the supervisory process and the independence of the oversight body are secured in law and respected in practice, GRECO leaves this matter entirely to the authorities' discretion.

or imprisoned without the Assembly's consent ("inviolability"). Also, an MP may not be heard as a witness or brought to court without the Assembly's authorisation.⁴³ In the event that criminal proceedings are brought against him/her and an MP is definitively charged⁴⁴, the Assembly is to decide, within the time limit prescribed, whether or not to suspend him/her so that the proceedings can take their course. Suspension is compulsory in relation to intentional crimes punishable as above. A request for the Assembly's authorisation is submitted to the President of the Assembly by the competent judge and the decision is made by the Plenary after having heard the MP concerned and after an opinion of the Ethics Committee has been considered. The statute of limitation for criminal proceedings is suspended if the request for authorisation is filed but the Assembly decides against lifting the immunity; the suspension remains in effect for as long as the MP is entitled to immunity.

78. There was broad agreement on-site that the system for lifting MPs' immunity functions well, to the extent that it has become unthinkable not to agree to waive immunity if a request is filed with the Assembly to do so. Between 2012 and 2015, 13 such requests were submitted to parliament and immunity was lifted on 12 occasions. A worrisome trend was however reported in respect of the regional legislative assembly of Madeira. Most recently on at least two occasions the waiving of the immunity of regional deputies was refused and criminal proceedings against them had to be suspended. Local cultural norms were evoked as the reason.⁴⁵ Also, political bias against the opposition is said to operate when requests for lifting immunity are processed. GRECO wishes to recall Guiding Principle 6 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption and to reiterate that parliamentary immunity – at whatever level – may not constitute a barrier to the effective investigation and prosecution of public office holders suspected of committing crimes, including corruption. It would therefore be advisable for the regional assemblies to follow the positive model set by their national counterpart. Although GRECO refrains from issuing formal recommendations to the sub-national level, it nevertheless invites the regional legislative assemblies to review the procedure for lifting the immunity of deputies so that it does not constitute an obstacle to prosecuting criminal acts, including corruption.

Advice, training and awareness

79. The Assembly's Ethics Committee is responsible for providing advice to MPs on all matters pertaining to the implementation of the MAS, i.e. the exercise of a parliamentarian's mandate, compliance with the incompatibility and disqualification rules and the declaration of private interests. Upon request, the Committee can also assist an MP with filling out an asset declaration and a register of private interests. All relevant laws applicable to MPs are in the public domain, as are also MPs' registers of interests, declarations of compatibility with the post and asset declarations.

80. In the section on ethical principles and rules of conduct, GRECO has already underscored the lack of recognition by MPs of the value of comprehensive, well-articulated and publicly available principles and standards of professional conduct.

⁴³ Authorisation is compulsory if there is a "strong indication" of the commission of an intentional crime punishable as above.

⁴⁴ The circumstances under which a charge becomes definitive are outlined in Article 11 (4) MAS.

⁴⁵ Research by a Portuguese newspaper in 2014 listed 61 judicial proceedings suspended in Madeira due to the unwillingness of this regional assembly to lift the immunity of MPs or members of the regional government. The newspaper exposes a practice which in essence allows MPs or members of the regional government to decide themselves whether their immunity should be lifted. Often, for the Assembly to refuse lifting immunity, it has been sufficient for an MP or member of the regional government to express their unwillingness to testify in a judicial proceeding or to cooperate with the authorities. That unwillingness is simply registered and a vote is sometimes not even held. This procedure has no basis in law or in the Assembly's procedures. See <http://www.publico.pt/politica/noticia/imunidades-dos-deputados-e-governantes-da-madeira-bloqueiam-mais-de-60-processos-nos-tribunais-1632772>.

Accordingly, it is recommended in paragraph 47 to set them out either in the form of a code or as a binding regulation, and to ensure they are promoted via initial and on-going training, advice and counselling. GRECO therefore renews its invitation to the authorities to proceed with the swift implementation of that recommendation, which aims at providing a foundation and environment for developing, implementing and sustaining a sound and effective integrity system in the Assembly and mitigating corruption risks.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

81. The structure of courts in Portugal comprises the Constitutional Court, the Supreme Court of Justice and the courts of law of first and second instance (ordinary courts), the Supreme Administrative Court and the administrative and tax courts, and the Court of Auditors. Execution of criminal sentences courts, maritime courts, intellectual property court, competition, regulation and supervision court, central instruction court, arbitration tribunals and justices of the peace may also be set up.

82. The Constitutional Court, composed of 13 judges, is responsible for administering justice in matters of a constitutional nature. Its competence, organisation and operation are laid down in the Constitution and in the 1982 Law on the Constitutional Court.

83. The ordinary courts have jurisdiction in civil and criminal matters and in matters not allocated to other courts. They are organised in three instances: 23 first instance (county) courts⁴⁶ and 5 courts with extended territorial jurisdiction⁴⁷; 5 second instance (appeal) courts; and the Supreme Court of Justice as a senior body, which also serves as a court of instance in cases laid down by law.

84. The administrative and tax courts try contested actions and appeals related to the settlement of disputes arising from administrative and fiscal legal relations. They comprise 18 first instance courts, 2 second instance courts and the Supreme Administrative Court.

85. The courts exercise sovereign power and are to administer justice on behalf of the people. They are independent and subject only to the law. The courts are responsible for safeguarding citizens' rights and interests, redressing breaches of the democratic rule of law and settling public and private disputes. In addition to the Constitution, the functioning of the ordinary courts and, to a certain degree, of the administrative and tax courts, is governed by the 2013 Law on the Organisation of the Judicial System (LOJS).

86. Judges are independent. They are to administer justice only in accordance with the Constitution and the law, and are not subject to orders or instructions beyond their duty to comply with the rulings of superior courts. Judges enjoy security of tenure and cannot be transferred, suspended or removed except as provided for by law. The ordinary court judges form a single magistracy corpus and are governed by the Statute of Magistrates (SOM). The administrative and tax court judges belong to a separate judicial corpus and are governed by their own Statute and other applicable legislation, including the SOM. At 12 November 2015, there was a total of 1 995 ordinary court judges (1 562 at first instance, 370 at second instance and 63 at the Supreme Court of Justice). At 31 December 2014, there were 196 administrative and tax court judges (135 at first instance, 40 at second instance and 21 at the Supreme Administrative Court).

87. In cases envisaged by law, and particularly when the prosecution or the defence so requests, trials of serious crimes may be conducted with the participation of jurors, unless they involve terrorism or "highly organised crime". Furthermore, lay judges participate in proceedings concerning labour matters, public health infractions, minor offences, the execution of sentences or certain other cases⁴⁸.

⁴⁶ The district courts are divided into: 1) "central instances" that comprise sections of specialised jurisdiction (e.g. civil, criminal, criminal inquiry, family and minors, labour, commerce and enforcement) and sections of mixed specialised jurisdiction; and 2) "local instances" that comprise sections of generic jurisdiction (e.g. civil, criminal and petty crime) and "sections of proximity".

⁴⁷ The Intellectual property court, the Competition, regulation and supervision court, the Maritime court, the Enforcement of sentences court and the Criminal inquiry central court.

⁴⁸ Article 207 of the Constitution.

88. The judicial map described above is relatively new. It entered into force in September 2014 by virtue of amendments to the LOJS. In effect, some 200 previous first instance courts were replaced by only 23, each based in the capital of an administrative district, except for Lisbon and Oporto which comprise three and two first instance courts respectively. The judicial reform pursued three main objectives: 1) to broaden the territorial base of the judicial counties, which as a rule now coincides with main towns and cities; 2) to set up specialised courts nationwide; and 3) to implement a new public management model as the means *inter alia* to eliminate backlogs. The procedural codes were also recently amended so as to streamline court procedures and, in particular, to speed up the resolution of standard civil and commercial disputes. The reform was supposed to be accompanied by a revision of the SOM, which did not materialise until today due to a lack of political consensus.

89. The judicial system in Portugal is widely regarded as independent. While the GET largely concurs with this assessment, it cannot overlook certain legal, institutional and administrative limitations that might diminish the independence of the judiciary or public perception of its independence. Some of these have been intentionally built in, such as the lack of financial autonomy. The budget of the judiciary has been and continues to be determined and to a certain degree administered by the executive⁴⁹ and is to be approved per judicial county (for first instance courts)⁵⁰ and per each higher court. The Public Prosecution Service always partakes in the negotiations since the overall budget of a judicial county and of each higher court includes the budget of a prosecutor's office belonging to it. The overwhelming majority of judges met on site were in favour of the judiciary being more actively involved in the drawing up of its budget, not least as a way of gaining greater recognition of their status as a separate state power. References were made to "pleading for resources" and to the "power of the purse" being used to inhibit the judiciary and limit its ability to effectively pursue financial crime and corruption, for example.

90. The principal innovation introduced by the 2014 reform was the launching of the new public management model in the judicial counties. The counties are now to be managed by councils composed of: the county court president, the co-ordinating prosecutor of the Public Prosecution and the judicial administrator. Also, "strategic objectives" are to be set for each court and their implementation monitored on an-going basis by the judicial council, the Prosecutor General and a representative of the Ministry of Justice.⁵¹ The strategic objectives are to build the foundations for "procedural objectives" that are to be defined for each court by its president and a co-ordinating prosecutor, on the condition that the latter objectives do not interfere with the adjudication of cases. Last but not least, the implementation of the procedural objectives is to be accounted for in the periodic evaluation of county court judges (on this see further below). Although the aim of greater efficiency and better co-ordination, which is at the heart of the new public management model, was generally welcomed by the judges on-site, its operation in practice allegedly poses many questions due to the extensive powers that have been vested in other branches of power in terms of court management which also heightens the risk of undue interference in case management and case adjudication (on this see also further below).

91. GRECO fully shares the aforementioned concerns. The situation is exacerbated by the co-habitation of judges and prosecutors under one roof, which is a feature of the Portuguese system. This proximity and sharing of communal services is said to create the impression that judges are vulnerable to pressure and undue influence. GRECO has

⁴⁹ In September 2015, i.e. subsequent to the visit, an agreement was reached between the Ministry of Justice and the Supreme Judicial Council to transfer to the latter the management and processing of salaries of first instance court judges.

⁵⁰ Article 106 (1)(j) and (2) LOJS.

⁵¹ Article 90 LOJS.

frequently recalled that judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law. Citizens and society as a whole benefit from judicial decision-making that is free from improper influence as it contributes to guaranteeing a fair trial. The authorities are therefore encouraged to achieve in law and in practice the principles of separation and of balance of powers, including by strengthening the financial autonomy of the judicial branch and by ensuring that “justice must not be done, but also be seen to be done”. The other ambivalent consequences of the reform are addressed in the relevant sections of this report.

Judicial self-governing bodies

92. Separate self-governing structures have been established for ordinary and administrative and tax court judges. The High Judicial Council (HJC) is the superior management and disciplinary body for the ordinary court judges, which is competent to appoint, assign, transfer, promote, exonerate, ascertain the professional merit and apply disciplinary measures in their regard. Besides the President of the Supreme Court of Justice (who chairs), the HJC is composed of a) two members appointed by the President of the Republic; b) seven members elected by the Assembly; and c) seven judges elected by peers in accordance with the principle of proportional representation⁵². Decisions are made in the plenary or in the Permanent Committee. The plenary has exclusive competence for issues concerning the Supreme Court and appellate judges, while the Permanent Committee has competence in all other matters and is composed of the HJC’s President (who chairs) and Vice President, one appellate judge, two district court judges, one of the two members appointed by the President of the Republic and four of the seven members elected by the Assembly⁵³. Decisions of both the plenary and the committee are taken by majority vote, and the chair has a casting vote. Claims against the committee’s acts can be appealed to the plenary, and the latter’s decisions - to a section within the Supreme Court of Justice, composed of the senior Vice-President (with a casting vote) and a judge from each section⁵⁴. Extracts from the HJC’s decisions are published in the Official Gazette. The HJC reports annually to Parliament.

93. The HJC may order inspections, investigations and inquiries regarding the judicial services in district courts and its inspection services are to collect comprehensive information on the status, needs and deficiencies of those services so that remedial measures can be taken by the HJC or the Ministry of Justice. During inspections, information on a judge’s service and merit is also to be gathered on condition that that task is only entrusted to an inspector of equal or superior category or seniority to the judge. Inspectors are appointed from among appeal court judges or, exceptionally, district court judges who have served for not less than 15 years and have a service evaluation of *Very Good* (on this see further below).

94. The High Judicial Council for Administrative and Tax Courts (HJCATC) is composed of the President of the Supreme Administrative Court (who presides), two members appointed by the President of the Republic, four members elected by the Assembly and four judges elected by peers according to the principle of proportional representation. The HJCATC has competences similar to those exercised by the HJC over the administrative and tax court judges. Extracts of the HJCATC’s decisions are published on the internet and immediately circulated to courts and judges.

95. In Portugal, the tradition of vesting a judicial council with decision-making powers with respect to a judge’s career dates from 1974 when the HJC was set up, initially as a body composed exclusively of judges. Since then, its membership has expanded to also

⁵² These include one judge from the Supreme Court of Justice who acts as the HJC’s Vice President, two appellate and four district court judges proposed by each judicial county. This group of judges hold their HJC posts for a three-year term renewable once.

⁵³ The Committee has disciplinary, monitoring, liaison and general affairs sections.

⁵⁴ These are appointed annually and successively bearing in mind the seniority principle.

include the nominees from other branches of power. At the outset, it was reportedly common for some acting judges to be appointed by the President of the Republic or elected by the Assembly but lately that practice has been abandoned and judges elected by their peers are now *in the minority* in the composition of both the HCJ (8 judges and 9 non-judges⁵⁵) and the HJCATC (5 judges and 6 non-judges). Given the extensive powers of these two councils, notably with respect to appointment, promotion, evaluation and disciplinary procedures, their composition attracted criticism on site and their independence and freedom from political bias was questioned⁵⁶. In this respect, the GET wishes to recall Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, which stipulates that judges elected by their peers should make up not less than half the members of councils for the judiciary. In Portugal, the legal framework falls short of meeting this important requirement. Moreover, the decisions of the Permanent Committee, composed of 11 members,⁵⁷ can be reviewed by the 17-member plenary, which includes 11 members of the Committee and therefore does not qualify as impartial review. Nonetheless, the possibility to challenge the Committee's and the Council's decisions before a court seems to provide for an adequate remedy.

96. More generally, seeking to safeguard the independence of the judiciary and of judges has not been inscribed in the councils' objectives as set out in the law. Both have only managerial and disciplinary responsibilities over judges and some administrative duties with regard to district courts⁵⁸. The weakness and complacency of the councils was frequently invoked while on-site, in particular, in connection with their passivity in the aftermath of the reform, which has given new and controversial powers to district court presidents and created risks for the independence of judges and for the principle of case allocation to a lawful judge (on this see further below). Additionally, there seems to be potential for further increasing the publicity of the outcome of the councils' disciplinary procedures. Even though, once adopted, their disciplinary decisions are public, only a summary is made available, and the name of the judge subject to the procedure, the court concerned and the specific breach of duty are concealed (this rule also applies to decisions adopted by courts on appeal)⁵⁹. Also, although the authorities state that, after the proceeding has been closed and a decision rendered, the complete disciplinary file is open for consultation by any interested person at the premises of one of the councils, it was claimed while on-site by representatives of the non-governmental sector that they only have access to a summary file. In view of the apparent discontent voiced by civil society, it would be beneficial for the judicial councils to be more receptive to public opinion and for greater publicity to be given to severe cases of misconduct. This would likely improve the responsibility of judges before society and public confidence in the justice system⁶⁰. The GET can only conclude from the foregoing that there is clear scope for the independence, credibility and accountability of the councils to be further reinforced so that they are more assertive in securing the independence of the judiciary vis-à-vis other branches of power and private actors, which in turn would contribute also to preventing judicial corruption and public perception thereof. Accordingly, **GRECO recommends that i) the role of the judicial councils as guarantors of the independence of judges and of the judiciary is strengthened, in particular, by providing in law that not less than half their members are judges elected by**

⁵⁵ The Permanent Committee, an HJC substructure responsible for the career of district court judges, is composed of five judges, five non-judges and a rapporteur who can be either a judge or a non-judge.

⁵⁶ Despite the fact that in practice some of the HCJ members appointed by the President of the Republic happen to be former judges. The GET was told that the two members appointed by the President to the HJC are not career judges, although currently one of them is an ex-judge of the Constitutional Court.

⁵⁷ Article 29 SPPS.

⁵⁸ For example, to monitor performance of such courts and to participate, alongside their presidents, in the setting up of priorities for the processing of cases pending for an excessive period of time.

⁵⁹ Article 123-A SOM.

⁶⁰ Subsequent to the visit, the GET was informed that the HJC has approved a communication plan which foresees *inter alia* an enhanced explanation to the media of adopted court decisions and the development of guidelines for the press.

their peers; and ii) information on the outcome of disciplinary procedures within the judicial councils is published in a timely manner.

Recruitment, career and conditions of service

97. The prerequisites for a judge are: Portuguese citizenship, enjoyment of all political and civil rights, holding a law degree from a Portuguese university or validated in Portugal, completion of a training course and internships, as well as compliance with other requirements for appointment to the civil service.

98. Admission to the compulsory initial training for both ordinary and administrative/tax court judges is via an open competition⁶¹. In order to qualify, the above requirements as well supplementary ones are to be met, depending on whether admittance is based on academic qualifications or on professional experience (a specific quota being reserved for each of the two ways of admittance). The competition consists of: 1) aptitude tests, i.e. written exams on law and, only for applicants seeking "admission based on academic qualifications", an oral exam; and 2) an assessment of the curriculum for those seeking "admission based on professional experience", which includes a discussion of the applicant's professional experience, legal topics related thereto, and a psychological recruitment test. Successful candidates are ranked according to their final mark and admitted to the first stage of the initial training course on the basis of the existing number of vacancies. The initial (three-year) training is managed by the Centre for Judicial Studies (CEJ) and described in more detail in paragraph 135.

99. District court judges are appointed by the HJC on the basis of the grades obtained in the initial training course. District court presidents are selected by the HJC from among judges who perform effectively duties a) at an appellate court and have received previously a service evaluation of *Very Good*; or b) at a district court, have a 15-year service record and a recent evaluation of *Very Good*. Court presidents are appointed only on a three-year secondment by the HJC, which may be terminated at any time by a reasoned decision by the HJC.⁶² The secondment may be renewed for the same term upon a favourable assessment, taking into account the exercise of management duties and the results obtained in the district. For appointment to a specialised court candidates are required to: 1) have attended specialised training, 2) hold a relevant Master's or PhD degree, or 3) have worked in a specialised court for at least three years.

100. Appellate judges are appointed by way of promotion from among district court judges who succeed in a competition based on an assessment of their curriculum, merit and the results of periodic evaluation⁶³. A selection panel is composed of the President of the Supreme Court of Justice, an HJC member who is at least an appellate judge, two HJC members who are not judges selected by the HJC, and a university law professor chosen by the HJC. The final decision is taken by the HJC. Appellate court judges elect the appellate court presidents from among their peers by secret ballot for a non-renewable five year term.

101. Judges of the Supreme Court of Justice are selected from among judges, prosecutors and other meritorious jurists via a competitive assessment of their curriculum⁶⁴. Ranking is done separately for each category in accordance with the applicant's merit, for which account is taken of prior service evaluations, ranking in previous judicial competitions, university and post-university "curriculum", written

⁶¹ Regulated by the 2008 Law on Admission to the Career of a Magistrate and on the Functioning of the Centre for Judicial Studies.

⁶² Article 92 LOJS.

⁶³ Article 215 (2) of the Constitution, Article 7(3) LOJS and Article 46 SOM.

⁶⁴ As a rule, three of each five vacancies are filled by appellate court judges, one by an Assistant Attorney General, and one by a jurist of recognised merit. See Article 52 (6) SOM.

academic publications, forensic or public education activities and other competence-enhancing factors. The applicants are to publicly present their "curriculum" in front of a panel composed of the President of the Supreme Court (chair), the most senior judge who is an SCJ member, a member of the High Council of the Public Prosecution elected by that body, an HJC member who is not a judge elected by the HJC, and a university law professor chosen by the HJC. A final decision is made by the HJC, and the Prosecutor General and the macebearer of the Bar may cast an advisory vote⁶⁵. The President of the Supreme Court is elected from among judges of that Court by secret ballot for a non-renewable five-year term.

102. The selection of administrative and tax court judges is broadly identical, the appointments are made by the HJCATC.

103. Judges are appointed for life. Besides the mentioned requirements, placement preferences in the initial and promotion proceedings are determined, as a rule, by judges' evaluation (see further below) and seniority, in that order⁶⁶. A seniority list that ranks judges according to their service time, date of birth, post of duty, date of placement and jurisdiction of origin, is established by the judicial councils and published annually⁶⁷. The ranking is subject to appeal.

104. Overall, the recruitment and promotion of judges is founded on objective and transparent criteria, with specific prerequisites for each career stage such as completion of initial training, merit, seniority and other factors. Still, the risk that political considerations might prevail over the objective merits of candidates at the appointment stage remains elevated due to the composition of the judicial councils where judges are in the minority (cf. paragraph 95). The same is also true for the preceding selection stage. The panel overseeing the short-listing of candidates to the post of appeal court judge is composed of two judges and three non-judges, and the panel for the selection of candidates to the post of Supreme Court judge of two judges, two non-judges (including a representative of the Superior Council of the Portuguese Bar Association) and one prosecutor. The GET wishes to stress that the process for selecting and appointing judges emerges as critical when the issue of judicial corruption is examined for it can be easily manipulated by other branches of power or private interests and lead to the selection and appointment of non-independent judges or of those who might be biased towards vested interests. Therefore, selection and appointment procedures in which judges have only a minority jeopardise the principle of the separation of powers and of judicial independence. Further to the recommendation in paragraph 96 and with a view to safeguarding against judicial nominations for improper motives, **GRECO recommends that at least half the members of the authorities taking decisions on the selection of second instance court and Supreme Court judges are judges elected (or chosen) by their peers.**

105. The professional performance of district court judges is subject to evaluation by means of an inspection every four years (the annual plan of regular evaluations is approved by the HJC). Judges are to be evaluated according to their merit as *Very Good*, *Good with Distinction*, *Good*, *Sufficient* and *Mediocre*. The latter evaluation implies suspension from duties and an inquiry into the reasons of the ineptitude. The evaluation takes into account "the manner in which judges perform their duties, the volume, difficulty and management of the service under their care, the capacity to simplify the procedural acts, the conditions of the rendered work, technical knowledge, intellectual capacity, published juridical papers and repute". Furthermore, the evaluation is to always take into account: the service time, the results of prior inspections, disciplinary processes

⁶⁵ Articles 52 and 156(4) SOM.

⁶⁶ Article 44(4) LOJS.

⁶⁷ In appointments preceded by training or internships at the end of which a ranking list is issued, seniority is determined by that ranking. In appointments and promotions via competition, seniority is determined by date of appointment. In any other case, seniority is determined by the seniority of the post held. – Article 75 SOM.

and any complementary elements that are part of the respective individual process. With regard to personal characteristics, assessment is made of a judge's: a) civic competence, b) independence, impartiality and dignity of conduct; c) relationship with parties to the process, other judges, lawyers, other court professionals, officials and the public; d) personal and professional prestige; e) reserve and serenity; f) the ability to understand the specific situations under consideration and the sense of justice in a given socio-cultural environment; g) ability and dedication to the training of judges.

106. A judge must be heard on an inspection report and may provide the information s/he deems appropriate. Although there is no regular evaluation conducted in respect of the appeal court judges, it can be ordered by the HJC, including in cases where an application is made for a post in the Supreme Court of Justice. The evaluation of district court judges is carried out by inspectors who are judges with at least fifteen years of service appointed by the HJC. An evaluation of an appeal court judge falls within the HJC Plenary's competence. The evaluation of the administrative and tax court judges is conducted on broadly similar terms by the HJCATC.

107. The system of periodic evaluation of first instance court judges elicited criticism from the judges themselves for being purely technical, founded on the criteria that are overwhelmingly qualitative, conducted in breach of the periodicity established by law, and, more generally, for being unfair and not affording equal treatment to those who are responsible for fewer but more complex cases⁶⁸. Moreover, due to the absence of statutory rules or a code of conduct by which all judges are bound (on this see further below) and the insufficiency of the criteria provided in the HCJ's Rules on Judiciary Inspections the integrity of a judge and his/her fitness for the profession have allegedly not been assessed in an adequate manner in practice. As for second instance court judges, the GET notes that, although they are not subject to periodic evaluation, other performance review mechanisms are available in their regard (i.e. *ex officio* HCJ inspections and evaluation upon request in case a judge presents his/her candidacy to the Supreme Court of Justice) and underpinned by the same criteria as those established for the first instance court judges. The GET is of the strong view that in order for performance review mechanisms whether for first or second instance court judges to be credible and effective, it would be imperative for them to include a more elaborated assessment of the ethical dimension of a judge's comportment based on the standards of conduct, the adoption of which is recommended later in this report (cf. paragraph 120). This would not only allow for an objective ascertainment of a judge's performance and its evolution over time but also for the early detection of improprieties or a propensity for unethical behaviour. Furthermore, assessment of respect for the ethical rules is likely to strengthen considerably the objectivity and transparency of the promotion procedure as it would further help substantiate relevant decisions. Consequently, **GRECO recommends ensuring that periodic evaluations of first instance court judges and inspections/assessments of second instance court judges ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of judicial conduct.**

108. A judge's duties are suspended: a) on the day on which s/he is notified of an indictment or an order indicating the date of trial of an intentional crime committed in the exercise of his/her duties; or b) on the day on which s/he is notified of a preventive suspension arising from a disciplinary proceeding or of a sentence implying removal from office. A judge's tenure ceases: a) on retirement (due to age or incapacity); b) on the day on which an order is published announcing his/her detachment from the service; or c) on the day immediately after the day on which the Official Gazette announces the new situation in the jurisdiction or place where s/he holds office.

⁶⁸ Among those examples given to the GET was that of a judge who had been evaluated less favourably due to only being responsible - at the time of evaluation - for six cases, including one where a former Prime Minister had been remanded in custody.

109. Judges' salaries consist of a base remuneration and supplements. Salaries vary depending on seniority and the nature of the court to which the judge belongs. Before the reductions applied in the aftermath of the economic crisis, the monthly, beginning of career, salary of a judge was approximately € 2500 and that of a judge of the highest courts (and of a member of the HJC who performed those duties full time) € 6 000. All judges receive a supplementary monthly remuneration of some € 600. The receipt of any other benefits is forbidden. Remuneration is administered by the Directorate-General for Justice Administration under the Ministry of Justice. The salaries of judges appointed to the Supreme Administrative Court are administered by that Court.

110. Entitlement to home/residence and travel allowances is regulated by the SOM. Whenever necessary, the Ministry of Justice, through the Institute of Financial Management of Justice, provides a monthly home/residence subsidy to a judge, which is determined by the Ministry and shall not exceed 1/10 of the judge's total remuneration. Judges who do not own a home/residence or who do not reside in their home/residence are entitled to compensation. The amount (currently, €600) takes into account current market prices for housing and is determined by the Ministry of Justice and allocated by decision of the HJC and of the professional associations of judges. Judges are entitled to the reimbursement (unless they prefer an advance payment), within the limits laid down by orders of the Ministers of Finance and of Justice, of the travel expenses of themselves and members of their household, including for the transportation of personal belongings, whatever the means of transport, when promoted, transferred or re-assigned for reasons other than disciplinary ones. Compensation for travel expenses is also paid when a judge is serving outside his/her court or service jurisdiction. Additionally, the President and Vice President of the Supreme Courts, the HJC's Vice President and the appeal court presidents receive a representation subsidy corresponding respectively to 20%, 10%, 10% and 10% of their monthly salary.

Case management and court procedure

111. In 2008, court management software CITIUS was introduced in the ordinary courts as a replacement of the paper case management system. CITIUS is a tool that is meant to simplify and speed up the judicial proceedings and to contribute to better court management and work organisation. The computer applications cover several judicial professionals: judges (except those of the Constitutional Court and of the appellate courts), public prosecutors, court officials, lawyers and other legal agents. Cases are distributed twice a day, automatically, according to the type of case and the organic unit responsible. The system ensures random distribution of cases to judges⁶⁹. Its equivalent (SITAF) has been installed in the administrative and tax courts.

112. The requirement to adjudicate cases within reasonable time is included in the Constitution and in the LOJS. It guarantees each citizen swift and prioritised judicial proceedings with the aim of safeguarding effective and timely judicial protection against threats to or violations of his/her personal rights, freedoms and guarantees. Although a national timeframe for the length of court proceedings has not been prescribed, legal rules have been established in each jurisdiction defining the deadline for sentencing (final decisions) which is, for urgent cases, normally 30 days for the final decision in a civil procedure and 10 days in a criminal procedure (for urgent cases, the deadline is normally set between 5 and 10 days). Also in some limited situations (criminal, family cases), legal provisions fix the duration of internal procedures.⁷⁰ Prior to the 2014 judicial reform, backlogs were only monitored in the higher courts and on the initiative of the parties following a proper legal procedure. The introduction of the new public management model has had implications for all district courts in that they have become subject to monitoring on terms that are similar to those that apply to the higher courts,

⁶⁹ Articles 203-218 of the Civil Procedure Code and Article 4 of the Criminal Procedure Code.

⁷⁰ Article 105 of the Criminal Procedure Code and Article 156 (4) of the Civil Procedure Code.

and their court presidents are now to present regular reports, including details of judicial backlogs, for the attention of the HJC, the Prosecutor General's Office and the Ministry of Justice. Systematic failure to respect procedural deadlines incurs disciplinary or criminal liability of a judge. The body which exercises control over the progress of court cases is the HJC or the HJCATC (through judicial inspectors and court presidents).

113. Court hearings are public, unless the court decides otherwise (and issues a written, reasoned order to that effect) with a view to safeguarding individual dignity or public morals, or ensuring the court's regular operation⁷¹. For proceedings regarding trafficking in human beings and sexual offences, public access is, as a general rule, excluded. All court decisions that are not merely administrative in nature are to be set out – with the relevant grounds for the decision – in the form stipulated by law. Second instance and supreme court judgments are published online (www.dgsi.pt), in the database of juridical documents maintained by the Ministry of Justice.

114. As the GET was told, for years a considerable backlog of pending trials has been inherent, with protracted proceedings encumbering, in particular, the administrative courts. The judicial reform launched in 2014 was intended *inter alia* to eliminate backlogs. That process has only begun, and although several thousands of cases have been closed, a structural overhaul of this magnitude can be expected to take years to fully implement and to produce results. Meanwhile, certain weaknesses have become apparent. In September 2014, the court management system CITIUS collapsed, which prompted the complete closure of ordinary courts for a six-week period. That temporary deactivation of the system is alleged to have exacerbated delays and hampered the distribution of cases, the issuing of rulings and filing of documents, all of which may only be done in electronic form pursuant to recent amendments to the pertinent procedural codes. Although by the time of the on-site visit the software had been restored, ample remarks were made by the GET's interlocutors about the precipitated nature of the reform and the fact that it was implemented without proper financial and administrative backing.

115. The discordant regulation of the re-allocation of cases and of the transfer of judges within district courts has been the other point of contention. With a view to expediting the proceedings, the newly amended LOJS has vested district court presidents with the power to propose to the HJC the re-assignment of judges and the re-allocation of cases to a judge other than the serving one for procedural and judgment purposes⁷². In comparison, the SOM, which has not been revised, only allows for a judge's transfer at his/her own request or as a disciplinary measure⁷³. The judges interviewed while on-site expressed their misgivings about the incongruent legal framework and highlighted the risks that it poses for the independence of judges and for the principle of case allocation to a lawful judge, not least due to the implication of the HJC, which in its current composition does not meet the pre-requisites of an independent judicial body (cf. paragraphs 95-96). Indeed, in the GET's view, the existence of contradictory rules breeds legal uncertainty which has to be eliminated. Furthermore, while it is generally accepted in countries whose constitutional arrangements so permit that there should be some flexibility enabling judges and/or cases to be transferred relatively easily between courts in order to cater for fluctuations in workload, sufficient legal guarantees are to be in place to ensure that this is done on a temporary basis and subject to judges' consent⁷⁴. In the absence of such clearly articulated guarantees, the procedure remains subjective, not transparent and vulnerable to misuse. Consequently, **GRECO recommends ensuring**

⁷¹ Some exceptions are also established by Article 87 of the Criminal Procedure Code, by virtue of which a judge may on his/her initiative or at the request of a public prosecutor, defendant or a private prosecutor, decide by order to restrict or exclude public access.

⁷² Article 94(4)(f) LOJS.

⁷³ E.g. Articles 6, 43, 85, 88, 93, 103, 104 SOM.

⁷⁴ Subsequent to the visit, the GET was informed of the rules adopted by the HJCHJC in 2014, which require *inter alia* a judge's consent in instances of case re-allocation.

that the legal framework governing the re-allocation of cases and the re-assignment of judges is consistent, underpinned by objective and transparent criteria and safeguards judges' independence.

116. The case adjudication has recently undergone changes as well and these had preceded the 2014 reform. Whereas adjudication by a three-judge panel applied previously in certain cases, the 2010 amendments to the procedural codes made adjudication of criminal cases in the appellate court by a two-judge panel the rule. The involvement of a third judge (court president) is only envisaged if the two judges forming a panel disagree with each other and, in practice, in a large number of cases a third judge is dispensed. The situation is rendered even more complex by the fact that *divergent* criteria have been established for the selection of court panel members other than court presidents. The principle of case assignment to a natural random judge is only to be followed in respect of one of the two judges (the judge-rapporteur), while the so-called "joining judge" is to be drawn from the pre-established list of judges that is kept in each court, and has to be the judge that is immediately below the judge-rapporteur in terms of seniority (cf. paragraph 103 for the description of seniority lists). The same pairs of judges are therefore automatically re-produced and adjudicate cases and this is regarded by the judiciary as being conducive to greater stability and predictability of jurisprudence. This premise was challenged by the interlocutors from outside the judiciary who asserted that the criteria for the court panel formation are at variance with the principle of case allocation to a lawful and impartial judge. Moreover, the collegiality of the decision-making process is said to be undermined by the rule whereby only the judge-rapporteur drafts the verdict and the other judge only adds his/her signature, making the set-up vulnerable to abuse. While, according to what the GET was told, at district court level any risks of judicial corruption can be mitigated to some extent by public and media scrutiny, at the appeal courts where public hearings are rare, the consequences of the procedure for pairing judges might be more serious because e.g. a decision of one judge-rapporteur could reverse the verdict reached in a case tried by jury in a criminal procedure. The GET is convinced that the criteria for the formation of a judicial panel at the appellate courts should safeguard the right to an impartial trial and be objective and transparent and apply in respect of each court panel member. Bearing in mind its implications for the establishment of legal doctrine, true collegiality of decision making at higher courts has to be respected as well. The authorities are therefore encouraged to remedy the vulnerabilities identified above that arise from the existing rules that govern the composition of judicial panels but, in light of the scope of GRECO's current evaluation round and in the absence of agreed international standards in this domain, GRECO refrains from addressing this issue in a tailor-made recommendation.

117. As concerns the accessibility, transparency and accountability of the judiciary, the GET notes that at present, only the judgments of second instance courts and of the two Supreme Courts are made available on a designated website, maintained by the Ministry of Justice. This, in itself, is a major achievement, as are also the full computerisation of all Portuguese courts and the conversion of most procedural acts into an electronic format. Still, in its earlier pronouncements, GRECO has often noted that, even in a system not based on precedent, the publication and dissemination of judgements plays a key role in assuring certainty in the law and uniformity and predictability in its application. In the GET's view, the publication of well-reasoned, consistent and comprehensible decisions therefore can assist the judge and also improve the quality of judgments. In this connection, placing all final decisions and judgments of first instance courts on a publicly available website, while striking a balance with data protection and confidentiality needs, is likely to bring a distinct added value in terms of enhanced accountability of judges, better access to justice and wider transparency. Accordingly, **GRECO recommends that final first instance court judgments are made easily accessible and searchable by the public.**

Ethical principles and rules of conduct

118. Judges are to make a declaration of honour while taking the office. The ethical principles and core values of the judicial system are established by the Constitution and the SOM. Besides, the general duties prescribed for civil servants by virtue of the General Law on Civil Service, such as impartiality, exemption, pursuit of the public interest, zeal, obedience, loyalty, assiduity, also apply on a subsidiary basis⁷⁵.

119. There is no code of conduct covering all judges. In 2009, the Union Association of Portuguese Judges, of which some 2200 (or 90%) ordinary court judges are members, adopted the Portuguese Judges' Pledge of Ethics, subsequently endorsed by the Eighth Congress of Portuguese Judges. The Pledge draws on judges' experience, doctrinal texts and relevant international instruments and is grouped around six key attributes of a judge: independence, impartiality, integrity, humanism, diligence and reserve. Each of these are defined in general terms, broken down into principles and commented upon so as to help explain their practical significance. The last chapter is dedicated to principles that are to guide the judicial association from the point of view of the judges' collective ethics. The Pledge has no disciplinary or sanctioning purpose.

120. Generally, the judges met by the GET did not acknowledge that there was a legitimate concern about judicial ethics. Members of both judicial councils expressed their satisfaction with judges' integrity and pointed to judges not condoning any misconduct. What appears to be problematic is the dearth of rules that govern judicial conduct and carry disciplinary sanctions. According to law, judges may be liable to disciplinary action for breaches, however minor, of professional duties, and for acts or omissions committed in their public life or those that are incompatible with the dignity essential to the exercise of judicial duties. However, the conduct that would constitute e.g. "loss of prestige demanded from a judge" (sanctioned by transfer) or "immoral or dishonourable conduct" (subject to compulsory retirement and dismissal) is not defined. Many proceedings are therefore reportedly initiated for breaches of rules established for civil servants that also apply. In the opinion of the GET, the situation where the statutory norms are few and where the imperatives of a judge's conduct may only be deduced from an analysis of disciplinary cases – on which a substantial part of the ethical training of candidates to the post of judge is focused (cf. paragraph 135) – cannot be conducive to shaping and properly owning the values on which the discharge of the judicial office is to be premised. As for the aforementioned Pledge of Ethics, which is a commendable initiative, it cannot be a substitute for standards for the judiciary as a whole as it only applies to certain, albeit significant, number of the country's judges. In this connection, developing standards of conduct that are binding on all judges and covering issues, such as the receipt of gifts (on this see further below), conflicts of interest and corruption prevention, would represent an important step forward not only in terms of further upholding integrity but also establishing a clear basis for periodic evaluation, promotion and initiation of disciplinary action. To promote greater compliance, it would be important for judges to receive guidance and confidential counselling and to undergo initial and on-going training on the ethical dimension of their office. Furthermore, making the standards available to the public is likely to further strengthen society's confidence in the independence and impartiality of justice. Consequently, **GRECO recommends that i) clear, enforceable, publicly-available standards of professional conduct (covering e.g. gifts, conflicts of interest, etc.) are set out for all judges and used *inter alia* as a basis for promotion, periodic evaluation and disciplinary action; and that ii) awareness of the standards of conduct is promoted amongst judges through dedicated guidance, confidential counselling, and initial and in-service training.**

⁷⁵ Article 32 SOM.

Conflicts of interest

121. Pursuant to Article 7 SOM, judges may not: a) perform duties in a court or tribunal served by judges, public prosecutors or justice officials to whom they are related by marriage or common law marriage, by family or affinity in any level of direct line or until the 2nd level of the collateral line; and b) serve in a court belonging to the judicial district where, within five years, they had acted as public prosecutor, or in a court belonging to the judicial circuit where, in the same period, they had maintained a lawyers' office. Within the judicial process, conflicts of interest are regulated by the Criminal and the Civil Procedure Codes which require a judge to withdraw from a specific proceeding if there is an "an impediment" to or a "suspicion" casting doubt on his/her impartiality (see further below). A judicial decision adopted in breach of this requirement is null and void. Failure to comply triggers disciplinary liability of the judge concerned.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

122. Judges may not participate in political-partisan activities of a public nature or hold political posts, except those of the President of the Republic and a member of Government or the State Council⁷⁶. Moreover, except those who are retired or on long-term unremunerated leave of absence, judges may not perform any public or private function, save for unpaid teaching or scientific research of a juridical nature or administrative duties in judges' associations⁷⁷. The carrying out of permissible activities may not be detrimental to a judge's service and is to be authorised by the HJC. The appointment of serving judges to limited term positions unrelated to the work of the courts is also only possible with the HJC's consent.

123. Judges can hold shares and bonds as citizens and are to declare them to the fiscal authorities. No specific rules pertain to the holding of financial interests, except the general rules on independence, impartiality and other relevant duties prescribed by the SOM. Similarly, no restrictions regarding employment in specific posts/functions apply to judges once they have ceased to exercise a judicial function. The GET was told that not more than one or two judges move to the private sector per year.

Recusal and routine withdrawal

124. A judge may be removed from a case for family or duty-related reasons or if there are doubts as to his/her impartiality. Within the criminal justice process, the rules on self-recusal and disqualification are established by Chapter VI of the Criminal Procedure Code on "Impediments, refusals and exemptions" (Articles 39-47). They stipulate *inter alia* that a judge may not preside a case: a) if s/he is/has been the spouse or legal representative of the defendant, of the offended party or of the person with capacity to constitute him/herself as private prosecutor or civil party or if s/he resides/has resided with any of the above in conditions similar to those of a spouse; b) if s/he, or his/her spouse or the person who resides with him/her in conditions similar to those of a spouse, is the ascendant, descendant, relative to the 3rd degree, tutor or curator of, or is the adoptive parent of the defendant, of the offended party or of the person with capacity to constitute him/herself as private prosecutor or civil party or is an in-law of these to the said degree; c) if s/he has intervened in the proceeding as a representative of the Public Prosecution, criminal police body, defence counsel, attorney of the private prosecutor or

⁷⁶ Article 11 SOM.

⁷⁷ Article 216 (3) of the Constitution, Article 5 (2) LOJS and Article 13 SOM. Additionally, pursuant to Article 32 SOM, the regime of incompatibilities established for judges is concurrent with that applicable to civil servants in as much as they are requested to comply with the demands of impartiality and exemption.

of the civil party or expert; or d) if, in the proceedings, s/he has been or is to be heard as a witness. Judges who are spouses, relatives or in-laws to the third degree or who live in conditions similar to those of spouses, are prohibited from performing duties in any capacity in the same proceedings. Moreover, a judge may not intervene in a trial or appeal, or request a revision regarding proceedings in which s/he has: applied a constraint measure, guided an inquiry, participated in a former trial, issued/participated in a former appeal decision or request for revision, refused to close the proceedings in the event of discharge without punishment, the provisional suspension or the simplest procedure due to disagreement of the penalty suggested. If any of the aforementioned impediments are present, the judge is to immediately declare them by order in the records. Such a declaration may also be requested by the Public Prosecution, a defendant, private prosecutor or civil party, and in the latter case, the order is to be issued within five days by the judge concerned. Similar rules also apply in civil law cases⁷⁸. Thereafter, the case is assigned to the substitute judge in accordance with law.

Gifts

125. There are no explicit prohibitions on judges accepting gifts but the attendance of conferences and other events necessitates the authorisation of the HJC. Nonetheless, as per Article 297(3)(j) of the General Law on Civil Service that applies to judges on a subsidiary basis, the acts performed by a civil servant, including a judge, who "as a consequence of the office held by him/her, demands or accepts, either directly or indirectly, any gift, bonus, participation in profit or any other patrimonial advantage, even if for any purpose other than that of accelerating or delaying any service or procedure", is to be construed as a disciplinary offence. Additionally, under Article 127 of the Civil Procedure Code, "if a judge has received a gift/donation before or after initiating the process and because of it, or where s/he has provided the means to pay the costs, a party has the right to doubt his/her impartiality and to demand his/her removal from the case". Last but not least, by virtue of Article 386 (3)(a) of the Penal Code, judges incur the same criminal liability as public officials, including members of parliament⁷⁹, for offences of active and passive bribery and the receipt of an undue advantage (Articles 372-374 PC).

126. The absence of a blanket prohibition on gifts *specifically* within the judiciary is regrettable, particularly in the presence of other incongruent rules. Although the General Law on Civil Service forbids the acceptance of gifts by civil servants, including judges, in connection with the exercise of their office, the above cited provision of the Civil Procedure Code might be interpreted as tolerating such practices, given that it is at the discretion of the party concerned to demand that a judge be removed from the trial due to the acceptance of a gift in relation thereto. The GET also wishes to stress that the judges interviewed while on-site mostly invoked their duties of impartiality as the legal basis for considering that accepting gifts is not permissible rather than the regulations established for civil servants. Also, although they stated categorically that it was not judges' practice to accept gifts, the GET was informed that district court judges tend to stay at the same court for long periods of time – on average fifteen years – and are likely to form bonds with the local community. This might entail *inter alia* accepting invitations to local events and other favours that are likely to make judges prone to adjudicate in line with personal sympathies. GRECO takes the view that the legal framework on the acceptance of gifts requires greater consistency. The recommendation in paragraph 120, which calls for the establishment of standards of professional conduct binding on all judges, is of direct relevance. A separate recommendation on prohibiting gifts in connection with the exercise of judicial function is therefore not warranted.

⁷⁸ Article 127 of the Civil Procedure Code

⁷⁹ See section on "Corruption prevention in respect of members of parliament".

Third party contacts and confidential information

127. According to Article 12 SOM on “the duty of reserve”, judges are not to make declarations or comments on cases except when authorised to do so by the HJC for the purpose of defending their honour or another legitimate interest. The duty of reserve does not apply to information that, in matters not covered by judicial secrecy or by professional secrecy, is meant to lead to the fulfilment of legitimate rights or interests, particularly access to information.

Declaration of assets, income, liabilities and interests

128. At the moment, the obligation to disclose assets, income, liabilities and interests, in accordance with the 1983 Law on Public Control of the Wealth of Political Officeholders only applies to the Constitutional Court judges. The desirability of extending those rules to the judiciary as a whole is subject to an on-going debate and, as transpired from numerous interviews, this idea is generally supported and welcomed by judges.

Supervision and enforcement

Conflicts of interest

129. Within the judicial process, the case-by-case handling of conflicts of interest is a responsibility vested in each judge. If a judge recuses him/herself, the decision to do so cannot be appealed. Where a demand to remove a judge is filed by one of the parties and the judge concerned fails to recuse him/herself within the specified time frame (five days), an appeal can be filed with the immediate superior court or, in the case of a judge belonging to the Supreme Court of Justice, with that Court. In the latter case, the criminal section of the Court decides without the judge concerned being present. Largely similar procedures are in place within the administrative and tax courts.

Auxiliary employment and other duties

130. Supervision of compliance by the ordinary court judges with the statutory rules is exercised by the HJC. More specifically, judges may incur disciplinarily liability for breaches, however minor, of professional duties, and for acts or omissions committed in their public life or those that are incompatible with the dignity essential to the exercise of judicial duties. Disciplinary sanctions are dismissal, compulsory retirement⁸⁰, compulsory inactivity (between one and two years), suspension (from 20 to 240 days), transfer⁸¹, a fine (between 5 and 90 days of remuneration) and a reprimand. Except for the latter, which may be applied independently - provided the accused is given a hearing and allowed to make a defence - and is not to be recorded, the disciplinary procedure, bar the hearing, is conducted in writing and is to guarantee the right to a defence. The grounds for self-recusal/withdrawal in the penal process apply with necessary adaptations.

131. The competence to initiate the procedure lies with the HJC. The statute of limitations is regulated by Article 178 of the General Labour Law in Public Functions. The right to initiate a procedure lapses within 60 days from the moment any hierarchical superior of a public employee, including a judge, becomes aware of an offence, and the initiation of a procedure, an inquiry or an investigation is to correspond to the foregoing time limit but to not exceed six months. The procedure expires within 18 months of its initiation, if within that period the judge concerned is not notified of the disciplinary decision, and unless the disciplinary offence constitutes a crime, it lapses within one year from the date it was committed.

⁸⁰ Compulsory retirement and dismissal are applicable *inter alia* for lack of honesty or immoral or dishonourable conduct and professional ineptitude.

⁸¹ Applies to conduct that constitutes the “loss of prestige demanded from a judge”.

132. The procedure is conducted by an inspector (a judge) who is to analyse it, to report whether it has merit and to propose to continue or dismiss the case. In respect of first instance court judges, the report proposing a sanction of transfer, fine or reprimand is to be submitted to the HJC’s Permanent Committee; in respect of more severe penalties and sanctions proposed in regard to higher court judges, the submissions are to be made to the HJC’s Plenary. Both structures can either dismiss the complaint or decide that the procedure is to be continued. In either case, the decision can be appealed to the Supreme Court of Justice. The procedure remains confidential until the final decision is made by the above organs and is to be archived in the HJC⁸²; the decision applying the penalty does not require publication⁸³. If in the course of a disciplinary procedure it is found that a criminal offence has been committed, the HJC is to be notified and a separate investigation is to be conducted by the Public Prosecution Service. Anyone aware of an act committed by a judge in the exercise of his/her duties that may constitute a disciplinary offence, must inform the HJC. The disciplinary procedure and measures are identical within the system of administrative and tax courts and supervisory responsibilities are vested in the HJCATC. The following statistics are available from the two court systems.

Ordinary courts

	2010	2011	2012	2013	2014
DISCIPLINARY PROCEEDINGS					
Pending from years before	21	25	26	26	41
New	48	44	40	34	40
Finished	44	43	40	19	33
Pending for future	25	26	26	41	48

	2010	2011	2012	2013	2014
Mandatory retirement	—	03	03	01	03
Transfer	—	01	—	—	01
Suspension from duties	02	06	04	01	03
Suspension with transfer	—	—	01	01	---
Fine	15	15	16	22	16
Recorded warning	06	08	03	01	04
Warning	03	02	02	10	07
Dismissal	—	—	—	—	----
Inactivity	—	—	—	—	----
File	18	06	—	—	03

Administrative and tax courts

DISCIPLINARY PROCEEDINGS	2010	2012	2015
Fine	02		
Dismissal		01	
Acquittal	01	01	
Pending			02

⁸² Article 113 (1) SOM.

⁸³ Article 123-A SOM.

133. Although the statute of limitation for the initiation of a disciplinary procedure in respect of a judge is relatively short (60 days extendable up to six months), the GET was not made aware of any difficulties that it poses. This is confirmed by the statistics presented above. As for the lack of transparency deriving from the fact that neither the HJC nor the HJCATC publish the full texts of their disciplinary decisions, this issue is already tackled by the recommendation included in paragraph 96 of this report.

134. Save for the exceptions laid down by law, judges may not be held personally liable for their decisions⁸⁴. Furthermore, except when they are caught *in flagrante delicto*, judges may not be imprisoned or detained unless an order has been issued stipulating a date on which they are to be tried for a crime punishable by a prison sentence of more than three years. If detained or imprisoned, a judge is to be immediately brought before the competent court. The competent court for a criminal offence is the court of the category immediately above the one to which a judge belongs, except in the case of justices of the Supreme Court of Justice who are subject to that same Court. If a personal or home search is necessary, it is to be conducted by the competent judge who shall notify the HJC in advance so that a member appointed by it may be present. In the past five years, three judges have been tried for criminal offences. One was convicted for money laundering and dismissed according to the SOM. Regarding the two other judges, criminal and disciplinary procedures are on-going.

Advice, training and awareness

135. The Centre for Judicial Studies (CEJ) under the Ministry of Justice is the institution responsible for the initial and on-going training of ordinary and administrative/tax court judges. The initial training is compulsory and consists of three phases: theoretical and practical (of 11 months each), and an 18-month probationary period. The theoretical phase is held at the CEJ premises and its objective is to assist trainees in developing the qualities and acquiring the technical skills that are fundamental to the judicial function. The subjects taught include *inter alia* "Justice administration – mission, ethics, deontology" (16 sessions or 24 hours), the delivery of which is supported by three e-books available on the CEJ's website⁸⁵. The related qualitative assessment (except for the ethics module, which is not subject to evaluation) are prepared at the end of the first and second trimester and are translated into quantitative grading at the moment of the final marking of this cycle. The practical phase involves the performance of judicial tasks at the courts under the supervision of a mentor judge. For candidates admitted from a so-called "professional background" (cf. paragraph 98), the second cycle is reduced,⁸⁶ unless the Pedagogical Council decides otherwise. The final grade of the initial training is calculated on the basis of the average obtained during the first (40%) and the second (60%) cycles. Finally, the probation period implies appointment by the HJC or the HJCATC as a trainee judge with full responsibility in a first instance court.

136. The on-going training is optional and its programme is prepared annually by the CEJ and the Supreme Councils for judges and prosecutors jointly. Judges have the right and the duty to participate in such training and must attend at least two courses per year⁸⁷. Participation and results count towards a judge's evaluation. Most training activities organised by the CEJ are broadcast on Justice TV and are accessible to those who have enrolled and to anyone else with access. The on-going training includes *inter alia* a one-day course on judicial ethics. Moreover, district court presidents are to arrange training for judges of their courts at appropriate intervals, in conjunction with the HJC

⁸⁴ Article 216 (2) of the Constitution and Article 4 (2) LOJS.

⁸⁵ The first volume brings together national and international legal sources on ethical conduct for judges, the second compiles selected texts written by well-known experts in this field, and the third is dedicated to selected jurisprudence of both the HJC and the High Council of the Public Prosecution Service in disciplinary matters related to infringements of the statutory norms of conduct.

⁸⁶ It lasts from the 1 September to 28 February of the following year.

⁸⁷ Article 10-B SOM.

and the HJCATC⁸⁸. Appointment as court president is subject to attending special training⁸⁹.

137. The efforts invested by the CEJ in designing a comprehensive three-year training programme to equip trainee judges with theoretical and practical knowledge and skills indispensable for the exercise of judicial functions is acknowledged and widely appreciated. The GET also notes that, even in the absence of formal standards regarding judges' professional conduct, the CEJ has incorporated a sound ethical component into the programme of initial and on-going training, strongly inspired by real cases of disciplinary procedures within the judicial councils. Still, it would be desirable for any future training to be focused on promoting a sense of ownership and full and consistent implementation of the standards of judicial conduct the authorities are recommended to adopt in paragraph 120. Furthermore, it is indispensable that participation in the training module on ethics is marked, and counts towards the overall evaluation carried out of a trainee judge's performance, and that attendance of other training on integrity matters is reflected in the periodic evaluation and borne in mind in the context of career progression, as recommended in paragraph 107.

138. Judges have the duty to know the statutory rules that apply to them. They can seek professional advice from the HJC and the HJCATC, their peers and professional associations.

139. Since the beginning of the economic crisis, the demand for information on the ethical rules and conduct of judges has increased and is actively sought by the general public. Relevant information is normally found in the media.

⁸⁸ Article 94 (3)(e) LOJS.

⁸⁹ Article 97 LOJS.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the Prosecution Service

140. The Public Prosecution Service (PPS) is an autonomous constitutional body with its own Statute (SPPS). It is responsible for representing the state and defending the interests determined by law, participating in the implementation of the criminal policy defined by the bodies that exercise sovereign power, carrying out prosecution in accordance with the legality principle, and defending the democratic rule of law. The autonomy of the PPS implies that it is bound by the criteria of legality, objectivity, impartiality, equality and justice and by the exclusive submission of public prosecutors to the directives, orders and instructions set out in the law.

141. The bodies of the PPS are: a) the Prosecutor General's Office, headed by the Prosecutor General⁹⁰ and which encompasses *inter alia* the High Council of the PPS and the Consultative Council of the Prosecutor General's Office (see further below); b) four District Deputy Prosecutor General's Offices (one per appellate court); and c) 23 District Prosecutor's Offices (one per district court). The PPS is represented at all jurisdictions and courts, as well as in the Constitutional Court and in the Court of Audit.⁹¹

142. The PPS is a magistracy that is parallel to but independent from the judicial magistracy. Public prosecutors are accountable judicial officers subject to hierarchical subordination. Accountable is understood as being answerable, pursuant to the law, for the fulfilment of duties and compliance with directives, orders and instructions issued by the hierarchical superiors with the powers to do so. Prosecutors of a lower rank are subordinated to their superiors, under the terms of the SPPS, and obliged to comply with the directives, orders and instructions received, with certain exceptions (see further below). Prosecutors may not be transferred, suspended or removed from office except as provided for by law. While in office, they are prohibited from taking part in party and political activities of a public nature. At 31 July 2015, of the total of 1 662 public prosecutors, 1 007 were women.

143. Directives, orders and instructions are binding on public prosecutors. The Prosecutor General is competent to issue generic and abstract directives, orders and instructions intended to conform with the PPS' unitary activities, and the District Deputy Prosecutors General have identical powers with regard to the territorial areas under their jurisdiction. In individual cases, the Prosecutor General and hierarchic superiors may only issue written orders to their subordinates in accordance with the law and the stipulated powers of the hierarchy (see further below).

144. As regards the powers of the Ministry of Justice to issue specific instructions, it is only allowed to do so in civil and administrative proceedings to which the State is a party and in which the State is represented by the PPS. The instructions are to be transmitted via the Prosecutor General and may only concern extrajudicial settlement of disputes or the authorisation to accept, settle or dismiss lawsuits⁹².

145. Overall, the PPS appears to enjoy such autonomy as is necessary for the exercise of its mandate and the nature and scope of its powers are clearly delineated by law. As in the case of the courts, the September 2014 judicial reform, introduced by amendments to the Law on the Organisation of the Judicial System (LOJS) has had a profound effect on the PPS' functioning: some 200 previous judicial counties (first instance courts) were

⁹⁰ S/he is assisted or represented by the Vice Prosecutor General.

⁹¹ The PPS is represented: a) at the Supreme Courts, the Constitutional Court and the Court of Audit by the Prosecutor General, who can be assisted or represented by the Deputy Prosecutors General; b) at the courts of appeal and the Central Administrative Courts by Deputy Prosecutors General; and c) at the first instance courts by the Deputy Prosecutors General, district prosecutors, and deputy district prosecutors.

⁹² Article 80 (1) and (2) SPPS

reduced to 23 and this has had implications for the prosecutor's offices previously attached to those counties (courts), and adjustments also had to be made with regard to representation at the appellate courts. Although the SPPS was supposed to be amended at the same time and a new draft Statute was developed, it had not been adopted at the time of the visit. The coexistence of the new judicial map and the old Statute disturbed the prescribed lines of subordination and engendered various problems addressed in the latter section of this report. Also, as in the case of the judiciary, the reform has not resulted in the PPS acquiring greater financial autonomy. As explained previously⁹³, the budget of each prosecutor's office is incorporated into the budget of a judicial county (at the level of first instance courts) and of each higher court and is determined by the Ministry of Justice with the participation of the relevant court presidents, and administered by the Ministry. The interviews held with prosecutors at all levels underscored the need for the Service to attain full financial autonomy to match its legal status and to ensure that adequate resources and expertise are available for the successful prosecution specifically of economic crime and corruption. In this connection, GRECO recalls Opinion No.9 (2014) of the Consultative Council of European Prosecutors to the Committee of Ministers of the Council of Europe on "European norms and principles concerning prosecutors", which states that the independence and autonomy of the prosecution services constitute an indispensable corollary to the independence of the judiciary. The general tendency to provide for the effective autonomy of the PPS also in financial terms is therefore to be encouraged.

Prosecutorial self-governing bodies

146. The Prosecutor General's Office (GPO) has disciplinary and management responsibility for prosecutors which is exercised through the High Council of the PPS, a body responsible for appointment, assignment, transfer, promotion, evaluation and disciplinary action. The Council is composed of 19 members: 1) the Prosecutor General (*ex officio*); b) four District Deputy Prosecutors General (*ex officio*); c) one Deputy Prosecutor General elected from among peers; d) two District Prosecutors elected from among peers; e) four Deputy District Prosecutors elected from among peers from each judicial district; f) five members elected by the Assembly; and g) two persons of recognised merit designated by the Minister of Justice⁹⁴. The Council works in plenary and in sections: at the time of the on-site visit two sections were responsible for evaluation (see further below), one for disciplinary matters (composed of 11 members) and one operated on a permanent basis. A quorum is constituted by at least 13 plenary members and 7 members of each section. Decisions are taken by majority vote, the Prosecutor General having the casting vote. Summaries of the decisions are published in the Information Bulletin while access to full texts is only possible on request and on legitimate grounds. All Council decisions can be appealed to the administrative courts.

147. The inspection services under the Council carry out inspections, inquiries, investigations and disciplinary procedures. The latter two may only be conducted by inspectors of a higher rank/seniority than those concerned.

148. The GPO performs advisory functions via the Consultative Council which is composed of the Prosecutor General and a number of Deputy Prosecutors General fixed by the Minister of Justice at the proposal of the High Council. The Council's resolutions are adopted by majority vote, the Prosecutor General having the casting vote. The Prosecutor General is also the one who signs the Council's legal opinions and may decide that the doctrine included therein is to be followed and upheld by the PPS members. All members are then to be informed thereof and the opinion is to be published in the II Series of the "*Diário da República*" with a reference to the decision which grants it binding force. If of concern to other entities, the opinions are to be ratified by them

⁹³ See the section on "Corruption prevention in respect of judges".

⁹⁴ Those referred to under c), d) and e) have a three-year term renewable once.

before publication so they may serve as an official interpretation for those services/entities.

149. The establishment of prosecutorial councils has become increasingly widespread in GRECO member states and is meant to provide democratic legitimacy and valuable expert input into decision-making processes with respect to the career of prosecutors, notably appointment, evaluation, promotion and disciplinary action. At the time of the on-site visit one of the issues raising concern in the operation of the High Council was the concurrent membership of various sections and hence parallel involvement in different procedures which engendered a risk of conflicts of interest and cast doubts on members' impartiality. The GET is pleased that after the visit, on 3 November 2015, the Council abolished one of the two evaluation sections, thus ensuring that, besides the Prosecutor General and one other member, the eight remaining members of the single evaluation section may not be involved in the disciplinary process. The absence of impartial review within the Council is another matter potentially prone to controversy. Thus, the decisions of the disciplinary section composed of 11 members⁹⁵ can be reviewed by the 19-member plenary⁹⁶ that includes 11 members of the disciplinary section, which, in the GET's opinion, does not qualify as impartial review. That being said, bearing in mind that all Council's and sections' decisions can be appealed to a court, a separate recommendation on this issue does not seem to be warranted. Additionally, and similarly to the judicial councils, the absence of disclosure of certain details pertaining to the outcome of disciplinary process is a source of concern. Only a summary of the facts and of the duties that have been breached, and information on the sanction imposed are published, not the prosecutor's name or the office s/he belongs to (the same applies to court decisions on appeal). As in the case of judges, in the GET's view, giving greater publicity to severe cases of misconduct would be likely to further enhance public trust and strengthen accountability in the operation of the Service. Accordingly, **GRECO recommends that information on the outcome of disciplinary procedures within the High Council of the Public Prosecution Service is published in a timely manner.**

Recruitment, career and conditions of service

150. The requirements of the Public Prosecution Service and process for admission to the initial training of a candidate to the post of prosecutor are identical to the ones established in respect of candidate judges and are described in paragraphs 97-98 and 135 above. The appointment, assignment, transfer, promotion and consideration of professional merit, except when it concerns the Prosecutor General, are to be carried out by the High Council of the PPS. As a rule, appointments, transfers, promotions and assignments are made by means of a "move" on the basis of a competition that is to be announced and published in the Official Gazette ("*Diário da República*")⁹⁷. Besides the applicable laws, rules and criteria are established for each "move" pursuant to the "Movement Rules of Procedure" developed by the Council and available to the public.

151. The first appointment in the PPS is to the post of deputy district prosecutor, in accordance with the order of grading established on graduation from the Centre for Judicial Studies. Deputy district prosecutors at the Departments of Criminal Investigation and Prosecution at district court level are appointed, as a rule, from among deputy district prosecutors who have held their post for at least 7 years⁹⁸. District prosecutors are appointed by transfer, as a first option, or promotion by means of a competition or

⁹⁵ Article 29 SPPS.

⁹⁶ Article 15 SPPS.

⁹⁷ Certain vacant posts are not subject to move or competition, e.g. the posts of Deputy Prosecutor General at the Supreme Courts or the District Deputy Prosecutor General and Deputy Prosecutor at the Central Administrative Court, for the selection of whom a separate procedure applies.

⁹⁸ Relevant factors are: merit evaluation, experience in criminal matters, specific training or the performance of investigative tasks in the relevant field.

according to a seniority list (see below) from among deputy district prosecutors who have held their post for at least ten years.

152. Access to higher ranks is by way of promotion based on merit or, in some cases, on seniority. Promotion to the rank of District Prosecutor is based on merit or on seniority, and promotion to the rank of Deputy Prosecutor General only on merit. The posts of Deputy Prosecutor General at the supreme courts are filled by assignment or promotion from among district prosecutors classified as "Very good", at the proposal of the Prosecutor General, and the High Council may not veto more than two names per vacancy. The Vice Prosecutor General is appointed at the proposal of the Prosecutor General from among Deputy Prosecutors General for a three-year term. S/he is to cease duties when a new Prosecutor General takes up office. The Prosecutor General is appointed by the President of the Republic at the proposal of the Government for a six-year term.⁹⁹ So far, no Prosecutor General has held more than one mandate. Most appointments within the PPS are temporary, three-year assignments and their renewal depends, as a rule, on the favourable opinion of the superior prosecutor.

153. The GET notes that certain vacancies within the PPS are predominantly filled by means of assignment and others by means of promotion (posts of Deputy Prosecutor General at a supreme court, District Deputy Prosecutor General, and Deputy Prosecutor General at a central administrative court). Certain specialised positions (Deputy Prosecutor General at the Central Department of Criminal Investigation and Prosecution, the State Contentious Matters Central Department, or the Department of Criminal Investigation and Prosecution¹⁰⁰) may only be filled by means of assignment at the proposal of the Prosecutor General – in such cases the High Council may not veto more than two proposed candidates per vacancy. Furthermore, certain promotions rely on seniority rather than merit. These issues are not problematic but many internal promotion procedures reportedly fail to attract any candidates, not least due allegedly to insufficient financial compensation. The GET wishes to stress that it is advisable to apply consistent promotion rules and procedures throughout the Service. This pre-supposes *inter alia* that all posts are filled via competition and that promotion is based predominantly on merit according to the law.

154. Public prosecutors enjoy life tenure. They are graded within their respective ranks pursuant to periodic evaluation (see below) and seniority. The seniority lists are to be established and published annually by the Ministry of Justice. Transfers are only possible on request or as a result of a disciplinary ruling, and any temporary assignment requires the authorisation of the High Council. For the purposes of assignment to special posts via transfer, completion of specialised training is the first criteria that applies.

155. Deputy district prosecutors and district prosecutors are to undergo evaluation by the High Council at least every four years. The criteria, which are defined by Article 110 SPPS and the "Inspection Rules of Procedure", include the manner in which duties are carried out, workload, any difficulties in service, conditions of the work made, technical training, intellectual capacity, legal publications and "civic aptitude" (i.e. courtesy and good manners). Consideration is also to be given to the outcome of past inspections, any inquiries, investigations or disciplinary procedures, employment status, annual reports and any other information in the Council's possession. The prosecutor concerned must be consulted on the evaluation report and is to supply the information s/he deems appropriate. Being classified as "insufficient" leads to suspension and an inquiry to ascertain fitness for office. If the results are negative, disciplinary proceedings for dismissal, compulsory retirement or resignation are to be launched.

⁹⁹ Articles 133(m) and 220(3) of the Constitution.

¹⁰⁰ Article 127 SPPS.

156. The periodic evaluation of deputy district prosecutors and of district prosecutors (i.e. those who are attached to first instance courts) is widely perceived as being a rigorous process and it is believed that it ascertains in a fair manner the professional performance of the prosecutors concerned. Yet, it is evident from the information gathered by the GET that the criteria underpinning evaluation tend to rely on quantitative rather than qualitative indicators and that the absence of statutory norms governing prosecutors' conduct (on this see further below) and the insufficiency of the criteria provided in the internal rules governing evaluations does not allow for a comprehensive assessment of the ethical dimension of a prosecutor's comportment as a crucial precondition for initial appointment and subsequent promotion. Also, the fact that the evaluations are conducted with an average two-year delay diminishes their relevance for the purpose of promotion procedures. Overall, the problems identified are to a large degree comparable to those facing judges, although the level of discontent expressed by prosecutors on site was much less pronounced. In view of the foregoing, **GRECO recommends ensuring that periodic evaluation of prosecutors attached to first instance court and inspections/assessment of prosecutors attached to second instance courts ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of professional conduct.**

157. The execution of prosecutorial duties is suspended: a) on the day a prosecutor is given notice of an order which sets the day of trial if accused of an intentional criminal offence; b) on the day s/he is given notice of preventive suspension on the grounds of disciplinary proceedings entailing the application of any sanction involving withdrawal from office; and c) on the day s/he is given notice of suspension due to inability. A prosecutor's service is terminated a) on reaching the legal age for retirement as applied to a State officer¹⁰¹; and b) on the day a decision discharging him/her from office is published. Prosecutors also cease to hold office due to: 1) voluntary retirement; 2) inability, due to physical or mental weakness displayed during the fulfilment of duties, to hold office without risking a serious miscarriage of justice or service; 3) retirement with full honours.

158. As in the case of judges, remuneration of a public prosecutor consists of a salary and supplements, and the receipt of any other type of allowance not envisaged by law is forbidden. The gross, annual, beginning of career salary of a deputy district prosecutor is €30 598,92 and there is an entitlement, as in the case of members of parliament and judges, to two extra monthly salaries per year, of €2,549,91 each. The gross annual salary of the Prosecutor General is €73 559,64; s/he is also entitled to two extra monthly salaries, each equal to €6 129,76 and to annual representation expenses of €14 280,36. Moreover, all public prosecutors receive a monthly supplement of €620. As in the case of judges, its amount is fixed by the Ministry of Justice and published in the Official Gazette. Accommodation, settlement and expense allowances are also granted, and representation and relocation expenses and reimbursed on terms and conditions that are similar to the ones established for judges¹⁰².

Case management and procedure

159. Within the PPS cases are, as a rule, assigned automatically and at random according to organisational structure and case typology, with due regard being had to a balanced workload. In specialised sections composed of only one prosecutor with relevant experience, specialisation and training, all cases are to be automatically assigned to him/her, whereas in those, composed of several prosecutors, cases are to be distributed automatically and at random among the prosecutors concerned. At the Supreme Court of Justice, cases where an opinion or other procedural acts are to be delivered are assigned in a fair and random manner to the Deputy Prosecutors General

¹⁰¹ On 1 January 2015, the legal threshold for retirement stood at 62 years and 6 months of age and 38 years and 6 months of service. The age limit for retirement is 70 years.

¹⁰² See "Corruption prevention in respect of judges".

holding office at each of the specialised chambers. Inquiries are assigned by the Co-ordinating Deputy Prosecutor General to the District Deputy Prosecutors General holding office at that court, regardless of the chamber, by order of entry of the claims and in a fair manner, with due regard to specialisation and, if applicable, caseload. At the Constitutional Court, cases are assigned on the basis of professional experience and specialisation criteria, and, if applicable, caseload.

160. A prosecutor may only be removed from a case if clearly provided for by law, or where work management reasons require its reassignment to another prosecutor. When justified by procedural complexity or possible social repercussions, the Prosecutor General may appoint another prosecutor to assist or replace the prosecutor in charge of the case. Based on procedural grounds, the District Deputy Prosecutor General may order a prosecutor who directed the inquiry to intervene in the subsequent stages of the proceedings. In civil actions to which the State is a party, the Prosecutor General, after consulting the District Deputy Prosecutor General, may appoint any public prosecutor to assist or substitute the prosecutor responsible.

161. In a specific case entrusted to his/her subordinate, a superior prosecutor may only issue orders or instructions if s/he is the immediate hierarchical superior of the subordinate and only in cases expressly provided for by the law¹⁰³. Prosecutors may request that orders/instructions be provided in writing, and such a form is compulsory whenever an order/instruction is to produce effects in a specific proceeding.¹⁰⁴ Furthermore, a subordinate must refuse to comply with an unlawful directive/order/instruction which constitutes on a serious violation of his/her legal conscience. The refusal should be reasoned and made in writing. In such a case, the superior who has issued the directive/order/instruction is to carry it out him/herself or to assign it to another prosecutor. The following may not be refused: hierarchical decisions under the terms of the procedural law and directives/orders/instructions of the Prosecutor General unless they are unlawful. Unjustified refusal to implement the orders of a superior incurs the disciplinary liability of the subordinate prosecutor.

162. In the fulfilment of their operational duties, public prosecutors are obliged to deal with cases within the established time-limits and without undue delay. Mechanisms are in place to identify cases in which no decisions have been produced within an established time frame (as a rule, 30 days). Firstly, court registries are to keep lists of cases which have not been dealt with in due time and are to send them to so-called co-ordinating prosecutors. The latter are obliged to transmit this information to a body responsible for disciplinary proceedings, together with the grounds for delay. Secondly, any delay can be subject to "procedural acceleration", at the request of a prosecutor, a private prosecutor or a plaintiff. The issue is decided by the Prosecutor General if the proceedings are directed by the PPS (or by the Supreme Judicial Council, if the proceedings are before a court/judge). If applicable, the Prosecutor General may also order a disciplinary or managerial decision. Thirdly, any breach of the maximum time-limit is to be notified by a subordinate prosecutor to his/her immediate superior together with the reasons and the period necessary to close the case is to be specified. The immediate superior may call back the case and is to notify the Prosecutor General and the defendant of the procedural delay either upon request or *ex officio*. The Prosecutor General is then to order "procedural acceleration" as mentioned above. In order to allow for more effective and swift action (as well as supervision and control), an IT platform where all pertinent records are kept has been included in the PPS's Information System (SIMP). Fourthly, with due regard to powers granted to hierarchical superiors, it is possible: a) to launch an internal inquiry into and to guarantee the operational action by prosecutors with regard to delayed procedural decisions; b) to implement managerial decisions to put an end to the situation; and c) to report the issue to the senior structures and bodies exercising

¹⁰³ I.e. interventions made under the terms and within the time-limits set out in the CPC must occur in one hierarchical level only

¹⁰⁴ Article 79 (1) SPPS.

disciplinary powers so that internal inquiries and inspections are carried out or disciplinary proceedings initiated.

163. As already mentioned the entry into force in September 2014 of amendments to the Law on the Organisation of the Judicial System has reduced some 200 previous judicial counties (first instance courts) to 23 and led to the re-organisation of prosecutor's offices attached to those counties (courts) as well as to the appellate courts. This has prompted a major overhaul of the internal structure of the PPS which was however not accompanied by parallel amendments to the SPPS. As a result, the previous strict hierarchical subordination has been eroded and the respective prosecutorial competences blurred. For example, instructions in a specific case, including those that are to be given in writing under the law, may only be issued to the prosecutor in charge by his/her immediate hierarchic superior, however in the new context the corresponding lines of subordination have not yet been established and are interpreted on a case-by-case basis. Furthermore, the extent to which entities vested with the power to issue binding instructions on prosecutors under the SPPS (the Prosecutor General and the GPO, the Deputy District Prosecutors General and their Offices, and the District Prosecutors¹⁰⁵) have retained this competence in the new judicial order is unclear. The information gathered by the GET strongly suggests that the resultant legal uncertainty undermines prosecutors' independence and makes them potentially vulnerable to receiving illegal instructions from within the system. The importance of having a prosecutorial Statute that matches the judicial system is patently obvious.¹⁰⁶ The authorities are therefore urged to introduce unambiguous legal regulation in this area and to ensure that it is underpinned by guarantees shielding prosecutors from undue or illegal interference or pressure from within the system. **GRECO recommends ensuring that the rules governing prosecutorial hierarchy and competences correspond to the new judicial map and protect prosecutors from undue or illegal interference from within the system.**

164. The GET furthermore wishes to draw attention to the report of the Venice Commission on "European Standards as regards the Independence of the Judicial System: Part II – the Prosecution Service"¹⁰⁷, which addresses, *inter alia*, instructions which are believed to be illegal or contrary to a prosecutor's conscience. The report insists that "an allegation that an instruction is illegal is very serious and should not simply result in removing the case from the prosecutor who has complained". Not only any instruction to reverse the view of an inferior prosecutor should be reasoned, as is the case in the Portuguese system, but also "in case of an allegation that an instruction is illegal, a court or an independent body, like a Prosecutorial Council, should decide on the legality of the instruction." The authorities are therefore encouraged to contemplate steps that would take account of that opinion of the Venice Commission.

Ethical principles and rules of conduct

165. By virtue of the SPPS, the following principles are to be adhered to by all prosecutors: legality, objectivity, safeguard of the public interest, autonomy, accountability, compliance with the law and directives, orders and instructions, limitation of the hierarchical powers. The SPPS moreover prohibits comportment which is incompatible with the decorum and dignity of the profession. More specific standards of conduct however have not been prescribed. As in the case of judges, the general duties by which civil servants are bound also apply on a subsidiary basis¹⁰⁸. Breaches of both types of duties incur disciplinary liability.

¹⁰⁵ Article 10, 12, 56, 58, 63 SPPS.

¹⁰⁶ The High Council of the PPS is said to be preparing a manual of good practices to address the most recurrent issues and to prevent any undue interference in the work of individual prosecutors from within the PPS.

¹⁰⁷ http://www.coe.int/t/dghl/cooperation/capacitybuilding/Source/judic_reform/europeanStandards_en.pdf, paragraph 59.

¹⁰⁸ Article 108 SPPS; cf. paragraph 118 above.

166. In March 2015, the Charter of Conduct for the Portuguese Public Prosecutors was adopted by the Portuguese Public Prosecutors Union, which brings together some 1 300 (or 80%) prosecutors. Founded on the international and national standards, the Charter is meant to serve as a source of reference on integrity and ethics-related matters. Besides the introductory part, the Charter is composed of three chapters: the preliminary provisions, the general principles and the prosecutors' rights and duties (initiative, independence, impartiality, objectivity, integrity, etc.). Breaches of the Charter by the Union members may trigger disciplinary action.

167. During the on-site interviews held with representatives of the PPS their awareness of the ethical values that underlie their office and their zero tolerance of inappropriate practices was apparent. Still, it was felt that the legal framework would benefit from a clearer articulation of the standards of professional conduct that befits their status, and which would clarify the type of behaviour that might lead to disciplinary action. The rather expansive concept of a disciplinary offence as laid down in Article 163 SPPS (see further below) is difficult to interpret. The Portuguese Public Prosecutors Union has dealt with this in respect of its members by means of the Charter of Conduct, the adoption of which is widely regarded as a positive and welcome initiative. Yet, the fact that it does not apply to all prosecutors is an obstacle to the Charter's use throughout the Service. In the absence of clearly stipulated rules, the sole way of framing professional conduct – for those prosecutors who do not belong to the Union – is through familiarisation with the disciplinary decisions of the High Council which is a component of the initial three-year training organised by the Centre for Judicial Studies (on this, see further below). The GET has already concluded in its evaluation of the situation with respect to judges that this is not an appropriate way to shape and ensure ownership of the values, principles and standards of conduct underlying their office¹⁰⁹. The same is true also for prosecutors. Therefore, the GET fully supports the development of a Code of Ethics covering all prosecutors as a means to express the values of the PPS to its employees and to uphold and enhance the integrity that is necessary for the proper and independent execution of prosecutorial tasks¹¹⁰. Moreover, a Code of Ethics would need to serve as an essential legal basis for the purposes of evaluation, promotion and disciplinary action. Regular supervision and compulsory initial and in-service training, guidance and confidential counselling on integrity matters, conflicts of interest and corruption prevention would furthermore contribute to observance of the rules. In view of the foregoing, **GRECO recommends that i) clear, enforceable, publicly-available standards of professional conduct are set out for all prosecutors and used *inter alia* as a basis for promotion, evaluation and disciplinary action; and ii) awareness of the standards of conduct is promoted amongst prosecutors through dedicated guidance, confidential counselling, and in the context of initial and in-service training.**

Conflicts of interest

168. The Criminal and the Civil Procedure Codes regulate conflicts of interest within the judicial process and require prosecutors (as well as judges) to withdraw from a specific proceeding if there is an "impediment" to or a "suspicion" casting doubt on their impartiality (see further below). A prosecutorial act or decision adopted in violation of this rule is null and void. Failure to comply incurs disciplinary liability of the prosecutor concerned.

¹⁰⁹ See the section on "Corruption prevention in respect of judges".

¹¹⁰ After the visit the GET was informed that, on 3 November 2015, the High Council of the PPS set up a Working Group to draw up a Code of Ethics covering all prosecutors.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests and post-employment restrictions

169. Similarly to judges, prosecutors may not perform any other public or private function, except unremunerated teaching or scientific research of a legal nature and managerial duties in professional organisations.¹¹¹ When they are permissible, such activities are subject to authorisation by the High Council of the PPS but may not be detrimental to a prosecutor's service. Additionally, while in office, public prosecutors may not hold political office, except as the President of the Republic, a member of Government or of the Council of State (in the first two cases, prosecutorial duties be suspended). The appointment of the Vice Prosecutor General as a judge at the Supreme Court of Justice does not imply termination of this temporary three-year assignment nor does it impede its renewal. Prosecutors are banned from serving at a court or tribunal in which magistrates of the judiciary or of the PPS, or justice officers to whom they are linked by marriage, cohabitation, blood or affinity of any degree in direct descent or up to the 2nd degree of collateral relationship, serve. Similarly, serving at a court or department appertaining to a judicial circuit in which a prosecutor has held a lawyer's office during the last five years is prohibited.

170. Prosecutors can hold shares and bonds as citizens and are to declare them to the fiscal authorities. There are no specific rules on the holding of financial interests and no post-public employment restrictions apply, except those by virtue of which prosecutors who have retired "with full honours" (ordinary retirement) continue to be bound by the statutory rules.

Recusal and routine withdrawal

171. In criminal proceedings, the grounds and procedure for removal of a public prosecutor from a case are set out in Article 54 of the Criminal Procedure Code. The grounds for disqualification and recusal (i.e. impediments, refusals or suspicions casting doubt on a prosecutor's impartiality) are largely identical to the ones established for judges.¹¹² A prosecutor may recuse him/herself or is disqualified following a motion by a party. In civil (and administrative) proceedings, Article 115 (a), (b), (g) and (i) of the Civil Procedure Code apply, and the grounds for withdrawal resemble those that are valid for judges.

Gifts

172. The acceptance of gifts specifically by prosecutors is unregulated but the duties of exemption, objectivity, pursuit of the public interest and of compliance of prosecutorial functional actions with those duties apply. Additionally, the previously mentioned Article 297(3)(j) of the General Law on Civil Service, which qualifies the acceptance of gifts by civil servants in the exercise of their office as a disciplinary offence, applies to prosecutors (as well as judges) on a subsidiary basis¹¹³. Furthermore, prosecutors, similarly to judges, are equated with public officials¹¹⁴ and incur criminal liability for the offences of active and passive bribery and receipt of an undue advantage (Articles 372-374 PC). The legal framework governing the acceptance of gifts by prosecutors in their

¹¹¹ Article 81(1) SPPS. Pursuant to Article 108 SPPS, the regime of incompatibilities established for prosecutors is concurrent with that applicable to civil servants in as much as they are requested to comply with the demands of impartiality and exemption.

¹¹² See above under "Corruption prevention in respect of judges".

¹¹³ See above under "Corruption prevention in respect of judges".

¹¹⁴ Article 386 (3)(a) of the Penal Code.

capacity as civil servants is more consistent than that governing judges.¹¹⁵ That being said, incorporating an explicit ban on the receipt of gifts into the standards of professional conduct for the PPS that are recommended in paragraph 166, would consolidate and thus render more transparent all responsibilities and duties by which prosecutors are bound.

Third party contacts and confidential information

173. Prosecutors (and judges) may not make any statements or comments regarding proceedings, except when duly authorised by a superior and for the purpose of defending their honour or for the fulfilment of another legitimate interest. Information aimed at the fulfilment of rights and legitimate interests, such as access to information, and which does not pertain to the secrecy of legal proceedings pending inquiry or to professional secrets, does not fall within the scope of the duty of reserve. Violation of the duty to withhold information may incur disciplinary liability. Breach of secrecy, and of professional or judicial secrets pending inquiry are criminally punishable¹¹⁶ and also lead to disciplinary action.

Declaration of assets, income, liabilities and interests

174. Currently, there are no rules, requiring public prosecutors and their family members to produce financial and interests' statements, except those to be submitted to the tax authorities. As in the case of judges, the prosecutors who were interviewed by the GET said that they would not have any objections to the Law on Public Control of the Wealth of Political Officeholders being extended to them.

Supervision and enforcement

Conflicts of interest

175. Within the judicial proceedings, compliance by prosecutors with the rules on recusal/disqualification from proceedings is to be ensured by their immediate superiors, or in the case of the Prosecutor General, by the Criminal Chamber of the Supreme Court of Justice. The decisions are final and not subject to appeal¹¹⁷. Since there is no obligation to report such situations to the GPO, unless they trigger disciplinary liability, statistics on recusals/disqualifications are not kept. Nevertheless, in 2013, two requests were submitted to the GPO: one for recusal was addressed to the Prosecutor General as the immediate superior (it was rejected due to the lack of motivated reasons), and the other was not decided on as it was not addressed to the immediate superior of the prosecutor concerned (the request was subsequently re-addressed). In 2014, three recusal requests were submitted to the GPO; of those, two were not decided on as they were not addressed to the immediate superior of the prosecutors concerned, and one was not considered legitimate. One impediment of a matrimonial nature with regard to case assignment was declared in 2014.

Rules of conduct, auxiliary employment and other duties

176. Public prosecutors are disciplinarily (and in certain cases criminally) responsible for breaches of professional duties and acts and omissions committed in their public life – or which have a consequence thereon – that are incompatible with the decorum and dignity necessary for the performance of their duties (for example, non-compliance with obligations deriving from the system of impediments and incompatibilities or with the duty to withhold information). The facts that are likely to constitute an offence may be

¹¹⁵ See above under "Corruption prevention in respect of judges".

¹¹⁶ Under Articles 195, 383 and 371 PC.

¹¹⁷ Article 54(2) of the Criminal Procedure Code

communicated via a complaint by any citizen and legal entity, a hierarchic superior, found in another prosecutor's report, revealed in a periodic or extraordinary inspection.

177. The disciplinary procedures are launched upon decision of the High Council of the PPS or at the request of the Prosecutor General and carried out by the inspection services attached to the Council. The disciplinary offence becomes statute-barred within one year from the date of its commission, unless it also constitutes a crime. The right to institute the procedure becomes statute-barred within 60 days from the moment any hierarchic superior in rank is informed thereof and can be prolonged for up to six months subject to the assumptions and conditions set out by law. The procedure is to be conducted in writing and to comply with the requisite defence guarantees. The system of impediments/refusals established for criminal proceedings also applies, with necessary adaptations. The procedure consists of: 1) the examining stage (90 days, as a rule); 2) preparation of charges (10 days); 3) preparation of the defence (10-30 days); and 4) preparation of a final report which contains a proposed penalty (15 days). The report is then transferred to the Disciplinary Section¹¹⁸ of the High Council of the PPS, and the case is assigned to one of its members by a drawing of lots.¹¹⁹ The rapporteur prepares a report with a draft final decision, which is to be adopted by majority vote; the Prosecutor General has the casting vote. The procedure remains confidential until the final decision is taken. A summary of the facts and of violated duties, as well as the sanctions imposed but not the names of the prosecutors found guilty are to be published in the High Council's Information Bulletin. All decisions taken by the Disciplinary Section can be appealed to the Council's plenary and, ultimately, to the Supreme Administrative Court.

178. Disciplinary measures consist of a warning, a fine (reduction in salary for a period of 5 to 30 days), transfer, suspension (for 20 to 240 days), removal from the active list (same as suspension but for a period of one to two years), compulsory retirement and dismissal. Except for the warning, the application of other penalties is to be registered. Where there is strong evidence that the disciplinary offence would be sanctioned by at least a transfer, and where the continued performance of duties by the prosecutor concerned might impair the preparation of the case or the service or the prestige and dignity of the office, s/he may be suspended as a preventive measure (as a rule, for not more than 180 days). Disciplinary procedures are independent from criminal proceedings. Whenever, in the scope of a disciplinary proceeding, evidence of a criminal offence comes to light, the Prosecutor General's Office is to be immediately notified.

179. In 2014, 19 disciplinary proceedings were launched (for breach of duties, excessive custody pending trial and delays leading to time-barred criminal proceedings), and 47 inquiries were opened. In the same year, decisions in respect of those 10 disciplinary proceedings and 25 inquiries were taken up by the Disciplinary Section within the High Council and 9 proceedings and 22 inquiries were postponed until 2015. Sanctions were imposed as follows: two fines, one compulsory retirement, one disciplinary proceeding - filed; six warnings (in Inquiries), eight inquiries converted into disciplinary proceedings, 15 inquiries - filed. With regard to the 47 inquiries opened, the decisions were as follows: 6 sanctions of warning in Inquiry, 9 inquiries converted into disciplinary procedures, 6 warnings without the need for disciplinary procedures, 11 inquiries - filed, and 22 inquiries postponed to 2015. The penalties applied in the 10 disciplinary proceedings decided upon in 2014 were: 6 fines, one suspension (for 180 days), 3 warnings, and 11 inquiries - filed, and one proceeding postponed from 2010 was filed. A total of 25 penalties were imposed in inquiries and in disciplinary proceedings, including 8 fines, one compulsory retirement, one suspension and 15 warnings.

¹¹⁸ Its composition is determined by Article 29 (3) SPPS.

¹¹⁹ Cases cannot be assigned to prosecutors whose seniority and ranking are lower than those to whom the case refers.

180. The GET wishes to stress that, as in the case of judges, the statute of limitation for the initiation of a disciplinary procedure in respect of a prosecutor is relatively short: 60 days extendable up to six months. Nonetheless, the statistics presented above point to systematic initiation of a disciplinary action in response to any misconduct. As for the incomplete disclosure of information pertaining to the outcome of disciplinary processes, these matters are already covered by the recommendation included in paragraph 149 of this report.

181. Prosecutors may not be arrested or remanded in custody without a court order designating the date of trial for a crime of which they are accused, except where they are caught in *flagrante delicto* for a crime that carries a sentence of imprisonment for more than three years. If arrested or detained, a prosecutor is to be immediately brought before the competent judicial authority. The court competent to try a public prosecutor for a criminal offence or for hearing an appeal regarding an administrative offence is the one placed immediately above the court to which the prosecutor concerned is assigned. The Supreme Court of Justice has competence in regard to the Prosecutor General, the Vice Prosecutor General and the Deputy Prosecutors General. The inquiries aimed at investigating the facts pertaining to a criminal charge against a prosecutor are dealt with by the PPS at the Supreme Court of Justice when a Deputy Prosecutor General is concerned, and by the PPS at the court of appeal when a district prosecutor or deputy district prosecutor is concerned. In cases where there is a need to search the professional premises or residence of a prosecutor, it shall be presided over by a competent judge who will give prior notice to the High Council, thus allowing the presence of its member, otherwise the search will be invalid. In the last five years two deputy district prosecutors have been subject to criminal proceedings due to facts related to their function – breach of professional secrecy, document forgery, undue access, misuse of power and personal favouritism. They were found guilty and suspended by the Lisbon Court of Appeal. The penalty of dismissal was also imposed on them in the framework of disciplinary procedures.

182. Except for the cases where the offence constitutes a crime, civil liability can only be enforced through recovery action by the State in case of intent and serious guilt.

Advice, training and awareness

183. The initial training of public prosecutors is compulsory, organised by the Centre for Judicial Studies (CEJ) and largely identical to the one provided to judges and described in paragraph 135 above. The subjects taught include *inter alia* "Justice administration – mission, ethics, deontology" (16 sessions or 24 hours). As in the case of judges, completion of the ethical module does not count towards the overall evaluation of candidate prosecutors' training performance.

184. Public prosecutors have the right and the duty to participate in in-service training. Participation in at least two courses per year is obligatory. All training-related expenses are borne by the Ministry of Justice. Attendance and successful completion are taken into account in the periodic evaluation. In 2013-2015, training was held, on "*The Function and Statute of the PPS, Inspections and Evaluation of Prosecutors*", "*Deontology of the Judge and of the Prosecutor as well as other legal professions*" and "*Professional Ethics and Deontology*".

185. All public prosecutors are bound to acquaint themselves with the rules governing their profession, including the SPPS and the Codes of Civil and Criminal Procedure. They may seek advice from the various hierarchical structures within the PPS as well as from the GPO and members of the High Council.

186. In the section concerning judges, the CEJ has already been praised for having integrated a solid ethical component, largely based on an analysis of disciplinary cases

managed by the judicial councils, into the initial three-year training programme for trainee judges. A similar module which examines the disciplinary decisions of the High Council has been designed for prosecutors. Nevertheless, in light of the recommendations included in paragraphs 167 and 156, it would be imperative that any future training is re-oriented towards building a sound knowledge of the new standards of prosecutorial professional conduct that are to be developed and to ensuring their consistent implementation. Compliance with the standards is to be taken into account for the purposes of promotion and evaluation procedures, and disciplinary action.

187. Pursuant to Article 54 SPPS, access by the public and the media to information on PPS activities is to be ensured in accordance with law. The GPO has set up an internet page (<http://www.pgr.pt>) which contains the legislation and the regulations governing the Office and the PPS, the structure of the PPS, incompatibilities, impediments and duties of public prosecutors, as well as the consequences of breaches of duties. The GPO's annual activity report covers the functioning of the High Council and data on the disciplinary proceedings initiated and decided on in the year concerned. The report is available on the GPO's internet page. Additionally, the High Council publishes an Information Bulletin of plenary sessions which is also available online (<http://csmpt.pgr.pt>). Under the law, press officers may be attached to the GPO and the Offices of the District Deputy Prosecutors General, under the supervision of the respective heads of office.

188. During the on-site visit, representatives of the media and of civil society were of the opinion that communication with the PPS is relatively poor. Reportedly, insufficient details are shared as prosecutors are not trained how to disclose relevant and succinct information without jeopardising an investigation or violating confidentiality or the right to respect for private life. Furthermore, only one press officer is said to be attached to the GPO and the possibility to establish such officers also in each of the four District Deputy Prosecutors Offices has not been exploited, even though it is expressly provided for in law. The resultant impaired transparency is said to give the impression that the PPS is reticent to communicate with the public. GRECO acknowledges that respecting the confidentiality of on-going criminal cases is one of the main principles of the criminal process and plays a pivotal role in protecting the rights of the parties; nonetheless it should not replace the requirements of transparency of public acts and activities which impact positively on public confidence in the public service and the accountability of prosecutors. Consequently, the authorities are encouraged to implement an efficient public communication strategy, taking into account the aforementioned concerns, and to provide training to prosecutors on communication with the media and civil society.

VI. RECOMMENDATIONS AND FOLLOW-UP

189. In view of the findings of the present report, GRECO addresses the following recommendations to Portugal:

Regarding members of parliament

- i. that i) measures are taken to ensure that the timelines established by the Rules of Procedure for the various stages of the law-making process are adhered to; and ii) provision is made for ensuring equal access of all interested parties, including civil society, to the various stages of the law-making process (paragraph 37);**
- ii. that i) clear, enforceable, publicly-stated principles and standards of conduct for MPs are adopted and equipped with an efficient supervisory mechanism; and that (ii) awareness of the principles and standards of conduct is promoted amongst MPs through dedicated guidance, confidential counselling and training on issues such as appropriate interactions with third parties, the acceptance of gifts, hospitality and other benefits and advantages, conflicts of interest and corruption prevention within their own ranks (paragraph 47);**
- iii. i) carrying out an independent evaluation of the effectiveness of the system for the prevention, disclosure, ascertainment and sanctioning of conflicts of interest of MPs, including specifically the adequacy of incompatibilities and disqualifications, and the impact that this system has on the prevention and detection of corruption, and taking appropriate corrective action (e.g. further developing and refining the regulatory framework, strengthening oversight, introducing dissuasive sanctions, etc.); and ii) ensuring that MPs' reporting of private interests – whether advance or periodic – is subject to substantive and regular checks by an impartial oversight body (paragraph 52);**
- iv. that i) adequate sanctions are established for minor breaches of the asset reporting obligation, including incomplete and inaccurate reporting; and ii) MPs' asset declarations are made publicly available on-line (paragraph 66);**
- v. that i) asset declarations of all MPs undergo frequent and substantive checks within a reasonable timeframe in accordance with law; and that ii) commensurate human and other resources are provided to the independent oversight body, including any of its auxiliary structures, and the effective co-operation of this body with other state institutions, in particular, those exercising control over MPs' conflicts of interest, is facilitated (paragraph 76);**

Regarding judges

- vi. that i) the role of the judicial councils as guarantors of the independence of judges and of the judiciary is strengthened, in particular, by providing in law that not less than half their members are judges elected by their peers; and ii) information on the outcome of disciplinary procedures within the judicial councils is published in a timely manner (paragraph 96);**
- vii. that at least half the members of the authorities taking decisions on the selection of second instance court and Supreme Court judges are judges elected (or chosen) by their peers (paragraph 104);**

- viii. **ensuring that periodic evaluations of first instance court judges and inspections/assessments of second instance court judges ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of judicial conduct** (paragraph 107);
- ix. **ensuring that the legal framework governing the re-allocation of cases and the re-assignment of judges is consistent, underpinned by objective and transparent criteria and safeguards judges' independence that final first instance court judgments are made easily accessible and searchable by the public** (paragraph 115);
- x. **that final first instance court judgments are made easily accessible and searchable by the public** (paragraph 117);
- xi. **that i) clear, enforceable, publicly-available standards of professional conduct (covering e.g. gifts, conflicts of interest, etc.) are set out for all judges and used *inter alia* as a basis for promotion, periodic evaluation and disciplinary action; and that ii) awareness of the standards of conduct is promoted amongst judges through dedicated guidance, confidential counselling, and initial and in-service training** (paragraph 120);

Regarding prosecutors

- xii. **that information on the outcome of disciplinary procedures within the High Council of the Public Prosecution Service is published in a timely manner** (paragraph 149);
- xiii. **ensuring that periodic evaluation of prosecutors attached to first instance court and inspections/assessment of prosecutors attached to second instance courts ascertain, in a fair, objective and timely manner, their integrity and compliance with the standards of professional conduct** (paragraph 156);
- xiv. **ensuring that the rules governing prosecutorial hierarchy and competences correspond to the new judicial map and protect prosecutors from undue or illegal interference from within the system** (paragraph 163);
- xv. **that i) clear, enforceable, publicly-available standards of professional conduct are set out for all prosecutors and used *inter alia* as a basis for promotion, evaluation and disciplinary action; and ii) awareness of the standards of conduct is promoted amongst prosecutors through dedicated guidance, confidential counselling, and in the context of initial and in-service training** (paragraph 167).

190. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Portugal to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2017. These measures will be assessed by GRECO through its specific compliance procedure.

191. GRECO invites the authorities of Portugal to authorise, at their earliest convenience, the publication of this report, to translate the report into the national language and to make the translation publicly available.

About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe’s anti-corruption instruments. GRECO’s monitoring comprises an “evaluation procedure” which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment (“compliance procedure”) which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at www.coe.int/greco.
