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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

ITALY

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EXECUTIVE SUMMARY

1. In recent years, Italy has embarked on wide-ranging structural reforms aimed at addressing the economic crisis and social unease faced by the country. More decisive steps have also been taken on the anticorruption front by complementing stronger punitive measures (harsher penalties, broader scope of corruption offences, greater guarantees for more expeditious trials) with comprehensive prevention mechanisms (transparency in decision-making, codes of ethics, conflicts of interest, specialised anticorruption authority, national anticorruption plan) aimed at spreading a culture of efficiency and integrity in the delivery of public services, ultimately boosting economic growth and regaining public trust.

2. The National Anticorruption Authority (so-called ANAC), the key coordinating body in Italy for corruption prevention and transparency of public administration purposes, is playing a most valuable role with its proactive and determined leadership. A broad Anticorruption Plan (2017-2019) is in the pipeline; it comprises multifaceted measures (publication of administrative information, rotation of personnel, strengthened control of conflicts of interest, monitoring of privatisation and externalisation of public services).

3. In Parliament, a reform of the electoral system took place in 2015; it is tied to a reform of the Senate, which comes as a component of a package of constitutional changes due for referendum in the last quarter of 2016. Both initiatives are aimed at ensuring greater stability of Government and simplifying the adoption of legislation.

4. Positive measures have been taken in recent years to enhance access to information as a key tool to further strengthen the public oversight of parliamentary activities. Likewise, salient efforts have recently been displayed to issue a Code of Conduct and Rules on Lobbying for the Chamber of Deputies; the Senate has yet to embark on a similar path. The aforementioned instruments are undoubtedly steps in the right direction on a long journey to recast public trust in politicians. Indeed, the growing disenchantment of Italian citizens with its politicians and political parties calls for decisive action in Parliament to build up its accountability regime. For this reason, the Code of Conduct, adopted on 12 April 2016, represents a cornerstone achievement of the current legislature; it further requires greater formalisation through its incorporation to the Rules of Procedure. The Code has been initially launched as an "experimental project", and as such, it will require further fine-tuning on its specific coverage (e.g. gifts, hospitality, favours and other benefits, conflicts of interest, financial declaration, etc.), enforcement, awareness raising and advisory machinery. The same applies to the Rules on Lobbying, which were adopted by the Chamber of Deputies on 26 April 2016. In point of fact, the move of former MPs to the lobbying industry has recurrently been signalled as a source of concern in Italy.

5. Furthermore, the status of parliamentarians is still generally governed by laws adopted in the 70s barely updated ever since, and dispersed in different regulatory instruments which have never been systematised, this is particularly relevant regarding the conflict of interest regime, which is currently undergoing changes.

6. The judiciary is governed by a very solid legislative framework enshrining its independence, both for judges and prosecutors. The undisputed reputation, professionalism and commitment of individual judges and prosecutors is somewhat tarnished by public doubts about the efficiency of the system to effectively punish law breakers when the risk of a corruption prosecution becoming time barred is no rare occurrence.

7. The National Association of Magistrates (ANM) issued one of the earliest Codes of Conduct in Europe for the profession, in 1994, but its coverage and enforcement mechanisms are limited. Moreover, dedicated mechanisms need yet to be introduced to

open channels for the discussion of ethical dilemmas shared by professional and lay magistrates and to provide for advisory services and guidelines in relation to conflicts of interest and other integrity-related matters. The participation of magistrates in political life is a particularly sensitive issue, as it might affect the impartiality and independence, both real and perceived, of the judiciary.

8. Jurisdiction in fiscal matters is exercised by special courts, Provincial Fiscal Commissions and District Fiscal Commissions, whose members are appointed among ordinary, administrative and military magistrates, university professors in legal and economic matters, lawyers, accountants and other professional categories. Major corruption scandals within tax courts in the last few months showed that the relevant rules need to be tightened up.

9. A reform in the prosecution service took place in 2006: it strengthened the hierarchical structure of prosecutorial offices. It remains important that this move does not impinge upon the principles of autonomy and transparency in the work of the office (transparency in case assignment, relationship between the chief prosecutor and public prosecutors within the office and internal autonomy of individual prosecutors).

10. Finally, it is essential that the public is made aware of any future efforts taken in each of these areas as they can all serve to strengthen the citizens' much eroded confidence in public service. Overall, an important shortcoming of the Italian system is the coexistence of multiple laws, some of which overlap; this problem of overregulation results in confusion, disparity, and more generally, loss of focus, and thereby, dilution of the spirit of the law. Simplification and consolidation remain key tasks ahead. In addition, as GRECO has already stressed in its previous evaluation reports on Italy, combating corruption has to become a matter of culture and not only rules; this requires a long term approach, continuing education throughout all sectors of society as an indispensable component of the anticorruption strategy and sustained political commitment.

I. INTRODUCTION AND METHODOLOGY

11. Italy joined GRECO in 2007. Since its accession, the country has been subject to evaluation in the framework of GRECO's Joint First and Second (in July 2009) and Third (in March 2012) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

12. 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 executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

13. 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.

14. 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.

15. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (GrecoEval4(2016)1) by Italy, 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 Rome from 25 to 29 April 2016. The GET was composed of Mr Manuel ALBA NAVARRO, Clerk of Congress of Deputies, Congress of Deputies (Spain), Mr José Manuel Igreja MARTINS MATOS, Court of Appeal Judge, Vice-President of the International Association of Judges and the Ibero-American Group of the International Association of Judges, Judge in courts in criminal, civil and labour matters (Portugal), Mr Juraj NOVOCÝ, Prosecutor of the Special Prosecution Office General Prosecution Office (Slovakia) and Mr Stefan SINNER, Head of Division PM1, Remuneration of Parliamentarians, Administration of the Bundestag (Germany). The GET was supported by Ms Valentina D'AGOSTINO and Ms Laura SANZ-LEVIA from GRECO's Secretariat.

16. The GET held interviews with representatives of the Ministry of Justice and the National Anticorruption Authority. Moreover, the GET held interviews with representatives of both Chambers of Parliament (technical services, as well as all political parties with parliamentary representation) and former members of Parliament, as represented by their corresponding association (Association of former members of Parliament). The GET also spoke with members of the judiciary (judges and prosecutors from different jurisdictions and instances, High Council of the Judiciary, High School of the Judiciary, National Association of Magistrates) and representatives of the legal profession (Italian

Bar Council). Finally, the GET met with civil society representatives (NGOs: Libera, Openpolis, Transparency International), academia (LUISS Guido Carli University of Rome) and journalists (La Repubblica, Corriere della Sera and La Stampa).

17. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Italy 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 Italy, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Within 18 months following the adoption of this report, Italy shall report back on the action taken in response to the recommendations contained herein.

II. CONTEXT

18. Corruption is still perceived as a most prominent and pressing problem in Italy given its transversal and cultural features; this pervasive phenomenon is said to affect all sectors of society, both in the public and private spheres of activity. That said, in recent years, Italy has embarked on a path of broad ranging structural reforms aimed at addressing the economic crisis and social unease faced by the country. On the anticorruption front, Italy adopted an anticorruption package in 2012 marking a policy shift from punitive to preventive in the country's approach to corruption. A new anticorruption authority was established, i.e. the National Anticorruption Authority (ANAC)¹, a national anticorruption plan was adopted and legislation was enacted to both further the implementation of previously launched initiatives (e.g. efficiency of public administration, transparency and public access to information, increased citizens' participation in public decision-making, etc.) and set in motion additional measures (prevention of conflicts of interest, adoption of code of ethics, whistle-blower protection, etc.).

19. GRECO paid tribute to the aforementioned improvements in its relevant evaluation and compliance reports, but also made remarks on outstanding matters and the way forward. The 2012 measures (Law No. 190/2012, so-called *Legge Severino*) were subsequently enhanced in 2014 (Law No. 114/2014) and 2015 (Law No. 69/2015). In addition to the long-awaited revamped anticorruption package adopted in May 2015, the powers and leadership of ANAC were also enhanced by allowing the body's president to take charge of public works projects involved in corruption investigations². A broad Anticorruption Plan for the period 2017-2019 was adopted on 6 July 2016; it draws upon the results and pending challenges of its predecessor (National Anticorruption Plan 2013-2017) and comprises multifaceted measures (publication of administrative information, rotation of personnel, strengthened control of conflicts of interest, monitoring of privatisation and externalisation of public services).

20. Public expectations on effective implementation of the newly introduced anticorruption measures are high as Italian citizens question the capacity of domestic institutions to successfully deliver. Concerns over public integrity and misconduct are frequently quoted as crucial factors underlying the prevalent lack of public trust in some of the State's pivotal institutions. The latest Eurobarometer on corruption dating from 2013 ([Survey 397](#)) reveals a troubling 97% of the Italian population thinking corruption is widespread in its country (second highest percentage in the EU; 76% EU average). The 2015 Transparency International report on the perception of corruption depicts similar results: while Italy has improved from the 69th to the 61st position worldwide (where 1 = least corrupt), it still lags behind most of its European counterparts (it stands second-to-last in the ranking for the EU region).

21. Corruption has long undermined Italy's economy by deterring foreign investors and pushing up costs. According to the aforementioned Eurobarometer, corruption continues to be identified as a very serious problem when engaging in business in Italy and is felt to be an embedded practice in the business culture of the country. While the payment of bribes to public officials appears to be an eradicated practice (only 2-5% of those surveyed admitted to having paid a kickback for the delivery of public services), corruption, patronage and nepotism are cited as recurrent phenomena in business affairs

¹ ANAC was initially called Independent Commission for the Evaluation, Integrity and Transparency of Public Administration (CIVIT).

² The introduction, in the last five years, of the aforementioned measures follows both international commitments, as well as public demands in light of the rampant number of corruption scandals in the country, including a series of graft probes involving all major parties with illegal party funding and bid rigging charges, as well as kickback investigations into major national projects such as Expo 2015 and the one related to the Venice flood barrier.

in Italy ([Survey 374](#)). The Court of Auditors (*Corte dei Conti*) estimates that the cost of corruption in Italy amounts to approximately 60 billion € each year.

22. In terms of the focus of the Fourth Evaluation Round of GRECO, the 2013 [Global Anticorruption Report](#) from Transparency International, ranks political parties and parliamentarians as the two most corrupt groups in the country (89% and 77% corruption perception levels, respectively). Although the credibility ratings of the judiciary are better than those of politicians in the aforementioned TI's survey, the figures also call for cautious reading of the citizenry's voice: less than half of the respondents (43%), trust the judicial system; furthermore, according to EU polls (2013 Eurobarometer, [Survey 397](#)) 27% of the interviewees perceive prosecutions as sufficiently successful to deter people from corrupt practices (EU average 26%). The issue of the statute of limitations, and more specifically corruption investigations becoming time barred, has been a recurrent serious concern and remains a pressing outstanding matter for GRECO regarding Italy, as underscored in previous evaluation and compliance reports.

23. It must be highlighted that, at the time of the on-site visit, numerous reforms on all the fronts covered by this report were underway. GRECO trusts that this report, with its in-depth analysis and recommendations, will further assist the Italian authorities in their reform process towards not only regaining but also raising the level of integrity of – and the public's trust in – some of its key institutions and their individual members.

24. Moreover, as underscored by GRECO in its former reports on Italy, combatting corruption must become a matter of culture and not only rules. This requires a long term approach and sustained political commitment. Education can further play a fundamental role in the fight against corruption, in that it makes corrupt behaviour socially unacceptable. In this connection, the initiatives anticipated by ANAC to develop, in the education system, educational programmes that instil concepts and principles of integrity and foster a culture of respect for the law and integrity can constitute most valuable tools for corruption prevention purposes.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

Political and electoral system

25. Italy is a parliamentary republic. Legislative power is vested in a bicameral parliament composed of a 630-member Chamber of Deputies and a 315-member Senate³, both primarily elected by popular vote for five-year terms and both enjoying equal powers.

26. The Chamber of Deputies and the Senate are both elected through largely proportional systems, according to the d'Hondt method. Deputies are elected by citizens who have reached 18 years of age and all voters who have attained the age of 25 on the day of election are eligible to be deputies; senators are instead elected by voters who are 25 years of age and voters who have attained the age of 40 are eligible to be senators. For each election, voters may cast one vote for a closed candidate list but are not entitled to choose individual candidates or alter the order of lists. In contrast, voters permanently residing outside Italy are able to express their preference through open candidate lists. Should a seat become vacant between elections, the next person on the candidate list assumes the seat or, in the case of majority seats, a by-election is held.

27. A reform of electoral law, aimed at ensuring greater stability of Government, was adopted in May 2015; it has entered into force on 1 July 2016. The new system will automatically assign 340 of the 630 seats in the lower house to the party that wins at least 40% of the vote in general elections. If no party reaches that threshold, a runoff is held between the top two finishers. The new rules also impose a 3% threshold of the popular vote to gain any seats in parliament.

28. Moreover, as a part of a package of overarching constitutional change, a reform of Parliament awaits referendum in the last quarter of 2016. Under the new bill, the reformed Senate would have 100 members, down from 315, and they would no longer be directly elected. A total of 95 members would be chosen by regional councillors and mayors and the other five would be nominated by the President. The new Senate would retain its veto on some constitutional matters, but its ability to quash ordinary legislation would be sharply reduced — a change allegedly aimed at simplifying the generally lengthy lawmaking process in Italy. The Senate would also no longer be able to participate in confidence votes in the Government. The GET understands that, if effectively passed in the referendum, this reform will trigger a deep change in the Italian political structure, by which the role and interplay of both Houses will be rather different from the one performed to date in the framework of the existing bicameral system (i.e. until today, both Houses enjoy equal powers). It means, notably, that the role of the Senate will change and the status and obligations of senators will consequently be rather different than the ones evaluated in the present report.

Functions and current composition of legislature

29. Parliament is a central institution in the constitutional system of Italy. Parliament approves legislation, adopts guidelines for and monitors the activity of the government, enquires into matters of public interest, and grants and revokes confidence in the government. The independence of Parliament is stipulated in the Constitution and members of Parliament (MPs) are expected to represent the national public interest and carry out their duties without a binding mandate (Article 67, Constitution). The working

³ The Senate is composed of 315 elected members and an additional number of life-long members (*Senatori a vita*).

proceedings of the Chamber of Deputies and the Senate are regulated in their respective Rules of Procedure which were adopted in 1971 (as amended).

30. The last parliamentary elections were held in February 2013; its results led to a deadlock resolved by a broad coalition which is headed by the leader of the Democratic Party. The current XVII legislature is characterised by a significant decrease in the average age of MPs: at the beginning of the parliamentary term (April 2013), the majority of MPs were aged under 50 years and almost 25% of them were aged under 40. Out of the 630 members of the Chamber of Deputies, there are 196 women and 434 men. Out of the 315 members of Senate, there are 86 women and 229 men.

Ineligibility and loss of mandate

31. The following situations call into question eligibility for membership in Parliament:

(i) persons who have lost, either temporarily or permanently, the right to vote (e.g. citizens subject to a definitive precautionary measure, personal detention or custody, residence prohibition, etc.);

(ii) persons with specific positions in other institutional offices, as detailed by law (notably, Law Nos. 361/1957, 533/1993 and 184/2011), including provincial presidents, mayors (as per Constitutional Court Decision No. 277/2011), commissioners, vice-commissioners and police general inspectors, heads of cabinet, governors and vice-governors, judges (for their own districts), diplomats, members of the Constitutional Court, any other single elective public office related to local governments with population over 5 000 inhabitants at the date of the election or the appointment;

(iii) persons with a specific and economic relation with the State, including the owners or legal representatives of a company or private business holding work or administration contracts, concessions or administrative authorisations of significant economic value; representatives, directors and managers of private companies subsidised by the State on an on-going basis; the related legal and administrative advisors (Presidential Decree No. 361/1957, Article 10). The general manager, the managing director and the medical director of a local health authority are not eligible unless the exercised function has ceased at least 180 days before the end of the parliamentary term. In any case, the same categories of persons are not eligible in the constituencies (or rather, according to Law No. 270/2005, in the districts) in which is situated, even partially, the territory of the local health authority for which they have exercised their functions during the six months preceding the date of acceptance of the candidacy (Legislative Decree No. 502/1992, Article 3, paragraph 9);

(iv) persons who, being subjected to precautionary measures, have violated the ban on conducting electoral propaganda activities (Law No. 175/2010, Article 2);

(v) persons with a final conviction of certain intentional offences, including corruption and other offences against public administration, pursuant to Legislative Decree No. 235/2012. The ineligibility term runs twice as long as the corresponding penalty and in any case no less than six years. In the current Parliament, two proceedings referring to this law have been instituted. One referred to a senator, who subsequently ceased from parliamentary mandate; the other referred to a deputy who ceased functions in April 2016.

Additionally, Legislative Decree No. 39/2013 establishes the ban (temporary or permanent, depending on the type of penalty applied) on holding public office for those convicted through final or non-final court decisions for offences against the public administration, including corruption; this provision is self-enforceable and does not require a vote in Parliament. The implementation of the legislative

provisions with regard to the termination of the MP's mandate as a result of a final conviction requires a vote of the chamber of Parliament to which the MP belongs.

32. Members of parliament lose their mandate in case of: (i) voluntary resignation; (ii) death; (iii) ineligibility; (iv) final conviction for specific intentional crimes; (v) incompatibility. Former presidents of the Republic are senators by right and for life unless they renounce the office. The President of the Republic may also appoint, as life senators, five citizens who have honoured the nation through their outstanding achievements in the social, scientific, artistic and literary fields.

Transparency of the legislative process

33. Sittings of Parliament are public and retransmitted in the form of live television broadcasts (webtv.camera.it and webtv.senato.it); however, each of the Houses and Parliament in joint session may decide to convene a closed session (Article 64, Constitution). Verbatim and summary reports of parliamentary proceedings – plenary and committees – are also published online (www.camera.it and www.senato.it). The Chamber of Deputies has its dedicated youtube channel providing a glimpse into the daily activities of the House. Every Saturday, each Chamber publishes on its website the working agenda of the following week.

34. Other parliamentary documents (e.g. bulletins of parliamentary bodies, messages by the Presidents of the Houses, printed documents with the texts of bills, proposed parliamentary enquiries or proposed amendments to the Rules of Procedure, Committee reports, official documents of the parliamentary oversight body, etc.) are also published online. Parliamentary acts also encompass documents that are created outside the Chamber of Deputies but are intended for its use and are published by it as part of its own output. These include: messages from the President of the Republic, requests for authorisation to prosecute an MP, decrees on which the Audit Court has expressed reservations, and the many reports that, pursuant to many laws, have to be forwarded to Parliament from the Government, Bank of Italy, Audit Court, National Council for Economics (CNEL), independent authorities, etc.

35. The results of parliamentary votes are announced live, and so are disclosed immediately to members of the public present in the relevant session, and are broadcast. A list of how each member voted – for and against a motion – is included in full in the records of debates published online. Secret voting remains exceptional and solely in specific cases strictly provided for by the Rules of Procedure, i.e. votes regarding persons for privacy reasons (Rule 49, Rules of Procedure).

36. Each House of Parliament may conduct enquiries on matters of public interest. For this purpose, it establishes, from among its members, a Committee which represent existing parliamentary groups proportionally. A Committee of Enquiry may conduct investigations and examination with the same powers and limits as the judiciary (Article 72, Constitution).

37. In case of relevant public interest, the Government may carry out public consultation processes on draft law. If prescribed by the law, in case of legislative decrees or implementing regulations, the Government is obliged to carry out public consultations on draft laws must be carried out before bills are introduced to Parliament (e.g. environmental matters, public contracting, etc.).

Remuneration and economic benefits

38. The average gross annual salary in 2014 in Italy was 29 327.90€ (data from National Statistics Office).

39. Members of Parliament are entitled to an allowance established by law (Article 69, Constitution), as well as a series of additional benefits, as follows:

Chamber of Deputies

Basic parliamentary allowance: Law 1261/1965 specifies that the total salary of an MP may not exceed the maximum gross annual salary of a member of the Judiciary who serves as President of a Section of the Court of Cassation or holds office of an equivalent grade. The Bureau of the Chamber of Deputies has taken steps on several occasions to reduce the remuneration of MPs with respect to the maximum amount indicated above. As of January 2012, the monthly remuneration for MPs – paid out for 12 months – was 5 246€, which is net of income tax but before the payment of additional local (regional and municipal) taxes. All told, the net monthly remuneration is around 5 000€. The net amount is derived from a gross monthly remuneration of 10 435€, against which social security and welfare taxes are withheld at source. MPs who have any other employment receive a net monthly remuneration of around 4 750€ corresponding to 9 975€ gross.

Daily subsistence allowance: The daily subsistence allowance is a form of reimbursement for the costs of staying in Rome. It is given to all MPs, including those who are already resident in the city, and does not require the presentation of any receipts for expenses incurred. The current allowance consists of a monthly lump sum payment of 3 503€, which is untaxed. The sum is reduced by 206€ for every day a Deputy is absent from a Parliamentary sitting in which a vote is held. The allowance may also be further reduced by up to a maximum of 500€ per month in proportion to the MP's absence from sittings of Parliamentary Committees appointed by the President, Standing and Special Committees, the Committee on Legislation, joint Committees and Committees of Inquiry, or from parliamentary delegations to international assemblies.

Reimbursement of expenses: The Bureau of the Chamber of Deputies has established a reimbursement of expenses for the exercise of the parliamentary mandate. The reimbursement, which is tax-free, amounts to 3 690€, and is paid directly to each MP as follows: A) 50% as a lump-sum (i.e. without any requirement to account for expenses); B) up to the remaining 50% of it by way of reimbursement for specific categories of expenses that must be accounted for: staff; consultancy services, research; office administration; use of public networks for data research; conferences and political activities. The College of Quaestors carries out spot checks on the use of this portion of the allowance. Since the Chamber of Deputies provides no additional funds or expense accounts to cover the costs of the Members' personal staff, this type of reimbursement is generally used in full to cover staff costs.

Travel allowance⁴: Deputies are provided with passes entitling them to free use of toll motorways and free travel by rail, sea and air for journeys within the national territory. To reimburse the costs of travel between their home and the closest airport, and between the Airport of Rome-Fiumicino and Montecitorio (seat of the Chamber of Deputies), deputies receive a quarterly allowance of 3 323€ if the distance from their place of residence to the nearest airport is 100 kms or less, and of 3 995€ if the distance is greater than 100 kms. The reimbursement, which is tax-free, is made as lump-sum payment.

Telephone allowance: Tax-free lump-sum telephone allowance of 1 200€ per year.

Healthcare contribution: Each month, deputies pay 526€ of their gross monthly remuneration into a complementary healthcare fund. Former deputies are entitled only to the healthcare benefits to which they voluntarily subscribe.

End of tenure allowance: Each month, deputies pay 784€ out of their gross remuneration into a special fund. At the end of their term of office, deputies receive an end-of-tenure allowance of 80% of their gross monthly salary for each year that they effectively held office.

Pension: As of 1 January 2012, MPs' pensions have been calculated on a defined-contribution basis, similar to that in force for civil servants. MPs who have reached the end of their term and who have held office for at least five years have the right to claim their pension upon reaching 65 years of age. For each additional year as an MP, the age of eligibility for claiming the pension is reduced by one year, with a cut-off point at 60 years. To fund MPs' pensions, 8.80% of the MPs' gross parliamentary salary is automatically withheld. Pension payments are suspended if an MP is re-elected to national parliament, to the European Parliament or to a regional Council. It is likewise suspended upon appointment of a former MP as a member of the national government or as a member of a regional executive or, generally, to an institutional post that the Constitution or constitutional laws deem incompatible with parliamentary office. Pension payments will also be suspended if the beneficiary is appointed to a post that under ordinary law is deemed to be incompatible with parliamentary office, if the remuneration for the new post exceeds 50% of the basic parliamentary allowance. Finally, the Chamber of Deputies and the Senate have determined that pensions shall not be paid to MPs definitively convicted of a particularly serious crime, including corruption, if the sentence imposed is at least two years' detention. Former MPs are entitled only to the supplementary pension scheme to which they are obliged to subscribe. This pension is compatible with other public pension schemes.

⁴ In 2015, the Chamber of Deputies approved two motions abolishing first-class air travel for sitting MPs (except on flights lasting more than four hours) and travel refunds for former MPs.

Senate

Basic parliamentary allowance: As a result of the cutbacks introduced in recent years, and a further reduction applied until 31 December 2015, the current (monthly gross) basic salary component is 10 385€, which is reduced to 10 064€ in the case of senators with other income sources. After deduction of income tax withholdings and Social Security contributions – and not considering any additional personal income tax liabilities – their net monthly income is 5 305€ (5 122€, if in receipt of other sources of income).

Daily subsistence allowance: The so-called *per diem allowance* is payable to all senators to refund their living costs. Between 2001 and 2010, the monthly *per diem* entitlement was 4 003€, which was further reduced to 3 500€ per month as from 1 January 2011, as resolved by the Senate Bureau on 25 November 2010. This reduction was reconfirmed subsequently, applicable until 31 December 2015. The *per diem allowance* comprises one small fixed component (130€), the remaining being a variable component (3 370€). This variable component is subject to a reduction of 225€ for each day's absence from the Chamber for sittings subject to a headcount, and a reduction of 50 per cent (112€) for each day's absence from sittings of any Committees on which a vote is called.

Lump sum refund of general expenses: Since 1 January 2011, senators have been paid a monthly lump sum allowance of 1 650€, in place of the previously paid refunds to cover individual travelling expenses and telephone expenses.

The three categories listed above are not subject to income tax.

Refund of the expenses incurred in the exercise of the parliamentary duty: Since March 2012, this component has replaced the previous "senators' activity support allowance", which was a single across-the-board lump sum refund of expenses. As a result of cutbacks extended to 31 December 2015, the overall lump sum refund was set at 4 180€, broken down into two component parts, each of 2 090€: one lump sum allowance, and the other component subject to the submission of four-monthly accounts (any amounts not reported on are deducted automatically).

Out-of-pocket expenses: Every senator is entitled to a maximum non-taxable allowance of 4 000€ for each parliamentary term to cover out-of-pocket expenses for the purchase of computer equipment and services, against the production of receipts.

40. Every year, Parliament adopts its budget, as prepared by the *quaestors* (MPs entrusted, as elected by the House, with administrative and financial responsibility⁵), adopted by the Bureau⁶ and approved by the plenary. The budget is published in full and available for consultation in the Parliament's website. Likewise, the different types of remuneration and compensation described under the corresponding tables above are fully detailed online.

Ethical principles and rules of conduct

41. The Constitution enshrines the principles of loyalty, discipline and honorability in the performance of a public function (Article 54, Constitution). Other laws include relevant provisions on due transparency and fairness (e.g. Law No. 441/1982). The Rules of Procedure of each Chamber also include some basic provisions on attendance of sessions, order and decorum.

42. In anticipation of GRECO's visit, the Chamber of Deputies adopted its Code of Conduct on 12 April 2016. In its Joint First and Second Evaluation Rounds, GRECO had already highlighted the need for parliamentarians to give serious consideration to the elaboration of a code of conduct as a public signal of their commitment to high integrity⁷;

⁵ Quaestors are elected by the members of Parliament among those receiving the highest number of votes at the first ballot. Quaestors are also members of the Bureau and are entrusted with the following responsibilities: (i) efficient administration of Parliament, including by ensuring compliance with the relevant regulations and directives issued by the President of each House; (ii) supervision of expenditure, drawing up of budget and accounts; (iii) protocol matters and House order.

⁶ The Bureau is composed of the Speaker, the Deputy Speakers, the Quaestors and Bureau secretaries of each Chamber.

⁷ See paragraph 39, Joint First and Second Evaluation Rounds, [Addendum to the Compliance Report on Italy](#), June 2013.

consequently, the GET can only welcome the recent move made by the Chamber of Deputies. Although a code in itself does not guarantee ethical behaviour it does help to foster a climate of integrity and to endorse the intention of the current legislature to abide by a culture of ethics; this effort in itself represents an important step for a Parliament which has been fighting to overcome the recent credibility crisis.

43. Although the GET considers that the Code of Conduct represents a cornerstone attainment of the current legislature, it further requires greater formalisation through its incorporation to the Rules of Procedure. The authorities indicated that, even if binding for all deputies, the Code has initially been launched as an “experimental project” and there is a perspective to further formalise it, once the assessment of this experience is completed. The GET can understand this two-step approach and is hopeful about its final outcome. Moreover, the GET is of the view that the Code, as it stands now, will require further fine-tuning on its specific coverage (e.g. gifts, hospitality, favours and other benefits, conflicts of interest, lobbying, financial declarations, etc.). The Code comprises seven articles based on the principles of publicity and transparency. The authorities stated that the Italian Code draws inspiration from the Code of Conduct for members of the European Parliament. Having compared both of the above, and understanding that each Code must have its own features as tailored to the specific situations addressed in each case, the GET notes that the scope and breadth of the Italian Code is vaguer and narrower, as compared to its European Parliament model. Additional efforts ought to be taken to further develop the provisions of the Italian Code; this can be done in the form of guidelines. Such guidelines must be clear, accessible and easily comprehensible in order to support the understanding of individual parliamentarians, but also the general public, as to the chief principles and values reigning in Parliament. They should further provide advice on how to behave in daily work when confronted with ethical dilemmas. The Code of Conduct appears to go in this same direction, when it provides for, in its Article 6(4), the publication of interpretative guidance by the Advisory Committee (see paragraph below for concrete details on Advisory Committee).

44. Moreover, the GET believes that any code of conduct must be part of a broader integrity framework requiring institutional set-up for its implementation; this calls for more developed enforcement, awareness raising and advisory machinery. The Code includes a specific provision on the creation of an Advisory Committee on the Conduct of Members (hereinafter: Advisory Committee), composed of four members of the Bureau and six deputies, who are appointed by the President of the Chamber, taking due account of the members’ experience and of political balance (Article 5, Code of Conduct). The Advisory Committee has to provide guidance, upon request and within a month, on ethical matters. The Committee may also issue general guidance, which is to be published on the parliamentary website. Additionally, at the request of the President of the Chamber, the Advisory Committee has to assess alleged breaches of the Code and inform the former on its findings for their eventual handling by the competent bodies. It can carry out inquiries, hear the member concerned and even call upon experts if so authorised by the President of the Chamber. The Advisory Committee has to issue an annual report on its activity which is made available on-line. The GET was informed after the on-site visit, that the Advisory Committee had started its work, which included the development of interpretative guidance on the Code of Conduct and the launch of a website regarding the Committee and its work (<http://camera.it/leg17/1284>).

45. As to the accountability machinery established by the Code, violations are to be made public on the parliamentary website and brought to the attention of the Chamber (Article 6, Code of Conduct). Again, the authorities stressed that the Code is in its testing phase. Once positive experience is developed, allowing for its inclusion in the Rules of Procedure, it would be possible to add other type of (more severe) sanctions. In the GET’s view, it is important that efficient and consistent enforcement machinery is in place to ensure compliance with the code and sanction misconduct, as appropriate; this would require the development of a wider range of non-criminal sanctioning of unethical

behaviour which is suited to the particularities of the parliamentary mandate. Publicity of eventual breaches is certainly a valuable measure, but the GET deems it insufficient. Likewise, it is necessary that the mechanisms for enforcing the rules are articulated in a clearer and more structured manner; the GET understands that it is too early to assess how the Advisory Committee performs its duties under the Code, but even so, the current provisions lack clarity as to enquiry procedures, investigative powers and even the possibility of referring the matter to "other competent bodies".

46. Finally, the GET notes that, independently of the future role and composition of the Senate which will be decided after the 2016 referendum, this Chamber needs to introduce additional tools to promote integrity principles among its members. The GET was informed that in June 2015, two senators tabled a draft code; the GET was further told that, following the example set by the Chamber of Deputies, it was likely that the Senate would soon catch up. **GRECO recommends strengthening the integrity framework for parliamentarians, including through (i) the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies; (ii) its further refinement through detailed guidance on its provisions; and (iii) the establishment of an effective enforcement and accountability regime. The same measures are recommended for the Senate.**

Conflicts of interest

47. There is no general definition of the notion of conflict of interest, and the applicable rules in this area which are specifically targeted at MPs are the ineligibility/incompatibility requirements already described under paragraph 31. The Code has introduced further provisions on the matter by stating that, a conflict of interest exists when a member has a specific private interest which could improperly influence the performance of his/her parliamentary duties. Fundamentally, until today, the control of conflicts of interest of MPs has resided on the fact of public availability of the asset disclosure reports, as established by Law No. 441/1982 (see below for details on financial disclosure). It would appear, that following the adoption of the Code of Conduct, the Advisory Committee may have additional competences on the matter, but it is yet to be seen how those competences will be understood and subsequently performed.

48. Additionally, MPs who are also members of the Government fall under the restrictions laid out in Law No. 215/2004 on Conflicts of Interest for Members of Government. The aforementioned law covers possible conflicts of interest between government responsibilities and professional and business activities in general. The law includes a requirement to refrain from a decision-making process (including at proposal stages), whenever the decision/act in question has a specific and preferential effect on the assets and liabilities of the MP concerned, his/her spouse or relatives up to the second degree of kinship or of related companies or their subsidiaries, with detriment to the public interest.

49. Discussion is on-going regarding some new bills on conflicts of interest, originally targeted at members of Government, but also touching upon parliamentarians in so far as they are also considered holders of a political mandate; these proposals table, *inter alia*, a stricter regulation of ineligibility in the case of companies operating under an authorisation or concession by the State having considerable economic value. Moreover, in June 2014 and then again in July 2015, the Italian Delegation to the Parliamentary Assembly of the Council of Europe organised a seminar on a code of conduct for MPs as a measure to prevent corruption. In the framework of these seminars, the Italian authorities recognised the need to articulate an ethical and accountability regime in the Italian Parliament, as well as to further regulate on possible conflicts of interest of parliamentarians in Italy. In this connection, virtually all interlocutors met underscored that this is one of the main gaps of the Italian system. They referred both to the restrictions applicable to serving MPs, as well as to the challenging matter of regulating

post-employment restrictions and tackling the sensitive issue of “revolving doors”. The GET understands that the latter is a challenge *per se*, particularly in the context of Parliament; this sensitive issue is dealt with later in paragraph 66.

50. Further, the GET notes that Italy is a country where the strong prerogatives and privileges of Parliament are enshrined in the Constitution (Articles 67, 68, 69 and 70). This principle is deeply rooted and none of the interlocutors met challenged the fact. It means that the ineligibility, incompatibility and immunity regimes of parliamentarians are mainly left to be decided by Parliament itself. That said, the new anticorruption laws (and in particular the so-called *Legge Severino*), together with the decisions issued by the Constitutional Court have largely contributed to defining the extent and limits of parliamentary prerogatives. However, the rules defining the status of parliamentarians are many, sometimes dating from far back and very dispersed in different regulations.

51. With particular reference to the conflict of interest area, the GET concurs with the view commonly shared by the interlocutors met, that the existing rules are difficult to navigate to the detriment of the overall transparency and effectiveness of the system. More particularly, the high number of laws/provisions, their related amendments and a general lack of consolidation and rationalisation of the dispersed norms, result in a rather confusing conflict of interest regime. This creates problems in the application of the existing rules as well as in their practical comprehension, which is a pre-condition for any preventative effect of such rules. The unsatisfactory state of affairs also leads to a rather cumbersome process of verification of possible causes of ineligibility and incompatibility, ultimately risking to compromise the effectiveness of the system (see paragraph 61 for details). The GET also draws attention to the effects that the foreseen reform of the Senate may bring about, if passed: the new role of the Senate and the fact that many senators will be carrying out regional or local duties will demand accurate and proper regulation, especially as regards incompatibility. Consequently, **GRECO recommends that (i) clear and enforceable conflict of interest rules be adopted for parliamentarians, including through a systematisation of the currently dispersed ineligibility and incompatibility regime; and (ii) the process of verification of ineligibility/incompatibility be further streamlined and thereby performed in an effective and timely manner.**

Prohibition or restriction of certain activities

Gifts

52. The Code of Conduct has introduced a specific provision on gifts (Article 4, Code of Conduct): deputies are barred from accepting gifts or benefits valued at more than 250€, given in accordance with courtesy usage, or those given to them in accordance with courtesy usage when they are representing Parliament in an official capacity. This provision does not apply to the reimbursement of travel, accommodation and subsistence expenses of members, or to the direct payment of such expenses by third parties, when members attend, pursuant to an invitation and in the performance of their duties, at any events organised by third parties. The Bureau is to issue further rules in this respect in order to ensure the transparency of this type of invitation; after the on-site visit, in May 2016, an Advisory Committee on the Conduct of Members was set up to submit proposals to the Bureau on this respect.

53. The GET can only welcome the inclusion of a specific provision in the Code of Conduct concerning gifts. However, the GET is of the firm view that this provision needs to be further developed. The threshold of 250€ is higher than that set by the Code of Conduct of European Parliament – which served as a blueprint for the Italian Code, i.e. 150€ which coincides with that set for Italian public officials in their applicable Code of Conduct (Decree No. 62/2013). Without entering into detail as to the reasons justifying a higher threshold for parliamentarians, it is essential that the restriction is further, and

more strictly, articulated as to its exact coverage (e.g. what is to be understood as courtesy, ban on monetary advantages, eventual reporting obligations and publication of reports, how to act when the courtesy gift received is valued above the threshold, whether the threshold applies per individual donor/year, in a single or consecutive times, etc.). Likewise, clearer rules and procedures must be put in place regarding the exception provided in Article 4, as detailed above, i.e. invitations to events organised by third parties. The GET recalls that it is important for a country to have in place a consistent and robust framework on gifts which would prevent certain situations from evolving into corrupt relationships and would preserve the objective impartiality of the official concerned as well as the reputation and image of his/her institution.

54. Additionally, restrictions are in place as regards donors: Law No. 195/1974 (Article 7) forbids donations of any kind to MPs from public authorities, corporations in which the state has an equity investment of more than 20% and all the companies controlled by such corporations, if the size of the shareholding is such as to give control to the public body. Donations are also forbidden from any other companies, unless they are decided by the competent corporate body and duly recorded in the budget. MPs (as well as candidates to parliamentary office and other categories of persons therein envisaged), having received donations, contributions and services for a value higher than 5 000€ per year are required to inform the President of the Chamber of Deputies by means of a specific declaration subscribed by them. This declaration (i) shall be jointly subscribed, as a rule, by both the donor and the beneficiary; (ii) may be subscribed only by the beneficiary in case of funds, contributions and services received from foreign countries or for electoral campaigns; (iii) shall be filed within three months of receiving the donation. In case of funds, contributions and services granted by the same entity, and whose total yearly amount exceeds the threshold, the obligation shall be fulfilled within March of the following year. All citizens registered to vote for elections to the Chamber of Deputies can have access to the content of such declarations through printouts from a special database reporting, in particular, the amount of the donations and gifts, the granting subject and the beneficiary (Decision No. 32/1993 of the Bureau of the Chamber of Deputies, in application of Article 8, Law No. 441/1982). Infringements of the applicable donation bans are punishable with an administrative fine of two to six times the undisclosed amount, also in case of a declaration after the deadline. The competent authority for imposing the sanctions is the Prefect of Rome, but because of the complexity of the matter and the uncertainty of the regulatory framework (this matter was formerly governed by criminal rather than administrative law) the application of penalties has proven to be quite difficult and rare in practice. The GET also heard that foundations are used to circumvent the rules on the financing of both single MPs, as well as political parties (in respect of the latter case, a recommendation was issued in GRECO's Third Evaluation Round Report and awaits implementation).

55. In light of the foregoing, **GRECO recommends establishing a robust set of restrictions concerning donations, gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable.**

Incompatibilities, ineligibility

56. The choice between incompatibility and ineligibility to stand for election and to carry out the parliamentary mandate has to do with the different purposes of these two institutions in the Italian legal system. More particularly, the purpose of ineligibility is designed to guarantee the regularity of the electoral process, placing restrictions on the fundamental right of all citizens to stand for election, whereas the purpose of incompatibility is to guarantee that the elected representatives perform their responsibilities properly when they are in personal situations which could, in theory, jeopardise that proper performance. In general terms, incompatibility involves the material impossibility to cover two offices and imposes on those who cover them both to

opt for one or the other, to ensure that exercise of elective office is not subject to conflicts of interest. The causes of incompatibilities for MPs are set out in different legislative measures, as follows.

57. According to the Constitution, the office of deputy is incompatible with other high public offices, i.e. President of the Republic, member of the High Council of the Judiciary, member of regional executive or of regional council and judge of the Constitutional Court.

58. In addition, Law No. 1953/1960 provides for incompatibility between the office of MP and appointments by the Government or State administration⁸, positions in associations or organisations that manage services on behalf of the Government or receive Government grants, positions in limited companies providing primarily financial services. Also, MPs are not allowed to act as legal counsel for financial or economic enterprises involved in litigation with the State.

59. Legislative Decree No. 39/2013 establishes incompatibility of the parliamentary mandate with all the top administrative echelons and top management positions in State, regional and local bodies, public agencies or private agencies under public control, as well as positions in the local health authorities.

60. Other causes of incompatibility are also covered by specific provisions contained in a large number of ordinary laws. These relate to other elected offices (e.g. MEP, mayor of municipalities with more than 15 000 inhabitants), public offices (e.g. member of an independent administrative authority, board member of the Bank of Italy, member of the intelligence services), or private positions (e.g. newspaper editor).

61. The verification of possible causes of ineligibility or incompatibility starts at the beginning of the parliamentary term and entails non-validation of the mandate. In this connection, the Elections Committee of the Chamber of Deputies carries out a preventative check of all the offices and positions declared by Members to determine whether any cases of ineligibility or incompatibility exist. In the current Parliament, which was inaugurated in March 2013, the Committee received around 650 declarations and has so far examined 270 of them, discovering 11 cases of incompatibility (leading to the resignation of one or the other incompatible position) with membership of Parliament involving MPs who were also holding office in regional and municipal elected assemblies⁹. The GET deems this lengthy and cumbersome process to be clearly unsatisfactory: a recommendation to improve the current verification system for ineligibility/incompatibility has been issued in paragraph 51.

62. If the pre-conditions of ineligibility or incompatibility occur during the parliamentary term, parliamentarians have an obligation to communicate, within one month, to the President of the relevant House the positions held, in order to disclose any grounds for incompatibility. In case of incompatibility, MPs must choose between the parliamentary mandate and the other office. Decisions on incompatibility/ineligibility are included in parliamentary reports, which are available on the Parliament's website.

Contracts with State authorities

63. Italian law stipulates that MPs may not hold a position in companies or private enterprises with which the State has work or service contracts, or to which it has granted concessions or administrative authorisations of significant economic value. The

⁸ The prohibition, however, does not extend to positions with cultural bodies, welfare organisations or trade-fair entities; nor does it apply to posts offered by a university or third-level educational establishment on the basis of an appointment approved by academic bodies, or to Government-approved appointments of candidates nominated by trade and industrial associations.

⁹ The verification of ineligibility causes is a lengthy process which has not yet been concluded for the MPs of the 17th legislature.

prohibition also extends to MPs who hold representative, executive or managerial posts in private companies that receive on-going funding from the State, and to MPs acting as legal or administrative consultants for such companies (Article 10, Presidential Decree No. 361/1957). Likewise, MPs may not be appointed or nominated by the government to an office or position of any kind in a public or private sector entity, or to any associations or bodies that operate services of any kind on behalf of the State, or to which the State contributes financially. An MP may not hold a post in a bank or in any joint-stock company whose primary area of activity is financial. Finally, an MP may not act as a professional legal counsel or provide assistance or advice to any company that is engaged in a legal dispute with, or simply has business relations with, the State. Non-compliance with the rules is a ground for terminating the parliamentary mandate. In the last three legislatures, parliamentarians have always opted to renounce to incompatible activities; no parliamentary vote on the loss of parliamentary mandate for this reason has therefore been needed and there have been no single case ascertaining ineligibility pursuant to Article 10 of Presidential Decree No. 361/1957.

Post-employment restrictions

64. The only applicable post-employment restrictions regarding MPs are to be found in Law No. 60/1953 addressing former members of Government. In particular, former MPs who held government posts are debarred for at least one year from the termination of their governmental duties from taking up certain offices or posts, e.g. government appointed offices, posts in associations or organisations that manage services on behalf of public administration or receive government grants, posts in stock companies with prevailing exercise of financial activities (Article 6, Law No. 60/1953).

65. Legislative Decree No. 39/2013 sets out additional restrictions on acceptable post-parliamentary employment, i.e. former MPs cannot accept the position of managing director, medical director nor administrative director of the local health units for one year after the end of the parliamentary mandate. The same prohibition – but for five years – applies to those who ran as candidates in general elections (Article 8(3), Legislative Decree No. 39/2013).

66. The issue of revolving doors was identified as a source of concern during the evaluation visit. The GET was made aware of cases where MPs were hired by private companies after the end of their mandate because of their contacts in the ruling party. Another point relates to former MPs being hired by the lobbying industry; there are no restrictions or cooling-off periods in this respect, other than the requirement of registration under the recently adopted Rules on Lobbying (Article 3, Rules on Lobbying). Recurrent concerns were also expressed regarding judges and prosecutors being elected as MPs for a legislative period and then returning to their previous judicial office (this issue is further explored in the chapters pertaining to the judiciary in the present report). While it is clear that a parliamentary mandate will not, as a rule, span a whole career, and that MPs should therefore be provided with fair opportunities to seek outside employment, the GET is nevertheless concerned that an MP could bring personal interests into the legislative process while having in mind interests that would come into play once s/he leaves Parliament to join/return to the private sector. The GET also accepts that an overly restrictive post-employment rule may discourage professionals from entering the political arena; at the same time, a proportionate approach is needed in order to ensure that there is zero tolerance for cases of blatant conflicts of interest. **GRECO recommends that (i) a study be carried out in order to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interests; and (ii) post-employment restrictions in such cases be introduced, as necessary.** This recommendation must be read in conjunction with the recommendation issued under paragraph 46 as to the clarity and enforceability of any possible post-employment restriction that may be introduced.

Misuse of confidential information and third party contacts

67. With regard to the improper use or misuse of classified data by MPs in the exercise of their functions, non-compliance with statutory provisions contained in the laws establishing Committees of Inquiry can be assimilated to the violation of official secrecy, as envisaged by Article 326 Criminal Code – hereinafter CP (disclosure and use of official secrets). Such cases are punishable with detention from six months up to three years, liable to being increased, from two years up to five, in the event of violations perpetrated to obtain an undue economic benefit. Such statutory provisions are also incorporated in the Rules of Procedure governing the activity and organisation of the aforementioned Committees of Inquiry. During the previous parliamentary term no cases of secrecy violations have been reported.

68. The debate on lobbying in Italy dates from as early as 1945, with nearly 50 bills on lobbying having been unsuccessfully drafted since then. Rules on Lobbying were adopted by the Chamber of Deputies on 26 April 2016, during GRECO's on-site visit to Rome. They establish a register of lobbyists, a requirement for lobbyists to provide periodic reports on their activity on an annual basis, and a disciplinary action consisting of suspension or removal from the register and publication of this measure on the parliamentary website. Regulation on lobbying has also been issued at regional level (Tuscany, Molise and Abruzzo) and at the Ministry of Agriculture.

69. The GET places chief significance regarding the level of transparency around which decisions are made and who influences the decision-making process in Parliament. The mere suspicion that decision-making may take place informally or behind closed doors is yet another factor bound to undermine public confidence. For this reason, the recent enactment of the Rules on Lobbying, by the Chamber of Deputies, is yet another positive move of the current legislature. The Senate has not yet adopted its own regulations on the matter, although the authorities indicated that a draft is currently under consideration by the Constitutional Affairs Committee. The GET urges the Senate to adequately regulate lobbying.

70. The Rules on Lobbying foresee further development of their implementation machinery, which is a welcome sign requiring prompt action. Procedures for securing compliance, including monitoring and enforcement, are most critical for a system to work properly. Furthermore, the GET again recalls how important it is for the legislation to be effective to ensure that it is properly understood, implemented, complied with and reviewed. The GET was informed, after the on-site visit, that steps had been taken to establish a lobbyist register. While having information from a registry will certainly be helpful, the focus of this Fourth Evaluation Round is on the standards applicable to parliamentarians, not those who lobby them. Lobbying involves the actions of both the person who lobbies and the public official who is lobbied. For the process to be properly beneficial, both sides of the process need to act appropriately with regard to one another. This requires more elaborate guidance and awareness-raising efforts, which may touch on, for example, standards for expected behaviour, for example to avoid misuse of confidential information, conflict of interest and to prevent revolving door practices. With respect to the latter, even some of the subjects under the scope of the Rules on Lobbying, i.e. former MPs, considered that the rules were soft. Furthermore, the GET notes that the Code of Conduct does not address issues that can arise from the interactions of parliamentarians with lobbyists or those who engage in similar informational or persuasive activities. **GRECO recommends further developing the applicable rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the parliamentary process, including by developing detailed guidance on the matter and securing its effective monitoring and enforcement. The same measures are recommended for the Senate.**

Misuse of public resources

71. The CP does not envisage any special provisions, other than those already applicable to all public officials, for MPs who misuse public resources. In particular, embezzlement, misappropriation and other diversion of any property by public officials are criminalised by Articles 314 (embezzlement), 316 (embezzlement by taking advantage of another's error) and 323 (abuse of office) CP.

Declaration of assets, income, liabilities and interests

72. This matter is regulated by Law No. 441/1982 and Decree Law No. 149/2013. Notably, Law No. 441/1982 (as supplemented by Decree Law No. 149/2013) requires the disclosure of assets of a number of elected officials, including senators and deputies. More particularly, MPs are required to submit to the Bureau of the relevant House, for each year of their term, a declaration on their property rights on real estate and assets recorded in public registers, corporate shares, equity interests in companies and a copy of the latest tax return in respect of income subject to personal income tax. MPs, at the end of their term, are subjected to the same rules provided for members in office. Pursuant to Decree Law No. 149/2013, data concerning the asset position and income of Members of Parliament, as well as the amounts received (with the consent of each donor), either directly or through committees established to support them, by way of donations exceeding 5 000€ a year, are also available on the website of Parliament. In particular, the personal webpage of each Member of the Chamber of Deputies includes documents relating to assets and income as well as, in certain cases, additional documentation that some Members volunteered to make public at the beginning of the legislature by signing a special release form. The authorities confirmed that all MPs in the current Parliament have so far fulfilled their legal obligations in this area, although this was not the case in former legislative periods.

73. The Code of Conduct now provides for a systematisation of the existing rules in its Article 3. The same disclosure requirements, with the prior consent of the persons concerned, apply to the spouse, unless separated, as well as the children living in the family home and the family members up to the second degree of kinship (parents, brothers and sisters, grandparents, grandchildren).

Supervision and enforcement

74. Breaches of the Rules of Procedure are subject to disciplinary action; they mostly concern the infringement of order and decorum requirements. Sanctions consist of removal of the right to speak and exclusion from the debate (for a period ranging from two to 15 days); these sanctions are to be imposed by the Speaker of each relevant House. In addition, the Bureau may conduct investigations, which necessarily involve the testimony of the MP in question.

75. As described before, following the adoption of the Code of Conduct in April 2016, an Advisory Committee is given competence to investigate breaches of the Code, including on financial declarations. With respect to the latter, until now, the system has heavily relied on public control; the Parliament did not have authority or competence to investigate public allegations of irregularities on this particular matter. Despite the undisputed importance of the control carried out by the public and the media, the GET takes the view that greater institutional safeguards are needed in order to strengthen credibility and accountability of the financial declaration regime in Parliament. As to the available sanctions for breaches to comply with the obligation to submit financial declarations, the only possibility refers to publication of the breach on the website and information to the plenary. The GET again expresses its misgivings as to the real dissuasive effect of publication alone; in the GET's view, stricter consequences must follow any fallacy, inaccuracy or simple non-submission of financial declarations. It is yet

to be seen how these critical shortcomings will be addressed in the context of the newly adopted Code of Conduct; the implementation of the recommendation issued in paragraph 46 can prove to be crucial in this respect.

Immunities

76. Parliamentary immunity in the Italian system, as regulated in the Constitution, consists of:

- a. non-liability (freedom of speech or "*insindacabilità*") of members of parliament for the opinions expressed or votes cast in the performance of their function (Article 68, Constitution). The notion of parliamentary function has been interpreted in broad terms (vocal, written and material behaviours);
- b. inviolability (procedural immunity or "*improcedibilità*") of members of parliament protecting them, during their mandate and in connection with the performance of official duties¹⁰, from pre-trial arrest (except in the case of *flagrante delicto*), house search, interception of their communications and seizure of their correspondence (Article 68(2) and (3) of the Constitution, as amended by Constitutional Law No. 9/1993). Unlike non-liability, inviolability protects the member as long as parliamentary mandate lasts. Once the person is no longer a member of parliament, procedural immunity is no longer applicable, even if the trial deals with facts that took place during the term of office.

77. The relevant procedure for lifting parliamentary immunity is dealt with by the Parliament itself at a court's request. More particularly, immunity matters are referred to a special committee in each House (*Giunta delle autorizzazioni* in the Chamber of Deputies and *Giunta per le immunità* in the Senate, respectively) which looks at the relevant documentation and offers the member involved a chance of being heard. Then the Committee makes a decision and files a report to the relevant House recommending to either grant the immunity in the specific case or to consider it not applicable. Once the decision is taken by the House, it is communicated to the judge (the decision to grant/lift immunity must take place within 30 days following the application of the responsible judge). A decision of Parliament not to lift immunity may be challenged by the court in the Constitutional Court in a procedure of *conflitto d'attribuzione* (i.e. a challenge between two branches of power, the legislative and the judiciary, Article 134(2), Constitution).

78. The Constitutional Court has ruled in the field of parliamentary privilege several times in recent decades in order to develop its scope and meaning¹¹. In this connection, the Constitutional Court has repeatedly stressed that "the safeguards and guarantees provided for by Article 68 of the Constitution (immunity) aim at protecting the parliamentary institutions as a whole, and not at creating personal privileges for senators or deputies". More than once, the Constitutional Court has repealed the immunity granted by Parliament¹². Likewise, the European Court of Human Rights (ECHR), has also had a say on this matter, notably, by ruling against the broad interpretation made by the

¹⁰ A functional link is required between the conduct carried out by the offender and his/her activities or duties (Cass., 15 June 2007, No. 35523, Bossi).

¹¹ See *inter alia* the following judgements of the Constitutional Court: No. 420 of 4 November 2008; No. 97 of 11 April 2008; No. 388 of 23 November 2007; No. 152 of 4 May 2007; No. 96 of 21 March 2007; No. 65 of 9 March 2007.

¹² See *inter alia* the following judgements of the Constitutional Court: No. 410 of 18 November 2008 (immunity granted by the House of Deputies); No. 330 of 8 July 2008 (immunity granted by the Senate); No. 279 of 10 June 2008 (immunity invoked by the Regional council); No. 171 of 15 April 2008 (immunity granted by the House of Deputies); No. 135 of 15 April 2008 (immunity granted by the Senate); No. 134 of 1 April 2008 (immunity granted by the House of Deputies); No. 97 of 11 February 2008 (immunity granted by the House of Deputies); No. 28 of 11 December 2007 (immunity granted by the House of Deputies).

Italian system of the notion of parliamentary immunity in so long as it may lead to an unjustified break of the right of third parties to a fair trial¹³.

79. The EU Anti-Corruption Report (2014) includes some interesting data in this area: more than 30 MPs of the former legislature (2008-2013) have been or are being investigated for corruption-related offences or illegal party financing. Some of these are still undergoing investigation or court proceedings, and some have been convicted in the first instance. For some, the cases were dismissed as they became time-barred or the offences were decriminalised. For some, the statute of limitations intervened before the cases were adjudicated in court through a final decision. One case to be mentioned concerns an MP investigated for links with the Camorra related to the financing of his electoral campaign in exchange for exerting political influence at national level, notably in the area of recycling toxic waste. A pre-trial arrest of the MP in question was twice denied in the Italian Parliament (i.e. refusal to lift immunity). The GET was made aware of a change of approach in the way the immunity prerogative was being understood by the current legislature, notably, with several on-going cases where the immunity of both deputies and senators had been lifted with the result of them being currently under investigation, including in connection with corruption-related offences. The GET concludes that, according to both the figures provided and the opinion of those surveyed on-site, the application of inviolability (Article 68 of the Constitution and the investigative measures mentioned *ibidem*) appears to be quite balanced. If the current practice was to change, and procedural immunity was misused to hamper the investigation of corruption offences, the issue would merit review as a source of concern for GRECO.

Advice, training and awareness

80. At the start of the legislature, all MPs are issued with all the necessary information, with particular regard to the disclosure of their assets and income and of any positions they hold. The GET was also told that the political parties to which individual members belong, as well as its more senior colleagues, are available for advice on ethical matters, as necessary. The newly issued Code of Conduct has established a dedicated Advisory Committee for ethical matters. The GET is hopeful that the establishment of this body will not only assist in responding to ethical dilemmas, but also in ensuring consistency throughout the House as to the understanding of shared values and standards of conduct.

81. The GET further notes that the current legislature is largely composed of newcomers, who have not been serving in former legislatures. For an ethics and conduct regime to work properly, MPs must themselves develop fair and realistic rules, as well as channels and mechanisms to imbue and to uphold strong ethical values. The institutionalisation of a sound integrity system in Parliament is a learning process necessitating inculcation, reinforcement and measurement. Training, raising awareness and disseminating the core values and standards of the code are inseparable elements for proper implementation. All these call for targeted measures of a practical nature, including induction and regular training, issuing frequently asked questions, hands-on guidance materials, etc. **GRECO recommends that practical measures be put in place to support the implementation of clear parliamentary integrity rules including through the development of dedicated training activities.**

82. Finally, as a sign of politicians' commitment to repair their image and recapture public confidence, each House needs to keep exploring ways to instill, maintain and promote a strong culture of integrity in its members. This requires more than just accountability mechanisms. It needs visible support from leadership, as well as effective opportunities to engage in individual and institutional discussions on integrity and ethical

¹³ *Cordova v. Italy* (2003), *Ielo v. Italy* (2004), *De Jorio v. Italy* (2005), *CGIL and Cofferati v. Italy* (2009,2010), *Onorato v. Italy* (2011).

issues related to parliamentary conduct. Furthermore, to support and strengthen public trust in Parliament, GRECO believes it is essential that the public continues to be made aware of the steps taken and the tools developed to reinforce the ethos of parliamentary integrity, to increase transparency and to institute real accountability.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system - The principle of independence

83. The structure of the Italian judiciary is laid out in the Constitution (Articles 101-113, Title IV, Constitution), which enshrines its independence and autonomy (Article 104, Constitution). The principle of impartiality of judges is ensured by the provisions of the Constitution concerning (i) prohibition to institute *ex officio* proceedings (Article 24(1), Constitution); (ii) establishment of judges by law (Article 25(1), Constitution); (iii) prohibition to set up extraordinary (or special) courts (Article 102, Constitution); and (iv) the requirement that judges be subject to law (Article 101(2), Constitution).

84. In particular, as a cornerstone principle, the Italian Constitution guarantees independence of the judiciary as a whole and of judges individually. Pursuant to Article 104 of the Constitution, the judiciary is an independent and autonomous body vis-à-vis other powers. When performing judicial functions, judges are independent and responsible only to the Constitution and to the law and any influence on judges while performing their judicial function is prohibited. The principle of independence is further assured by security of tenure, as enshrined in Article 107 of the Constitution.

85. The principles, structure and organisation of the Italian judicial system are further regulated in Royal Decree No. 12/1941 (Fundamental Law on the Judiciary) and following amendments. A series of legislative decrees have introduced important reforms over the years regarding, *inter alia*, recruitment mechanisms; assessment of magistrates' professional skills; initial and in-office training; organisation of prosecuting offices; transition from the position of public prosecutor to that of judge and *vice versa*; disciplinary measures. Moreover, secondary legislation applying to the judicial system includes regulations, resolutions and circulars issued by the High Council of the Judiciary (*Consiglio Superiore della Magistratura*, hereinafter CSM). An overall reform of the judiciary is currently underway. A commission of experts, set up at the Ministry of Justice, has recently submitted draft proposals focusing, in particular, on: abolishment of some judicial offices; magistrates' recruitment and career; disciplinary liability; incompatibilities; organisation of prosecutorial offices.

86. In Italy, the principle of unity of the judiciary applies, which means that judges and public prosecutors belong to the same professional *corpus* of officials, i.e. magistrates with a common career structure and governed by the CSM. Pursuant to Article 107(3) of the Constitution, magistrates differ from one another only with regard to the functions they perform. The term "magistrate" is used throughout this report to refer to both judges and public prosecutors when no distinction is required and contains recommendations addressed to both judges and prosecutors, as appropriate. Cross references to the current chapter are made in the subsequent chapter (Chapter V) dealing with prosecutors.

Courts

87. The structure of courts in Italy comprises the Constitutional Court, courts of ordinary jurisdiction (in civil and criminal matters) and courts of special jurisdiction, namely administrative, accounting, military and tax jurisdiction.

88. Jurisdiction on constitutional issues is conferred to the Constitutional Court, which consists of 15 judges; one-third of them are appointed by the President of the Republic, one-third by the two Houses of Parliament sitting in a joint session, and one third by the highest-instance courts in the administrative and non-administrative sectors. Candidates are to be either lawyers with at least twenty years' experience, full professors of law, or former judges of the highest administrative or ordinary courts. According to Articles 134 and 90 of the Constitution, the Constitutional Court is competent to decide on: (i) disputes relating to constitutionality of laws and instruments equated to laws whether enacted by the State or Regions; (ii) conflicts of jurisdiction between State powers and/or between the State and Regions or between Regions; (iii) indictments against the President of the Republic as per the Constitution. Review of the constitutionality of laws may be initiated either by the entities that are specifically entitled to do so (State, Regions, autonomous provinces) or in the form of an incidental question raised by a judge in the course of a proceeding, if the judge wishes to establish whether the law applicable to the specific case is constitutional.

89. The ordinary courts have jurisdiction in criminal and civil matters. Civil and criminal cases are tried within a three level court procedure (first instance, appellate review and cassation). Civil and criminal matters are handled by justices of the peace, courts, appellate courts, the Supreme Court of Cassation, juvenile courts, magistrates in charge of supervising enforcement of sentences, and courts in charge of supervising enforcement of sentences. The distribution of judicial offices of ordinary jurisdiction in the national territory is as follows: there are 508 first-instance offices (139 Tribunals and 369 offices of justices of the peace), 26 appellate courts and, finally, the Supreme Court of Cassation based in Rome. The Italian judiciary currently consists of 6 481 ordinary judges (3 007 are men and 3 474 women)¹⁴. In an effort towards enhancing efficiency, the judiciary has undergone a massive structural organisation to centralise judicial functions and to reduce the number of judicial offices; as a result, 31 tribunals and 667 offices of justices of the peace were abolished. Furthermore, the number and structure of judicial offices is currently under review by the Ministry of Justice; a work group was set up for this purpose. In parallel, the abolishment of juvenile courts is also under discussion.

90. Justices of the peace are lay judges who administer jurisdiction, in both civil and criminal matters, for lower value claims and less serious offences¹⁵. Civil and criminal courts of first instance (tribunals) have a general and residual jurisdiction covering issues not specifically assigned to other courts. Specific matters such as labour, bankruptcy and family, are dealt with by special divisions within the same court. Cases are adjudicated by a single judge or a panel of three judges, depending on their importance. In criminal proceedings, the most serious offences are tried before the Court of Assizes which consists of a panel of eight judges, two professional judges and six jurors¹⁶.

91. Appellate Courts are second instance courts which consist of three or more divisions: criminal, civil and labour. Juvenile courts have jurisdiction in criminal and civil proceedings involving minors; their decisions are reviewed by juvenile divisions at appellate courts.

92. The Court of Cassation is the highest Italian court. It assures the correct observance and uniform interpretation of the law, compliance with the limits of the various jurisdictions, decides jurisdictional issues, and fulfils other duties conferred on it

¹⁴ [Data from the official home page of the CSM](#), as of March 2016 (CSM)

¹⁵ Pursuant to Article 7, Code of Civil Procedure, Justices of the Peace preside over actions relating to movables with a value not exceeding 5 000€, actions for damages caused by road accidents when the value does not exceed 20 000€ and other specific matters. In criminal matters, Justices of the Peace have jurisdiction over petty offences, such as slander, threatening etc.

¹⁶ See Article 5 Code of Criminal Procedure; the Court of Assizes has jurisdiction over criminal offences punished with life prison or prison at least 24 years and over other specific crimes.

by law. The Court of Cassation hears appeals both in civil and criminal matters against decisions by lower courts, but it only rules on points of law without examining the merits of cases. To be appointed magistrate at the Court of Cassation, a judge, as a general rule, is to have at least 4th degree seniority (i.e. 16 years of service). The analytical and scientific capacity required by the law is assessed by a special committee, nominated by the CSM, on the basis of the applicant's merit and scientific qualifications, which include written publications; final decisions on appointment are taken by the CSM.

93. The main functions of special courts are enshrined in Article 103 of the Constitution. The administrative courts review administrative decisions taken by public authorities and comprise the regional administrative courts (*Tribunali Amministrativi Regionali*) as first instance courts, and the Council of State. Jurisdiction over accounting matters is exercised by the Court of Audit (*Corte dei Conti*) and, in particular, by Regional Chambers, as first level courts and the Central Chamber. The military jurisdiction is exercised by Military Courts (*Tribunali Militari*), Military Appeals Courts (*Corti Militari di Appello*) and Military Surveillance Courts (*Tribunali Militari di Sorveglianza*) in cases concerning military offences committed by members of the Armed Forces. Administrative, accounting and military jurisdictions are exerted by professional magistrates, recruited through a public competition among candidates with specific requirements. The special jurisdiction courts have their self-government bodies, namely the Presidency Council of administrative magistrates; the Presidency Council of the Court of Audit, and the High Council of Military Judiciary, which are responsible for career, promotions, transfers, disciplinary proceedings etc. The current number of magistrates of special jurisdiction is: 420 administrative magistrates; 527 accounting magistrates; 58 military magistrates.

94. Jurisdiction in fiscal matters is exercised by fiscal courts at provincial (*Commissioni Tributarie Provinciali*) and regional level (*Commissioni Tributarie Regionali*), respectively. The Court of Cassation is competent to hear appeals against decisions of fiscal courts. The members of tax courts are appointed by the President of the Republic, upon proposal of the Minister of Economic and Financial Affairs, following the decision of the Presidency Council of Fiscal Courts, the self-governing body of the fiscal jurisdiction. Tax courts of first and second instance have a mixed composition of (i) professional magistrates (both sitting and retired) belonging to ordinary, administrative and military jurisdictions; and (ii) other professional categories, including, university professors, university researchers or secondary school teachers in legal and economic matters; civil servants, sitting or retired, with a seniority of at least ten years and a law or economic degree; retired officers of the *Guardia di Finanza*; accountants and professionals listed in the registers of engineers, architects, building surveyors etc. They are in any case chaired by professional magistrates. Disciplinary sanctions consist of reprimand, censure, dismissal from office and are adopted by the Presidency Council of fiscal courts. According to the statistics provided, 14 disciplinary sanctions were imposed in 2014 and three in 2015, respectively. The current number of members of fiscal courts is 3 354 at provincial level, and 1 314 at regional level, respectively. A recent law reform on tax litigation has provided the recruitment of new tax judges exclusively among applicants who are already judges or are practicing as lawyers or certified accountants.

95. Taking into account the practical relevance of ordinary courts, as well as the absence of specific criticism concerning special courts, the attention of the GET was largely focused on ordinary jurisdiction. Nevertheless, the fiscal courts deserve special attention as some controversies surround their operation. More particularly, during the on-site visit, several interlocutors expressed misgivings as regards the functioning and composition of these courts. In the light of recent scandals involving members of fiscal courts not belonging to the corps of professional magistrates, mischiefs were raised on-site regarding the adequacy of the mechanisms in place concerning professional evaluation, training, prevention of conflict of interests and sanction of misconduct. The practitioners interviewed pointed out that a main criticism is the lack of adequate professionalism and specialisation. In this connection, the GET notes that, as described

before, the composition of fiscal courts is made up of both non-professional judges belonging to different categories, as well as magistrates from different jurisdictions; therefore, none of these categories are fully dedicated to fiscal disputes. At the same time, the constant increase in workload (at 31 December 2015 the number of pending cases before provincial and regional fiscal courts was 538 191) and the great complexity of certain cases require a high level of professionalism and specialisation. Moreover, fiscal courts suffer from a lack of human resources (1 415 in service out of a total number of 4 668 fiscal magistrates). Some interlocutors also expressed doubts on the adequacy of the remuneration system: it consists of a fixed component, which ranges from a monthly gross sum of 415€ for the President of the court to 311€ for other members, which is complemented by 78€ for each closed case. The authorities provided the following example: a judge who resolves around 10 cases per month and is judge-rapporteur of five cases receives a gross remuneration of 628.50€ (equalling 358€ in net terms). More generally, some interlocutors expressed the view that the distant relation which characterises the interplay between citizens and fiscal administration hinders any possible dialogue between one and the other, which would ultimately allow alternative remedies, detached from the judicial system and emanated from the fiscal administration itself, for instance with conciliation mechanisms, to the benefit of the ever growing, unmanageable amount of appeals clogging the Italian judiciary.

96. The GET further notes that the fiscal jurisdiction is characterised by specific features in relation to other special jurisdictions. Its members are appointed among different professional categories and are not established as an autonomous professional *corpus*. Members of fiscal courts are in some way similar to lay judges, as the retribution system also suggests. That said, the GET expresses the view that the overall supervision over the members of this special jurisdiction suffers from several shortcomings.

97. First of all, the GET notes that the current legal framework provides neither compulsory and regular training nor periodical professional appraisal for members of fiscal commissions. Furthermore, a code of ethics is not in place. Despite the stringent incompatibility regime and the system of disciplinary offences they are subject to, the recent corruption scandals that have arisen in this area suggest that more needs to be done in order to guarantee an effective system for supervision and enforcement of the integrity standards.

98. During the on-site visit, the GET learnt that a recent legislative proposal, submitted to the Parliament on 8 April 2016, aims at abolishing this type of specialised courts and at establishing specialised divisions, within the ordinary tribunals, to deal with fiscal matters. Some interlocutors expressed doubts about such a proposal, stressing that the ordinary courts are already affected by a heavy backlog and, therefore, would be unable to deal efficiently with the extra burden of fiscal cases, despite the planned recruitment of 750 new magistrates. The GET shares these concerns. At the same time, it is clear that a set of measures must be put in place in order to address the above mentioned lacunae. Consequently, **GRECO recommends that (i) a deliberate policy for preventing and detecting corruption risks and conflicts of interests be developed within the fiscal jurisdiction; (ii) appropriate measures be taken with a view to enhancing the professional and integrity supervision over members of fiscal courts, *inter alia*, by introducing a system of periodic assessment and regular training, including on questions of ethics, expected conduct, corruption prevention and related matters; (iii) a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, is established.**

99. After the on-site visit, the authorities indicated that they concurred with the concerns raised by the GET in the preceding paragraphs and the suggested course for improvement. The Presidency Council of Fiscal Courts underscored that, aware of the problems, it had initiated some corrective action, including by enhancing training

programmes in close cooperation with other judicial councils, the Constitutional Court and selected Faculties of Law and Economics, strengthening the disciplinary system, scheduling regular and periodical inspections, approving a three-year Anti-corruption Action Plan (2016-2018), playing a proactive role in the drafting of the law on tax reform, etc.

Lay judges

100. In accordance with Article 106 of the Constitution, the law regulates cases where justice is administered by lay judges. The Italian legal framework comprises different categories of lay judges: justices of the peace, tribunal lay judges (*giudici onorari di tribunale*), experts in juvenile courts and juvenile divisions at appellate courts, experts in courts competent for supervision over enforcement of judicial decisions (*tribunali di sorveglianza*). Tribunal lay judges can examine cases in both criminal and civil matters as single judges¹⁷. Moreover, lay judges can replace a professional magistrate on a panel of three judges. Lay magistrates belong to the judiciary and when performing their duties are to comply with the same principles and rules as professional magistrates. Supervision over lay judges is exerted by the CSM; measures have been recently taken to strengthen professional checks over lay judges, notably, through triennial appraisals.

101. The GET is aware that lay judges in Italy play an important role in the management of judicial cases and workload, especially considering the lasting vacancy of posts within the judiciary. The CSM has, over the years, gradually broadened the scope of their competences, assigning them more than a role of substitution of professional judges¹⁸. The Government has repeatedly prolonged the functions of lay judges, even after the expiration of their term of office, in order to avoid serious mismanagement within the justice system as a consequence of the sudden cessation of their duties. In this regard, the GET welcomes the comprehensive reform of honorary magistrates which has been launched. The GET was informed after the on-site visit of the adoption of Law No. 57/2016 on "Delegation to Government to undertake a comprehensive reform of lay magistrates and justices of the peace", which aims at globally reforming the discipline of such categories, establishing a single *status* of lay judges and, *inter alia*, enhancing their professional training, supervision and assessment. According to Article 5 of the aforementioned Law, the President of the court coordinates justices of peace. In addition, Article 4 strengthens the regime of incompatibility for justices of the peace, aiming at preventing any possible conflict of interest. These two provisions are already fully operative, while the other provisions of the Law await further implementing regulation.

Ministry of Justice

102. Under the Italian Constitution (Article 110), the Minister of Justice is responsible for the organisation and running of the service necessary for the exercise of judicial functions (staff recruitment, administration, provision of buildings and operational structures etc.). The Minister of Justice is also responsible for disciplinary actions against magistrates (Article 107, Constitution) and oversees the correct functioning of the justice system. To fulfil these duties, the Minister of Justice is entitled to exercise functions of inspection and to conduct administrative enquiries.

¹⁷ See Article 43 bis, Royal Decree 12/1942. In criminal matters, lay judges can administer jurisdiction over offences punishable with imprisonment of no more than four years or a fine or both, and other specific crimes listed in Article 550 of the Code of Criminal Procedure. In civil matters, tribunal lay judges can examine proceedings which can be held by a professional magistrate as a single judge; they cannot examine proceedings related to bankruptcy, company law, precautionary measures etc.

¹⁸ Lay tribunal judges can perform their functions according to mentoring schemes, in strict cooperation with professional judges, or autonomously deal with judicial cases, within the limits provided by the law. Such a possibility is allowed only in cases of serious vacancy of posts in the office.

Self-governing bodies

103. The Italian judiciary has a strong component of self-administration. Under Article 104 of the Constitution, the High Council of the Judiciary (*Consiglio Superiore della Magistratura*, CSM) is established as an independent and autonomous body to provide for and guarantee the independence and autonomy of the judiciary. It is responsible for recruitments, transfers, promotions, professional assessments and disciplinary measures (Article 105, Constitution). Moreover, it drafts proposals and opinions concerning the organisation of the judicial system. The Council is also vested with the authority to protect the image of the judiciary and to respond to any behaviour which may jeopardise the credibility and the independence of the judiciary. The CSM was set up for the first time in 1958. A reform of the CSM is currently subject to discussion; a Commission of Experts (so-called *Commissione Vietti*), set up at the Ministry of Justice, has recently presented draft proposals in this respect (e.g. regarding the day to day functioning of the CSM, the distribution of work for disciplinary proceedings, transparency of the voting system in plenary sessions of the CSM, etc.). The authorities underscored that the current CSM has given priority to internal reform of its functioning in order to enhance its transparency and accountability, and steps are being taken accordingly (e.g. new rules on the selection of high posts in the judiciary dating from 30 July 2015, reform of internal rules of 26 September 2016, etc.)

104. As to its composition, the CSM includes three members in their own right: the President of the Republic (who also chairs the CSM; in that role, s/he represents national unity and guarantees abidance by the Constitution), the President of the Court of Cassation, and the Prosecutor General at the Court of Cassation (Article 104, Constitution). As far as the 24 elected members are concerned, 16 are judicial members elected by all the magistrates from among those belonging to the various categories: two magistrates from the Court of Cassation (judges and/or public prosecutors), four public prosecutors and 10 judges from courts deciding on the merits (i.e. first or second instance courts). Members from the judiciary are elected according to a majority system in a single nationwide constituency for each of the three categories. The remaining eight non-judicial/lay members are elected at a joint session of Parliament (a majority of three-fifths of the members of the two Houses is required at the first two ballots, whilst a majority of three-fifths of the voting members is enough as from the third ballot onwards), which selects them from among university professors in legal matters and advocates having experience in the legal profession for at least 15 years. Elected members hold office for four years and may not be re-elected for the next term. Members of the CSM elect a Vice President among lay members. The Vice President chairs the plenary meetings in case of absence of the President of the Republic and exercises the functions delegated to him by the President. Moreover, s/he chairs the Presidency Committee, entrusted with the task of promoting the activity of the council, implementing the resolutions issued and managing the budgetary funds. The CSM has financial and accounting autonomy. With particular reference to the role of the President of the Republic in the CSM, the GET deems it in line with international standards, which stress that members of judiciary councils should not be active politicians, members of parliament, the executive or the administration¹⁹. In Italy, the President of the Republic is the Head of State, appointed for a period of seven years by a two-thirds vote of Parliament, among any Italian citizen who is 50 years or older and enjoys civil and political rights. His/her term and conditions of tenure are independent from political parties; the President's term may only end by voluntary resignation, death, permanent disability (due to serious illness), and dismissal for crimes of high treason or an attack on the Constitution. The office of President of the Republic is incompatible with any other office. The President of the Republic only has formal or ceremonial powers: presidential acts must be countersigned by a member of the Government (with the exception of the

¹⁹ Opinion No. 10(2007) of the CCJE on the Council for the Judiciary at the service of society

autonomous presidential powers of pardons and commutations) and political responsibility lies with the government (Articles 83 to 91, Constitution).

105. The organisation, duties and competence of the CSM are further regulated in the law²⁰ and in the internal rules of procedure adopted by the Council. For the CSM's resolutions to be valid, at least 10 judges and five members elected by Parliament must be present. Decisions are adopted on the basis of a majority of votes; in the event of a tied vote, the vote of the President shall prevail. The Council carries out its duties in plenary settings, upon proposal of the competent commission. Each commission consists of six regular members (four magistrates and two lay members) and is competent for specific matters.

106. The CSM is the head of the bureaucratic organisation in charge of managing judicial-governing functions. To fulfil its tasks, it is supported - on different grounds - by Judicial Councils and the heads of courts and public prosecutor's offices. Judicial Councils are local self-governing bodies established in each judicial district; they draft opinions and proposals concerning the organisation of courts and the career of magistrates, such as professional appraisals, opinions for promotions, change of functions etc. Judicial Councils also carry out the preparatory activities related to proceedings concerning lay magistrates and exert supervisory functions over the activity of judicial offices within the districts. The Judicial Councils' opinions and proposals are submitted to the CSM which is ultimately responsible for the final decision.

Recruitment, career and conditions of service

107. To become ordinary magistrates, candidates have to pass a competitive public examination (Article 106, Constitution) consisting of three written exams and an oral interview. The basic requirements for admission to the competition are: to hold Italian citizenship, be under 40 years of age, not to be banned from civil rights, irreproachable conduct. The authorities stressed that background checks are stringent and that specific requirements include: absence of criminal convictions; not to be subject to preliminary investigations; not to have been displaced or dismissed from office in the public administration for poor performance, etc.

108. Only candidates who have a law degree and the diploma issued by the post-graduate Schools for Legal Professions are admitted to the examination. Furthermore, candidates belonging to the following categories may participate in the exam without the Schools for Legal Profession diploma: administrative and accounting magistrates; civil servants having a law degree and at least five years' seniority in upper-level positions; university professors in legal matters, lawyers who have not been subject to disciplinary sanctions; honorary magistrates having at least six years of professional experience; law graduates with a PhD in legal matters. Successful candidates are appointed (as) magistrates by decree of the Minister of Justice upon decision of the CSM, which is to approve the ranking list established by the Commission.

109. Newly appointed magistrates do not exercise judicial functions, but have to undergo a training period of eighteen months (one year of general training and six months of specialised training, corresponding to the functions that the magistrate shall discharge, i.e. as judge or prosecutor). The training consists of theoretical and practical courses and it is partly conducted at the Higher Judicial School (six months), part-time (twelve months) within the different judicial offices.

110. At the end of the general training, the CSM is to assess whether magistrates can be conferred with judicial functions on the basis of the comments expressed by the

²⁰ Law No. 195/1958 on Composition and Functioning of the CSM, as amended by Law No. 695/1975.

competent Judicial Council and the trainee's coordinating magistrate (on the basis of the different assessments made during the training period by the responsible senior supervising magistrates of the trainees)²¹. Opinions are also expressed by the High Judicial School (*Scuola Superiore della Magistratura*). Criteria to be taken into account include: professional expertise, legal analysis skills, ability to perform the functions responsibly; productivity and dedication to work; diligence; independence and impartiality. In case of a negative appraisal, a magistrate is admitted to a new training period of one year; a second adverse appraisal implies being dismissed from employment. At the end of the training, magistrates are appointed by decree of the Minister of Justice on proposal of the CSM. Magistrates cannot carry out functions as pre-trial investigation judge, criminal single judge (for the most serious offences)²² and preliminary hearing judge before they undergo their first professional appraisal, four years after their appointment.

111. As an exception to recruitment by competitive examination, regular university law professors and lawyers of at least fifteen years' standing and registered in the special rosters entitling them to practise in the higher jurisdiction courts may be appointed Counsellors of the Supreme Court of Cassation on exceptional merit (Article 106, Constitution).

112. Security of tenure is enshrined in Article 107 of the Constitution and magistrates may only be suspended, exempted from service or transferred upon a resolution by the CSM and in cases set up in the law (principle of irremovability). Accordingly, a magistrate as a rule may be transferred to another district and/or entrusted with different functions exclusively with his/her consent upon a resolution by the CSM.

113. Notwithstanding the security of judges' tenure, pursuant to Article 19 of Legislative Decree No. 160/2006, judges at first instance courts and appellate courts cannot exert the same functions within the same office for more than a certain period, which the CSM has established to be 10 years. This measure is designed to prevent the excessive concentration of powers and to guarantee a fair rotation among magistrates.

114. Transfers follow a competitive procedure which starts upon publication of the list of available positions; the allocation of candidates is based on objective criteria such as seniority and qualifications. Health and/or family reasons can be taken into consideration in particular cases. The exceptions to this rule, i.e. the cases in which magistrates may be transferred *ex officio*, are set forth exclusively by law: transfers to cover specific service needs; transfers due to abolition of the office or workforce reduction; transfers due to incompatibility reasons. *Ex officio* transfers can be challenged before the administrative court.

115. Moreover, magistrates can be transferred *ex officio* whenever they are unable to discharge their functions in an independent and impartial manner due to reasons for which they may not be considered responsible. Such a measure, which is administrative in nature, is adopted by the CSM in cases where judicial functions cannot be properly exerted for reasons which do not necessarily require disciplinary measures (for instance, this was adopted in respect of a chief prosecutor as a consequence of serious conflicts and a breakdown of trust between him and the other magistrates in the office). This transfer is different from the disciplinary one, which can be imposed as a precautionary measure or an accessory sanction as a consequence of a disciplinary offence. Some interlocutors expressed the view that such a measure should be enhanced in order to provide the CSM with appropriate and prompt instruments to remove magistrates in every situation which may entail a prejudice for the credibility and the image of the judiciary, without waiting for the disciplinary decision; this view is strongly shared by the

²¹ Coordinating magistrates are contact points for several (normally, five) new recruits.

²² Newly appointed magistrates can administer justice as single judges in proceedings concerning the offences listed in Article 550 of the Code of Criminal Procedure.

GET. According to the information provided, since 2011 the CSM adopted only two transfers for "incompatibility reasons" (most cases were closed as the magistrates concerned applied for a different post before the decision was adopted).

116. Career advancement is the same for judges and prosecutors. The work of all magistrates is subject to regular evaluation on the basis of objective and uniform criteria and standards stipulated by the law and detailed in the CSM's circulars. Judges and prosecutors undergo appraisal every four years, until they pass their seventh professional appraisal, after 28 years of employment. The criteria governing the appraisal proceedings include: 1) legal expertise and professional skills; 2) productivity and efficiency; 3) diligence; and 4) commitment. Indicators to be taken into account include for evaluating the aforementioned criteria refer, *inter alia*, to quality of judicial decisions; outcome of judicial decisions (i.e. whether the number of decisions overturned reveals some anomalies); number of judicial decisions issued and number of proceedings closed; compliance with timelines; degree of participation and contribution to the proper function of the office (i.e. availability in replacing colleagues, frequency of attendance of training courses, contribution to solving organisational issues, etc.). Independence, impartiality and balance are prerequisites which are considered indispensable for the discharge of judicial functions and are expressly taken into account by the CSM, Judicial Councils and heads of judicial offices when appraising magistrates; failure to meet these fundamental requisites lead to a negative appraisal. The law provides for specific consequences, both professional and economic, as a result of a "non-favourable" or "negative" appraisal; a magistrate is to be released from service in case of a double negative appraisal. In the last five years the CSM issued 44 negative appraisals, 117 "non-favourable" appraisals and 9 428 favourable appraisals.

117. Regarding termination of judicial office, a magistrate is dismissed in the following cases: in case of a double negative appraisal; when the disciplinary sanction of dismissal is imposed; when they are not able to properly perform judicial duties due to health reasons. Magistrates retire at the age of 70 years.

118. As to the remuneration of magistrates, the salaries of judges and prosecutors follow the same grading system. Magistrates, at the start of their career, receive annually a gross salary of 46 703.95€ (29 446.90€ net). Trainee judges and prosecutors are entitled to the following allowances when they are appointed to the first duty station which is different from the place of residence: 1) assignment allowance for one year (about 400€ net for six months and 200€ for a further six months); 2) one-time installation allowance (about 1750€ net for magistrates who move with their family); 3) reimbursement of travel costs and removal expenses to reach the new duty station. The salary increases at the third, fifth and seventh professional evaluation, respectively after 12, 20 and 28 years from the appointment. The gross salary of magistrates who undergo the seventh and last professional assessment is 170 078.97€ (92 965.81€ net). The first president of the Court of Cassation receives a gross annual salary of 240 000€ (127 398.02€ net), so-called remuneration cap. Magistrates are not entitled to additional benefits, such as family and library allowance, special taxation regime, or housing benefits.

119. Changing from the position of judge to prosecutor (and vice versa) is possible, but specifically forbidden by law in the following cases (i) within the same judicial district; (ii) within other districts of the same region; (iii) within the district of the court of appeal established by law as holding jurisdiction in the matter of criminal liability of magistrates of the district where the magistrate holds office when changing functions. A magistrate can change from one function to another four times at the most during his/her whole career, and has to exercise a given function for at least five years before changing again. Before changing functions, magistrates are required to attend a specific training course. Moreover, they need the favourable appraisal of the CSM, issued on the basis of the opinion by the responsible Judicial Council indicating that the relevant magistrate is

suitable to exercise the different function. In the last five years, 96 judges moved to the position of prosecutor, and 128 prosecutors switched viceversa.

120. Finally, all decisions of the CSM concerning promotions, evaluations, transfers and, in general, magistrates' careers are subject to appeal before the administrative court. The GET considers the recruitment, evaluation and promotion system of Italian magistrates to be both detailed and rigorous, and as such, vested with due guarantees of objectivity and accountability.

Case management and procedure

121. The Italian Constitution provides for the principle of pre-determination of natural judge under the law, i.e. a judge selected on the basis of objective and predetermined criteria set forth in advance by law. This fundamental principle is intended to ensure impartiality of judicial functions as well as independence of judges.

122. The assignment of cases within the competent court is first done according to the divisions dealing with specific matters (i.e. criminal, civil, labour, family law, bankruptcy, company law). Cases are distributed automatically on the basis of objective and pre-established criteria laid down in court schedules (*tabelle di organizzazione*). Heads of courts are to set the organisational programmes of the office under their responsibility, every three years, following the rules of the CSM²³. The court schedules take into account the structure and the organisation of the judicial office, the workload, the number of judges (both professional and lay magistrates), etc. They are submitted for approval to the competent Judicial Council, which drafts an opinion, and subsequently subject to approval by the CSM. Derogation from the predetermined criteria is admissible only in cases of proven service needs and must be specifically motivated. A judge can be removed from hearing a case if there are grounds for disqualification.

123. Court proceedings are, as a main rule, public and oral but the public may be excluded by decision of the court (for instance to protect a State secret, to preserve public order and morality, to protect the privacy of private parties or witnesses, or in proceedings concerning sexual offences)²⁴. As for civil proceedings, parties, lawyers, judges and judicial staff have direct access to the whole judicial file (on-line civil trial, so-called *processo civile telematico*), while public can access an area containing information on the stage of the procedures and other non-confidential information. Moreover, almost all judicial offices have a website.

124. The principle of reasonable length of proceedings is enshrined in the Italian Constitution (Article 111) and it is also recognised in Law No. 89/2001, which entitles parties to claim fair pecuniary compensation from the State in case this right is violated. In order to prevent the excessive length of proceedings, heads of courts check that judges conclude proceedings without unnecessary delay and adopt the organisational measures to ensure efficiency and compliance with the deadline established by the law²⁵. Moreover, reiterated, serious and unjustified delay in performing judicial activity is considered a disciplinary offence. The significant workload generated at all instances has resulted in procedural delays and many disciplinary proceedings being instituted in respect of the magistrates concerned; in point of fact, most disciplinary proceedings against judges concern delay in performing judicial activities (see paragraph 168 for details and concrete figures).

²³ Every three years the CSM drafts a circular establishing the objective criteria for the allocation of cases (both civil and criminal) to chambers, panels and single judges.

²⁴ See Article 128 Civil Procedure Code and Article 472 of the Code of Criminal Procedure.

²⁵ Pursuant to Article 37 of Law No. 111/2011, heads of judicial offices adopt an annual work programme aimed at managing the pending cases and reducing the length of proceedings.

125. In this connection, the backlog of cases remains a major issue for the Italian judiciary. Although Italian magistrates are ranked among the most prolific in Europe, in both criminal and civil proceedings, the latest reports of the European Commission for Efficiency of Justice (CEPEJ) evidence that Italy is one of the countries with the highest number of pending cases and the longest duration of proceedings²⁶. In recent years, the Italian authorities have taken a number of legislative measures to address the inefficiencies in the justice system, including through the reorganisation and rationalisation of courts, introduction of mandatory mediation in civil matters, “filter” system for appeals in civil proceedings²⁷, settlement of disputes outside court, development of on-line civil trials, etc. Positive results have already been seen and Italy is registering a slight decrease in incoming cases; however, the backlog remains problematic with a total number of 3 886 285 civil proceedings and 3 467 896 criminal proceedings pending before the Italian courts²⁸.

126. As for the length of proceedings, some positive results have been reached in civil matters. A recent study of the Ministry of Justice shows that the average duration of civil proceedings before tribunals in the first months of 2016 is 367 days. Nevertheless, the disposition time is still excessively long, especially before courts of appeal and the Court of Cassation. Indeed, the average duration in the period 2014-2015 is: 819 days at second instance and 1 427 days at the Court of Cassation. A similar situation occurs in criminal cases, with a disposition time of over a year, i.e. 389 days at first instance tribunals, 819 days at appellate courts, and 1 427 days at the Court of Cassation²⁹. During the on-site visit, several interviewees stressed the need to rationalise and simplify the procedures in place, both in civil and criminal law. Moreover, some judiciary interlocutors highlighted the importance of an urgent adoption of legislative reforms already pending before Parliament (a draft law on amendments to the CP and the CPC, regarding, *inter alia*, the statute of limitations, amendments to the appeal system before both courts of appeals and the Court of Cassation and aimed at rationalising the procedure; legislative decrees on decriminalisation of minor crimes, etc.). The rationalisation of the access to appellate courts and the Court of Cassation is, in the GET’s view, crucial to invert backlogs, thus, the GET can only endorse the steps taken by the authorities in this area (notably, through the development of filters), and thereby urges Italy to keep up their efforts in this sensitive domain, including through prompt adoption of legislative initiatives in the pipeline.

127. Another issue, which was raised during the on-site discussion, concerned the shortage of material and human resources which affects the adequate operation of an overburdened justice system. In this context, it is to be noted that Italy has one of the lowest numbers of judges *per capita* in Europe and it is one of the more litigious countries. There are almost 1 100 vacant posts which need to be filled out of a total number of about 9 000 professional magistrates. The number of auxiliary staff in judicial offices is also inadequate, as retired and leaving staff have not been replaced and there

²⁶ [CEPEJ Report on European Judicial Systems](#), 2016 (2014 data)
[CEPEJ Study on Council of Europe Member States on Appeal and Supreme Courts' Lengths of Proceedings](#), September 2015 (2006-2012 data).

²⁷ The so-called “filter” phase is aimed at selecting only the deeds of appeal deemed by the court to be likely to succeed. Where the court decides, on the basis of a preliminary examination of the case, that there is no “reasonable probability” of a positive outcome, the deed of appeal will be declared inadmissible. The decision must be taken at the first hearing, after having heard the parties, and through a motivated decision. When the appeal is declared inadmissible, the appealing party may challenge the first instance decision only before the Court of Cassation. The “filter” phase is not applicable to proceedings where the involvement of the Public Prosecutor is required (e.g. bankruptcy declaration proceedings), or to summary proceedings.

²⁸ Data from (i) regarding civil cases, the Statistics Office of the Ministry of Justice (issued in the second semester of 2016). The remarkable decrease in incoming procedures from 1 947 538 in 2013 to 1 748 384 in 2015 has resulted in Italy moving up from 160 to 111 in the World Bank Doing Business Index (2016); (ii) regarding criminal cases, Ministry of Justice [Report on Italian Justice in 2015](#), issued by the First President of the Court of Cassation.

²⁹ [Effective results of judicial reforms: 2016 improvements in civil justice](#), Ministry of Justice, 2016.

has been no recruitment of court personnel in the last 18 years³⁰. The allocation of sufficient financial and human resources to enable the judiciary to perform its role in appropriate working conditions is critical for both the efficiency of the judicial system and for the independence of the judiciary, but the GET also considers that, at times of economic and financial crisis leading to budgetary cuts across all sectors of government, it is also decisive that efforts are geared towards better management of scarce resources. The Italian authorities said to be working sharp in this direction and the GET encourages them to continue doing so in order to assure better efficiency in the management of the means already at disposal of the judicial system. A recent resolution of the CSM, issued in June 2016, draws attention to the urgency of the problem, calls for prompt action and outlines proposals to the Ministry of Justice in this respect.

128. Furthermore, the problem of the expiry of the statute of limitations remains unresolved. Despite some recent progress in this area, statistics show that the number of criminal proceedings for which the limitation period expired before the trial could be concluded is still alarming. In 2014, there were 132 296 criminal proceedings which became time barred (23% of which at second instance)³¹. It is clear that the high chance of having criminal prosecutions time-barred has, in turn, the detrimental effect of increasing the number of appeals to superior courts, already overstretched, and discouraging access to alternative resolution means, such as plea bargaining. GRECO, in its Joint First and Second Evaluation and Third Evaluation Reports already expressed serious concerns as to the issue of the statute of limitation and its negative impact on investigating and adjudicating corruption cases in Italy, urging the authorities to take appropriate steps to address this state of affairs³². The GET regrets that a harmonised and systematic reform of such a crucial matter is not still in place.

129. Taken altogether, the aforementioned factors lead to two inevitable detrimental situations affecting both public perception and the day-to-day reality of the practitioners. On one hand, the delays and backlogs are key in understanding public mistrust in the judiciary and their capacity to prosecute and punish corruption. On the other hand, the excessive workload of magistrates, together with their restrained resources, have a negative impact on the motivation levels of the profession, their capacity to meet reasonable procedural timeframes and the quality of the decisions issued, as the GET heard on-site. The number of appeals, for instance, is clearly excessive for the capacity of the judicial system as a whole (hence the establishment of a filter phase, as described before, to limit the number of cases reaching and clogging appellate courts). As some interlocutors stressed, the lack of adequate resources may well objectively and subjectively affect the judges' work, all the more so when the justice system as a whole already suffers from an excessive workload.

130. In light of the foregoing, **GRECO recommends that (i) the authorities continue in their endeavours to ensure efficiency of the justice system through a prompt adoption of the planned reforms in civil and criminal matters, including the reform of the appeal system and of the statute of limitation; (ii) an analysis be carried out of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial system.**

³⁰ A call for 1 000 auxiliary posts in judicial offices was opened after the on-site visit.

³¹ Data from the Ministry of Justice, 7 May 2016 available on [Giustizia Newsonline. Home - Ministero della Giustizia](#)

³² See Joint First and Second Round Evaluation Report on Italy (Greco Eval I-II Rep (2008) 2E), paragraphs 54 to 57; Third Round Evaluation Report, (Greco Eval III Rep (2011) 7E Theme I Incriminations, paragraphs 115-118). The GET was informed after the on-site visit of an on-going study identifying trends and causes for bottlenecks regarding criminal cases and setting in motion measures to tackle problems, including through a more efficient follow-up system of criminal cases through a data web register (similar to that already in place for civil cases).

Ethical principles and rules of conduct

131. The fundamental values concerning the judiciary and conduct expected from judges are enshrined in Title IV of the Constitution (Articles 101-113). Moreover, pursuant to Article 54 of the Constitution, those citizens entrusted with public functions have the duty to fulfil such functions with discipline and honour, taking an oath in those cases established by law. Additionally, Article 1 of Legislative Decree No. 109 of 23 February 2006 on Duties of Members of the Judiciary provides that (i) judges and public prosecutors perform their duties impartially, correctly, diligently, industriously, discretely and with equanimity, and shall respect personal dignity while exercising their duties, and that (ii) even when not performing their duties, judges and public prosecutors do not engage in conduct which, even though legal, may compromise their credibility, prestige and decency or the reputation of the judiciary as a whole.

132. The Code of Ethics adopted by the National Association of Magistrates (ANM) in 1994 is the oldest in Europe. The Code, which was reviewed in 2010, consists of 14 provisions covering the conduct of the judiciary, as understood in its broadest scope, thereby including judges, public prosecutors and heads of judicial offices. It contains a compilation of ethical principles and rules with which judges and prosecutors must comply when performing their judicial functions, as well as in their public life (e.g. dignity, impartiality, diligence and professionalism, respect and consideration of others, discretion, cooperation, etc.). The Code is a self-regulatory and non-binding instrument generated by the judiciary itself.

133. The Code does not include any provisions concerning its monitoring nor does it provide sanctions for breaches of rules of conduct. The Italian authorities clarified that, pursuant to the Statute of the ANM, a special body, *Collegio dei Probiviri* (hereinafter *Probiviri Committee*) is responsible for exerting disciplinary powers over associated magistrates when their acts contravene the general purposes of the Association and might discredit the judiciary (Article 9, Statute of the ANM). Disciplinary sanctions entail censure, suspension of social rights for up to one year, and expulsion from the association. The sanctions are decided by the Central Directive Committee of the ANM upon proposal of the *Probiviri Committee*. The on-site discussion showed that only 13 procedures had been opened since the code was in place and that no sanctions have ever been imposed, as in most cases the concerned magistrates spontaneously resigned from the association. The GET shares the opinion expressed by several interlocutors that the supervising and sanctioning role of the *Probiviri Committee* can certainly be strengthened in order to ensure an effective implementation of ethical rules; in this connection, the GET heard that the ANM is currently working in this direction. In the view of the judges and prosecutors met on-site, the main monitoring functions on magistrates' ethics are exerted by the organs responsible for disciplinary proceedings. Indeed, disregard for most principles and rules enshrined in the Code's provisions may also constitute a breach of duty or irregular performance of judicial service under the Law on Disciplinary Offences and give rise to disciplinary sanctions.

134. The GET agrees that the Code of Judicial Ethics is a valuable document, even if its accountability mechanism is not as efficient as it should be. In this connection, the GET notes that the Code only applies directly to members of the ANM (about 90% of magistrates belong to the ANM). More generally, the GET takes the view that, even if most ethical principles are reflected in the Law on Disciplinary Offences, legal duties and standards of professional conduct, such as those contained in a Code of Ethics, are not interchangeable; indeed, they fulfil different purposes³³.

³³ See also Recommendation CM/Rec(2010)12, Explanatory Memorandum, paragraph 73: ethical standards aim at achieving, in an optimal manner, the best professional practices, while disciplinary regimes are essentially meant to sanction failures in the accomplishment of duties. The European Commission for Democracy through Law (Venice Commission of the Council of Europe), states that codes of conduct should provide standards of good behaviour that help to resolve questions of professional ethics, provide judges with autonomy in their

135. That said, the GET believes that an effective prevention of misconduct within the judiciary requires a more proactive, systematic and concrete approach. In fact, the quality of behaviour of judges and prosecutors plays a crucial role in public confidence in the administration of justice. As GRECO has repeatedly stressed, a code of ethics is most valuable when it provides practical guidance on how principles apply and helps solve concrete situations - for example, as regard conflicts of interest, incompatibilities, gifts, how to behave when magistrates are faced with undue influence, etc. A code of ethics needs to be conceived as a living document, complemented by explanations, interpretative guidance and concrete examples.

136. Practical knowledge of ethical duties should, therefore, be disseminated more actively within the Italian judiciary not only by the ANM, but also by and in the CSM, as the body responsible for the professional life of magistrates, whose members should demonstrate the highest degree of transparency towards judges and society. The GET takes note of the activities that the CSM is already performing in this regard through its advisory replies on deontological matters (*risposte ai quesiti*) upon individual requests of magistrates - including chief of courts/prosecution offices, and the subsequent building-up of jurisprudence in this domain; these opinions of the CSM are publicly available online³⁴. Furthermore, the GET is of the opinion that a more proactive role in the field of ethics can be played by the High Judicial School; including ethics and standards of conduct as a permanent component of initial and in-service training for both professional and lay magistrates would considerably increase awareness on ethics. The training should be focused on real-life scenarios, such as those indicated above, provide counselling and advice on ethical questions within the judiciary and include also the active participation of lawyers and other law professionals, in order to create a common and shared mind-set. Without such a practical approach, the Code risks being a mere document. In line with the above, **GRECO recommends that (i) a Code of Judicial Ethics, which covers in scope all magistrates, whether associated or not, is further developed and complemented by explanatory comments and/or practical examples, including guidance on conflicts of interest, gifts, etc.; (ii) the proper application of the rules of conduct is ensured via an effective supervisory mechanism and accompanied by dedicated and regular training, advice and counselling for both professional and lay magistrates.**

Conflicts of interest

Recusal and routine withdrawal

137. Procedural safeguards are in place to prevent and resolve conflicts of interest arising from private activities and interests, or connected with persons close to a judge or prosecutor (for family reasons or business relationships). The aforementioned safeguards are established, pursuant to Articles 34, 35 and 36 CPC, as follows:

- (i) specific cases: a) a judge must withdraw if he/she has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; b) the judge is tutor or employer of one of the parties in the proceeding, or his/her spouse or close relative is a party's defendant or tutor or employer; c) the judge has expressed an opinion or provided advice with respect to the object of the case outside the scope of his/her function; d) serious enmity occurs between the judge or his/her close relatives and one of the private parties in the proceeding; e) a judge's spouse or close relative is a victim or is damaged by the criminal offence or is a private party; f) a judge's close

decision-making rather than be seen as binding legal provisions. Similar principles are also expressed in the Magna Carta of Judges and the Opinions issued by the Consultative Council of European Judges (CCJE).

³⁴ An overhaul of the CSM website, with a view to rendering it more transparent, is scheduled for early 2017 at the latest.

relative, or a close relative of his/her spouse, performs or has performed as prosecutor in the proceeding;
(ii) more generally, when any serious reason that casts doubts on his/her impartiality arises. Similar rules apply to civil proceedings.

138. Judges must, immediately upon becoming aware of the existence of any reason for withdrawal, submit the declaration of abstention to the court president. The declaration is examined by the President of the Court of Appeal when the impediment regards the president of a court of first instance. Similarly, the President of the Court of Cassation shall decide on the statement of abstention of the President of the Court of Appeal. The competent president shall appoint a substitute where grounds for disqualification are found. Under similar grounds, parties and the defence counsel may submit to the court president a motion for recusal of the judge. In criminal proceedings, a ruling denying a recusal motion may be challenged before the court of appeal. Concerning the withdrawal of the President of the Court of Cassation, s/he is replaced by another judge of the Court of Cassation, whose appointment is based on objective predetermined criteria.

139. Other reasons for incompatibility are established in Articles 16, 18 and 19 of Royal Decree No. 12/1941 concerning relations between magistrates and their spouses or relatives. As a general rule, a judge/prosecutor cannot exert functions in judicial offices where his/her spouse or cohabitee, relatives up to second degree or an in-law within the first degree practise the legal profession as a lawyer. Moreover, family or affinity relationships between judges and prosecutors are considered as reasons for incompatibility within the same judicial office. Magistrates in situations of incompatibility can be transferred ex-officio.

140. Grounds for incompatibilities are assessed by the CSM following an opinion by the competent Judicial Council on the basis of elements such as: the size of the judicial office, its organisational structure, the specialisation functions exerted by the magistrate, the significance of the legal profession practiced by the magistrate's spouse, cohabitee or relative. The matter is exhaustively regulated in several circulars issued by the CSM.

Prohibition or restriction of certain activities, post-employment

141. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. Pursuant to Article 16(1) of Royal Decree No. 12/1941, magistrates cannot hold private or public posts or offices, except for those as senator, national counsellor or unpaid administrator of charitable public institutions. They cannot even engage in businesses or trades or any liberal profession; likewise, they cannot accept jobs or take the role of arbitrator without the authorisation of the CSM.

142. The CSM regulates in detail the matter making a distinction between activities which can be carried out without restrictions (activities in scientific and educational sectors, if not remunerated, as well as work protected by copyright) and activities submitted to previous consent of the CSM (such as teaching and training activities, whether remunerated or not)³⁵. The relevant authorisation is to be granted on condition that the individual task is compatible with official duties and does not jeopardise the magistrate's independence and impartiality.

143. As for prohibited activities, magistrates are explicitly banned from engaging in private consultancy activities, taking assignments in sports justice, managing private schools for legal professions, exerting arbitration functions.

³⁵ CSM Circular No. 22581/2015 on incompatibilities is the latest guidance issued on the matter, as of March 2016.

144. The performance of activities which are deemed to be incompatible with the judicial function constitutes a disciplinary offence. Taking extrajudicial posts or activities without the prescribed authorisation by the CSM is a disciplinary offence too.

145. There are no restrictions for magistrates as regards financial interests, including holding shares in companies, but this must be in accordance with the prohibition on engaging in businesses or trades established under Article 16 of Royal Decree No. 12/1941. Magistrates are banned from carrying out any form of administration activity in companies. Moreover, the magistrates' involvement in financial and economic activities of other persons is considered a disciplinary offence when it may affect the exercise of judicial functions and the image of the concerned magistrate (Art. 3, letter h Legislative Decree No. 109/2006).

146. There are no provisions limiting the right for magistrates to be employed in certain posts/positions or engage in other remunerated or unremunerated activities after performing judicial functions. When practicing the legal profession, the use of any information acquired while performing previous judicial functions is prohibited.

147. Magistrates may perform different functions than those within the judiciary and be temporarily out of the judiciary role. For example, they may be appointed to the Ministry of Justice, the CSM (as secretariat or researchers), the Constitutional Court, the Presidency of Republic or seconded to international bodies and institutions. In some cases the functions performed are characterised by direct cooperation with political authorities, such as Ministers and the Presidency of the Council of Ministers. Pursuant to Article 66 of Law No. 190/2012 on Provisions for Preventing and Fighting Corruption and Illegality within Public Administration, magistrates holding high positions within national and international institutions, public bodies and entities, move out of the judicial function during the period of appointment in those other positions.

148. The principles regulating the matter are further elaborated in CSM Circular No. 13778/2014, as follows: 1) the need for prior authorisation from the CSM, which is to assess whether the different functions meet the interest of justice and do not threaten the impartiality and independence of the magistrate concerned and of the judiciary as a whole; 2) the temporary nature of the different functions. As a general rule, the maximum period in functions other than those within the judiciary is ten years. Pursuant to Law No. 18/2000, the maximum number of magistrates temporarily out of the judiciary role is 200.

149. As regards magistrates' participation in political life, they are banned from membership in political parties. Pursuant to Article 3, letter h, of Legislative Decree No. 109/2006, membership in political parties, as well as the continuous and systematic participation in political parties' activities is a disciplinary offence. On the other hand, magistrates, like any other citizen, may participate in national parliamentary elections, and in regional, provincial and municipal elections. Moreover, they can be appointed as members of the national government and of the executive bodies in all levels of local government.

150. The law regulates some cases of ineligibility concerning magistrates. For national parliamentary elections, under Article 8, Law No. 361/1957, magistrates are not eligible in the constituencies where they exert judicial functions, or where they have exerted functions in the six months prior to accepting a candidature. The same provision obliges magistrates to take special leave if they compete for elections. Similarly, magistrates cannot be elected as mayors, presidents of provinces, or members of municipal or provincial councils in the territory where they exert judicial functions; this ineligibility ceases when they take special leave before they compete for elections (Article 60, paragraph 6, Legislative Decree No. 267/2000). Similar rules apply for regional councils (Article 5, Law No. 108/1968). The matter is also regulated in circulars issued by the

CSM (in particular Circular No. 13778/2014) laying down territorial, functional and temporal restrictions for magistrates to return to judicial functions after political elections.

151. The GET is of the opinion that the issue of direct participation of magistrates in political life is particularly sensitive, due to the inevitable risk of politicisation, both real and perceived, among the judiciary. Such a matter and more generally the relation between magistrates and politics is the subject of heated debate within the Italian judiciary and civil society, especially when criminal investigations for corruption involve politicians. During the discussions held on-site, the GET noticed that there appeared to be unanimous consensus on the need for a stricter demarcation between jurisdictional functions and magistrates' direct participation in political or governmental activity, as the latter is liable to compromise the image of independence, impartiality and neutrality of the judiciary and threaten the citizens' confidence in the justice system as a whole. In general terms, the matter concerns both the right of magistrates to express their political opinions and participate in political debates as well as the direct exercise of political activities at local, national and international level.

152. With regard to the first issue, magistrates should not be isolated from the civil society in which they live, nor deprived from the right to participate in social and political life, as any other citizen. Having said that, the peculiarities of the judicial functions require that a reasonable balance is struck between the degree to which magistrates may be involved in society and the need for them and for the judiciary as a whole to be – and to be seen as – independent and impartial in the discharge of their functions. In the interest of a right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity³⁶.

153. As to the direct performance of political activities, the GET shares the view that a stricter line between judicial functions and the latter should be drawn³⁷. In this regard, the Italian legal framework clearly presents several lacunae and inconsistencies raising questions from the point of view of separation of powers and regarding the necessary independence and impartiality of judges. For instance, the current legal framework does not require that magistrates take special leave to be elected or appointed in local governments. As a consequence, a magistrate could perform political activities as mayor, president of regional or provincial councils or assessor while exerting judicial functions, with the only limit of the territorial ineligibility. Indeed, the law only prescribes the ineligibility in the territory where the magistrate currently exerts judicial functions³⁸. Moreover, there are no restrictions to magistrates being directly appointed by local governments (for instance as assessors) in the territory where they exert judicial functions. The only rule concerning the matter is enshrined in the Code of Judicial Ethics: pursuant to Article 8, magistrates, without prejudice to the ineligibility and incompatibility regime provided by the relevant regulations, shall not accept candidacies or political-administrative appointments in local bodies in the district where they exercise judiciary functions. Even the magistrates' return to judicial functions following a political mandate, or the mere participation in political competition would deserve, in the GET's view, a stricter discipline. A recent resolution issued by the CSM, focused on the main shortcomings and urged the legislative power to strictly regulate the matter³⁹. Some positive proposals are also laid down in the report by the Committee of Experts, under the aegis of the Ministry of Justice, aimed at broadening the cases of ineligibility and incompatibility and introducing stricter limits to the right of magistrates to return to

³⁶ See [Opinion No. 3 of the CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality](#), paragraph 30.

³⁷ See also Commentary on the [Bangalore Principles of Judicial Conduct](#), on the issue of judges' participation in political activities and its effects on public perception on judicial independence.

³⁸ See Article 60 No. 6 Legislative Decree No. 267/2000.

³⁹ [Resolution on the participation of magistrates in political activity and governance at local, national and international level](#), October 2015 and 13 September 2016 (paragraph 2.82).

judicial functions after participating in political competitions. In view of the preceding considerations, **GRECO recommends (i) that a restriction on the simultaneous holding of the office of magistrate and that of a member of local government be laid down in law; and more generally, (ii) that the issue of political activity of magistrates be dealt with in all its aspects at legislative level, given its impact on the fundamental principles of independence and impartiality, both real and perceived, of the judiciary.**

Gifts

154. Legislative Decree No. 109/2006 bans the acceptance of gifts by magistrates. The use of the position as a judge or prosecutor in view of obtaining undue advantages for him/herself or others is a disciplinary offence. Nothing is said, however, in the current Code of Ethics of the ANM as to the issue of gifts; this issue must be specifically developed when implementing the recommendation of paragraph 136.

155. In addition, the provisions on passive bribery apply when a gift, independent of its value, is received for a magistrate to act in breach of his/her official duties. Article 319ter CP provides for a specific offence of passive bribery in judicial proceedings. Law No. 69/2015 has significantly increased the available range of sanctions for this offence, which now range from imprisonment of between six and 12 years where the offence is committed in favour of or against a party to a civil, criminal or administrative proceeding; imprisonment of between six and 14 years where the offence results in another being wrongfully sentenced to a term of imprisonment of up to five years; and imprisonment of between eight and 20 years where the offence results in another being wrongfully sentenced to a term of imprisonment of more than five years.

Misuse of confidential information and third party contacts

156. Disclosure of confidential information from a case is a criminal offence under Article 326 CP. Moreover, the breach of confidentiality is a disciplinary offence pursuant to Article 3, letter u, Legislative Decree No. 109/2006. The Code of Ethics also prohibits disclosure or use of confidential information.

Declaration of assets, income, liabilities and interests

157. Law No. 441 of 5 July 1982 on Provisions on making public the financial situation of elected officials and public officials in management positions applies to ordinary magistrates by virtue of Article 17, paragraph 22 of Law No. 127/1997. Consequently, magistrates are required to submit to the CSM, within three months from their appointment: (i) a statement on his/her real rights on immovable properties and movable properties recorded in a public register, shares in companies, stakes in companies, performance of company manager or auditor functions, as well as (ii) a copy of the latest personal income tax return, and (iii) financial situation and income tax return of his/her spouse, unless separated, and his/her cohabiting children, if they give their consent. In addition, a report must be filed no later than one month from the expiry date for submitting the personal income tax return, if any changes occur since the previous declaration. Magistrates are also required to file a report within three months from the day of termination of office. In case of violation of the rules, the name of the magistrate shall be published on the Official Gazette of the Republic. Failure to lodge a financial situation statement is not included in the catalogue of disciplinary offences. The statements made by magistrates are not made public, but interested persons are allowed to submit a grounded request to have access to them. The High Council of the Judiciary considers the interests underpinning this request, and justifies, if necessary, the reasons for refusing, postponing or limiting examination of documents, with a decision which can be challenged before the administrative judge.

158. The GET can certainly see room for improvement in the current system of financial reporting for magistrates, notably, on its accessibility and control features. In this context, the CSM is merely responsible for granting public access to the forms, but has no control powers on the content of the information submitted by the individual magistrates, nor can it sanction the non-submission of the required forms. Moreover, since access to disclosure forms is provided upon individual request, the type of public control that can be established over the judicial corps has its limits. The GET understands the reservations of the authorities to broaden public access to the declaration forms of the magistrates for security and privacy grounds. That said, this in turn limits somehow the type of control that can be exercised by the public as they lose a holistic view of conflicts of interest risks and challenges in the profession.

159. In the GET's view, the filing of assets and financial declarations is an important tool to prevent and detect conflicts of interests, but the usefulness of such a tool is close to none if the declarations remain unused pieces of paper. Against these considerations, all interlocutors met stressed that both judges and prosecutors had a strong spirit of public service and dedication to public duty and that evidence of financial corruption amongst magistrates has only emerged in few isolated cases. The authorities added that the very strict rules on secondary/side activities are also valuable tools in the system to prevent conflicts of interest in the Italian judiciary. The GET is aware that judges and prosecutors are not subject to the same standards of transparency as politically elected representatives and that practice regarding publication of the financial declarations of judicial officials varies among GRECO member States; that said, more needs to be done to reinforce the existing system of asset disclosure by magistrates, and more particularly, its follow-up. Consequently, **GRECO recommends strengthening the follow-up of the financial declaration forms filed by magistrates, notably, by ensuring a more in-depth scrutiny of the declarations and subsequently sanctioning the identified violations.**

Supervision and enforcement

General supervision

160. The justice system in Italy is largely self-managed with the existence of the CSM and the local Judicial Councils responsible, at different stages, for the careers and promotions of magistrates. Moreover, the chairpersons of judicial offices exert general supervision and appraisal responsibility as regards the conduct and the work of individual magistrates and have the duty to report to the Minister of Justice and the General Prosecutor at the Court of Cassation any disciplinary offence.

Criminal and civil liability

161. Magistrates can be held criminally liable for offences committed outside and in the exercise of their functions. They do not enjoy any kind of immunity. The authorities provided statistics regarding the number of disciplinary proceedings against magistrates running in parallel to criminal proceedings, for the period 2011-2016, among which most of them concern defamation cases. Regarding corruption-related cases, there was one case in 2011, one case in 2012, two cases in 2013, five cases in 2014, three cases in 2015, and two cases in 2016, respectively.

162. As concerns civil liability, Law No. 117/1988, as amended by Law No. 18/2015, established the right to compensation for any unfair damage resulting from the conduct, decision or judicial order issued by a magistrate either with "intention" or "serious negligence" while exercising his/her functions, or resulting from a "denial of justice".

Disciplinary liability

163. Legislative Decree No. 109/2006 regulates disciplinary offences and their corresponding sanctioning regime. Breaches of disciplinary rules can be divided into two categories: (i) violations committed in the exercise of the judicial functions, listed in Article 2 (e.g. any conduct that, contravening the duties of a magistrate, causes unfair damage or unfair advantage to one of the parties; the intentional non-compliance with the obligation to abstain; serious violations of the law caused by inexcusable ignorance or negligence and the misinterpretation of facts caused by inexcusable negligence; the serious, repeated and unjustified delay in the discharge of judicial functions etc.); and (ii) offences committed when not performing judicial functions, listed in Article 3 (e.g. using the title of magistrate to obtain an unfair advantage for oneself or others; discharging extra-judicial activities without the required authorisation; granting, directly or indirectly, loans or other benefits by persons who are parties in civil or criminal proceedings pending before the office where the magistrate performs judicial functions or before other offices within the same district, etc.). Moreover, criminal liability does not exclude disciplinary liability (Article 4).

164. Disciplinary sanctions range from: (i) reprimand, (ii) censure, (iii) loss of seniority, up to two years, (iv) temporary incapacity to hold managerial or semi-managerial positions in judicial offices, from six months up to two years, (v) suspension from judicial functions and salary, (vi) dismissal from office. The accessory sanction of transfer may be applied if a more severe sanction than a warning is imposed, as provided by law. A transfer *ex officio* can also be ordered as a precautionary and temporary measure when reasons of urgency occur. Appeals are possible before the Court of Cassation. The statute of limitations for disciplinary offences is ten years.

165. Disciplinary proceedings are judicial in nature and are regulated by the principles of the CPC. The competent authority is the Disciplinary Division of the CSM, which consists of six members: the Vice-President of the CSM, who is an *ex officio* member and chairs the Commission; and five members elected by the CSM from among its members, one of whom is a "laymen", one is a judge/prosecutor with the rank and functions of a Court of Cassation judge/prosecutor, two are judges and one prosecutor. Disciplinary proceedings are initiated by the Minister of Justice and the Prosecutor General attached to the Court of Cassation. Prosecution for disciplinary offences is mandatory for the Prosecutor General, while it is discretionary for the Minister of Justice, who exerts this faculty by requesting the Prosecutor General to carry out investigations. The Minister usually decides to initiate disciplinary proceedings as a result of inspections carried out by the General Inspectorate.

166. The Minister of Justice can exercise his/her authority to autonomously initiate a disciplinary proceeding and request the Prosecutor General to conduct investigations. The Minister of Justice can also intervene in disciplinary proceedings promoted by the Prosecutor General by requesting the extension or change of disciplinary charge.

167. The General Inspectorate is an office of direct cooperation with the Minister, entrusted with supervisory powers⁴⁰. The General Inspectorate carries out its duties essentially through three kinds of inspections of judicial offices: 1) ordinary inspections, which usually take place every three years and are ordered by the Chief of the Inspectorate in order to verify whether the different services within the official offices are performed in compliance with the laws, regulations and directives in force; 2) special inspections, where shortcomings or irregularities have been reported or found; 3) target inspections, which can be ordered by the Minister of Justice whenever he/she deems necessary to verify the productivity, output and the timely performance of professional

⁴⁰ The organisation and functioning of the General Inspectorate are governed by Law No. 1311 of 12 August 1962.

duties by individual magistrates. As a result of the inspection, the report can be used by the Minister to initiate a disciplinary proceeding.

168. According to the information provided, in the past five years, 240 disciplinary sanctions were imposed on magistrates. Most cases concerned delays in judicial activities (121 disciplinary measures).

Advice, training and awareness

169. Legislative Decree No. 26/2006 established the High Judicial School (*Scuola Superiore della Magistratura*), an institution which is structurally and functionally distinct from the CSM. The School is an independent entity with legal personality under public and private law. The courses organised by the School are aimed at professional in-service training; training for newly appointed magistrates; special training for magistrates who move from adjudication to prosecution functions and *vice versa* or for magistrates who apply for managerial functions. The School also provides initial and in-service training to lay judges and prosecutors. The training activities of the School are organised both on a central and local basis, in order to ensure a broader participation of magistrates, representatives from the academia and legal practitioners.

170. Initial training is addressed at apprentice magistrates who, once appointed, are obliged to attend professional training at least annually in the first four years of function. Serving magistrates have the right and the duty to participate in such training and must attend at least one course organised by the School every four years. The contents of the training modules are both theoretical and practical. In order to facilitate access to training throughout the judicial offices, a dynamic approach is taken by developing a network of decentralised trainers and e-learning modules/remote training programmes. The School also conducts training programmes in collaboration with similar structures of foreign States or professional associations.

171. As regards training on ethics, the authorities provided the following information: in the context of the initial training of judges and prosecutors, a specific half-day session, which is compulsory and held at the High School of the Judiciary, focuses on the "Ethics and Deontology of Judges and Prosecutors and the relevant Disciplinary System". As regards in-service training, the 2016 annual programme provides for a three-day course - reserved for 90 judges and prosecutors - on the theme: "The Fight against Corruption in the Public Administration and in Courts", which includes a half-day session on the topic: "Corruption in the Justice System". The GET was informed after the on-site visit that, according to the guidelines issued by the CSM, the 2017 training curricula includes a specific focus on ethics, particularly targeted at new recruits.

172. As already stressed, the GET is of the view that better and more tailored guidance and counselling mechanisms on judicial conduct could be developed. At present, the sound basis for ethical judicial behaviour is largely left to the conscience of the individual magistrate and to informal counselling. Only a few courses have been organised in relation to ethics and there is no systematic approach to dealing with ethical issues when conceptualising training curricula. Likewise, no formal measures for guidance and advice are in place. The comments and recommendation in paragraph 136 are of direct relevance, as the School is called upon to play a more active role in disseminating standards of professional conduct and ethical rules and to ensure that future training programmes, for both professional and lay judges, include a systematic component on ethics, expected conduct, corruption prevention, conflicts of interest and related matters.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

173. As indicated earlier, prosecutors and judges belong to the same professional order of “magistrates”. Therefore, the prosecutorial service is largely governed by the same rules in respect of judges, as per the provisions included in the Constitution, primary legislation and secondary regulation issued by the CSM. Thus, decisions regarding the professional status of prosecutors (e.g. appointment, appraisal, promotion, transfers, disciplinary liability) are taken in accordance with the rules mentioned earlier in Chapter IV of the present report; cross references are made to this effect in order to avoid unnecessary repetition.

174. Prosecutors, as members of the judiciary, are independent vis-à-vis the other State powers (Article 104, Constitution); they are to perform their duties without being subject to any external influence. They enjoy the guarantees established in the provisions concerning the organisation of the judiciary (Article 107, Constitution), including security of tenure. Public prosecutors are to assure observance of the law and the prompt and regular administration of justice, protect the rights of the State, and repress the commission of criminal offences.

175. Italy abides by the principle of mandatory prosecution (Article 112, Constitution). Prosecutors are responsible for directing the police in the conduct of investigations (Article 109, Constitution; Articles 56 and 327, Code of Criminal Procedure). In the discharge of their duties, public prosecutors are to act with impartiality and objectivity and are to acquire any facts or circumstances, even in favour of the person under investigation. Once the investigation is concluded, the prosecutor may either file a formal indictment, when sufficient evidence is collected, or request the judge for preliminary investigations to dismiss the case. At the trial stage, the public prosecutor represents the prosecution before criminal courts. Public prosecutors are also responsible for the procedures for the execution of judgments. In addition to criminal functions, public prosecutors have competencies in civil proceedings in cases provided by the law and supervisory functions over civil status.

176. The structure of the prosecution service mirrors that of the courts. According to Article 2 of Royal Decree No. 12/1941, prosecutors’ offices are attached to courts of first instance and juvenile courts, appellate courts and the Court of Cassation. Therefore the current structure of the prosecution service consists of: 136 offices of first instance, established in each province or municipality where a court is in place; 26 offices at appellate courts; and one office at the Court of Cassation. With respect to organised crime and other serious criminal offences⁴¹, prosecutorial functions are carried out by the District Anti-Mafia Divisions, which are set up within the prosecutor’s office located in the district capitals. The National Anti-Mafia Division (*Direzione Nazionale Antimafia*), operating within the General Prosecutor’s Office at the Court of Cassation, coordinates and supervises the investigations carried out by the District Divisions. Law Decree No. 7 of 18 February 2015, converted into Law on 17 April 2015, enhanced the coordinating and supervisory role of the National Anti-mafia Prosecutor (now National Anti-mafia and Counterterrorism Prosecutor) in the field of the fight against terrorism.

177. Pursuant to Article 72 of Royal Decree No. 12/1941, as amended by Law No. 51/1998, some prosecutorial functions can be delegated by chief prosecutors to honorary prosecutors (*vice-procuratori onorari*). In particular, they can represent the prosecution in criminal trials pending before the justice of the peace or before the tribunal, when a single judge is competent to adjudicate the case. To be nominated as an

⁴¹ See Article 51 of the Code of Criminal Procedure; the list of criminal offences includes, *inter alia*, drug trafficking, enslavement, kidnapping, child prostitution and pornography.

honorary prosecutor, the law requires: Italian citizenship, age over 25 years and below 69 years, full exercise of civil rights, good reputation, not having been convicted for intentional crimes, and the possession of a law degree. Honorary prosecutors are appointed by decree of the Minister of Justice in accordance with the decision of the CSM, on proposal of the competent Judicial Council. Once appointed, they perform their duties for three years and can be confirmed once. In fact, as explained earlier for tribunal honorary judges, they are confirmed repeatedly in post via law decrees.

178. The Italian prosecutorial service currently consists of 2 192 professional public prosecutors (1 265 are men and 927 women)⁴². As of March 2016, the number of honorary prosecutors in service is 1 740 (out of 2 067 posts)⁴³.

Internal organisation

179. As for the structure and functioning of the public prosecution service, important changes were introduced by Legislative Decree No. 106/2006, as amended by Law No. 269/2006.

180. Each prosecutor's office consists of a chief public prosecutor and an appropriate number of public prosecutors. A deputy chief prosecutor is appointed in offices where there are more than nine public prosecutors. To fulfil the tasks falling under the scope of the work of the office, the chief prosecutor may appoint a deputy prosecutor as his/her substitute, in case of absence or impediment. Moreover, the chief prosecutor may delegate specific areas of activities to one or more deputy prosecutors or to one or more public prosecutors within the office. The Prosecutor General at the Court of Cassation is appointed by the CSM; there is no hierarchical link between the various prosecution offices of the country and the General Prosecution Office at the Court of Cassation⁴⁴.

181. Following the 2006 reform, the hierarchical structure of the prosecution office was strengthened. The chief public prosecutor represents the public prosecution and is responsible for criminal action in accordance with the law. The chief prosecutor can exert criminal action personally or by assigning proceedings (or specific acts) to public prosecutors within the office. In the latter case, the chief prosecutor may establish criteria with which prosecutors shall comply. Furthermore, chief public prosecutors have the duty to guarantee appropriate, timely and uniform prosecution and to ensure that safeguards for a fair trial are fully respected. Pursuant to Article 3 of Legislative Decree No. 106/2006, the prior written approval of the chief prosecutor is necessary for some acts issued by the public prosecutors and, in particular, for preventive measure requests (e.g. restraining orders, house arrest, provisional detention, interdictory measures, seizure, etc.). The chief prosecutor is responsible, among other duties, for ensuring that the office under his/her responsibility works in an efficient, coherent and coordinated manner, including by assigning responsibilities and work division within the office.

182. In accordance with Article 1, paragraph 6 of Legislative Decree No. 106/2006, chief prosecutors are to lay down criteria for: (1) the general organisation of the office; (2) the assignment of proceedings to the public prosecutors within the office; (3) the typology of criminal offences for which automated case allocation applies. Organisational programmes issued by chief public prosecutors are to be submitted to the CSM, but neither the law nor the secondary regulation of the CSM requires a formal approval of such programmes.

⁴² [Data from the official home page of the CSM](#), as of March 2016.

⁴³ Data from the Ministry of Justice.

⁴⁴ Resolution CSM of 20 April 2016.

Self-governing bodies

183. As for judges, the CSM is the key self-governing body, with major responsibilities to appoint, transfer, promote, evaluate public prosecutors and to issue decisions on disciplinary offences (Article 105, Constitution). The composition, functioning and structures are described in paragraphs 103 to 106.

Recruitment, career and conditions of service

184. Prosecutors and judges are basically subject to the same rules and they undergo the same recruitment paths and the same professional evaluations. See paragraphs 107 to 120 for details.

Case management and procedure

185. According to Legislative Decree No. 106/2006, the chief prosecutor, being responsible for criminal prosecution, can decide to personally exert criminal action or assign cases to prosecutors within the office. Cases are generally allocated on a random basis, according to the general criteria laid out in the relevant organisation programme of the office and taking into consideration the specialised groups of magistrates within the office. The chief prosecutor can withdraw a case assignment, as follows: (i) when the public prosecutor does not comply with the criteria laid down in the general organisational programme or specifically issued for the individual case; (ii) in case of a divergence between the chief public prosecutor and the public prosecutor concerning the criminal investigation (such as in case of disagreement concerning the determination of a criminal offence, or concerning the decision of whether to prosecute or not, etc.). The law requires that the decision to withdraw the case is motivated. The public prosecutor within ten days after receiving the decision can submit written comments to the chief prosecutor, who is to send them to the CSM.

186. Criteria laid down in the internal organisational programme issued by the chief prosecutor play a major role in the assignment of cases. The CSM provided guidelines to structure the chief prosecutors' management powers and to guarantee a balance between the hierarchical structure of the prosecutorial office and the internal autonomy and independence of the individual public prosecutors⁴⁵. In line with the CSM resolutions, when drafting the organisational programme, chief prosecutors are to pursue the objectives laid down in the law and are to guarantee, in particular: (i) the reasonable duration of trials and the rapid and effective completion of criminal investigations, taking into consideration the workload of the office and determining priority criteria; (ii) the appropriate, timely and uniform prosecution of criminal offences. To fulfil this objective, chief prosecutors establish specialised working groups within the office⁴⁶ and develop uniform criteria, guidelines and an adequate exchange on information and professional experience between public prosecutors; (iii) the efficient direction of investigative police and the efficient use of economic and technological resources.

187. As stressed above, the 2006 reform enhanced the hierarchical structure of prosecutorial offices and the chief prosecutors' role, both in terms of organisational functions, assignment of cases and relations with the magistrates within the office. The discussions held on-site revealed that the supervisory powers of the CSM over the organisational programmes issued by chief prosecutors are not effective enough, as a formal and preventive approval of the former is no longer necessary. The current system implies that the CSM might intervene only when a conflict between chief prosecutors and public prosecutors arises or when assessing the managerial expertise of the head of the office, after the first four-year mandate. The ANM has stressed in recent communications

⁴⁵ See, in particular, Resolution of 12 July 2007 and Resolution of 21 July 2009.

⁴⁶ The CSM established that the maximum term within the same group for each public prosecutor is ten years; see CSM's regulation adopted on 13 March 2008.

that a more decisive role of the CSM would better guarantee the transparency of case assignment and of the relations between chief prosecutors and public prosecutors (as for magistrates' participation in specialised working groups, potential conflicts between chief prosecutors and public prosecutors, etc.)⁴⁷.

188. The GET is of the opinion that chief prosecutors' decision-making powers and supervisory and control functions are logical and acceptable in a hierarchical structure and also necessary to guarantee efficiency and uniformity in prosecutorial offices' work. However, decisions on case assignment, as well as on mechanisms for resolving potential conflicts within the office ought to be guided by strict and pre-established criteria, subject to control by the CSM. The GET takes the view that organisational programmes of prosecutorial offices should be subject to preventive assessment and approval from the self-governing bodies. Such measures would also ensure greater uniformity of organisational rules as well as a closer coordination with the programmes of the courts. Consequently, **GRECO recommends that the supervisory role of the High Council of the Judiciary over organisational programmes of prosecutorial offices is strengthened with the aim of enhancing transparency and objectivity in case management.**

189. After the on-site visit, the authorities indicated that they concurred with the concerns raised by the GET in the preceding paragraph and the corresponding recommendation. A Commission of Experts (*Commissione Scotti*), set up at the Ministry of Justice, has presented draft proposals in this respect: organisational programmes of prosecutorial offices would be sent to the CSM at the time of their adoption, or whenever changes are made. The CSM expressed its remarks in a Resolution of 13 September 2016, which goes in the same direction as the Commission draft proposals, supporting the adoption of organisational programmes which are stricter than the current ones.

Ethical principles and rules of conduct

190. Prosecutors are subject to the same ethical rules already mentioned in respect of judges. Article 13 of the Code of Judicial Ethics is specifically addressed to prosecutors. In particular, prosecutors act with impartiality in the performance of their duties. They direct the investigation towards the pursuit of truth, by also gathering evidence that could be in favour of the suspect. They do not hide from the judge the existence of facts that could be in favour of the suspect or the defendant. They refrain from issuing statements personally concerning parties to the proceedings, witnesses or third parties, which are not relevant to the decision on the case; they abstain from expressing any criticism or appreciation of the professionalism of judges or defence lawyers. They participate actively in coordination initiatives and ensure a proper promotion thereof. They do not ask judges to disclose in advance their decisions, nor do they disclose to judges, in an informal way, any information on facts concerning on-going proceedings.

Conflicts of interest

Recusal and routine withdrawal

191. Prosecutors cannot be recused. Pursuant to Article 52 of the Code of Criminal Procedure, public prosecutors have the faculty to withdraw from the case when serious reasons of opportunity arise. The declaration of abstention is submitted to the chief prosecutor who appoints a substitute when the abstention is accepted. Substitution is mandatory if the prosecutor has interest in the proceeding or if one of the private parties is a debtor or creditor towards him/her, his/her spouse or his/her children; if s/he is tutor or employer of one of the parties in the proceeding or his/her spouse or close relative is a party's defendant or tutor or employer; serious enmity occurs between the prosecutor or

⁴⁷ Document issued by the Directive Central Committee of the ANM on 12 December 2015.

his/her close relatives and one of the private parties in the proceedings; and the prosecutor's spouse or close relative is a victim or is damaged by the criminal offence or is a private party (Article 36, letters a), b), d) and e), CPC). The authorities clarified that the Italian legal framework does not provide recusal in respect of prosecutors as it could be misused as a means for hindering and slowing the investigations. In effect, prosecutors are obliged to disclose every potential conflict of interest, as they are to perform their functions according to the principles of independence and impartiality. Failure to declare an interest in a case and, consequently, to withdraw, is a disciplinary offence.

Prohibition or restriction of certain activities, post-employment

192. As a general rule, judges and prosecutors cannot hold another public office or perform other jobs or activities. For specific details, see under paragraphs 141 to 153.

Gifts

193. There are no specific rules prohibiting or limiting prosecutors from accepting gifts. However, the use of the position as a judge or prosecutor in view of obtaining undue advantages for him/her or others constitutes a disciplinary offence. Criminal provisions may apply as explained in paragraph 155. As was the case for judges, the practice of gift giving to a prosecutor is neither common nor even tolerated in Italy. That said, this is a matter that can be unequivocally referred to whenever guidance or training on integrity matters is developed, in accordance with recommendation in paragraph 136.

Misuse of confidential information and third party contacts

194. The disclosure of confidential information may give rise to criminal or/and disciplinary action, for details see under paragraph 156.

Declaration of assets, income, liabilities and interests

195. Prosecutors are to file financial reports, for specific details see under paragraphs 157 to 159.

Supervision and enforcement

196. According to Article 6 of Legislative Decree No. 106/2006, General Prosecutors at the Courts of Appeal exercise supervisory powers over the activity of district prosecution offices. To fulfil this task they collect data and information aimed at verifying: a) the uniformity, effectiveness and swiftness of the prosecutorial action; b) the respect for the principles of a fair trial; c) the correct exercise by chief public prosecutors of organisational, supervisory and control powers over the office. At least once a year, prosecutors at the Courts of Appeal send a report to the General Prosecutor at the Court of Cassation. Furthermore, the General Prosecutor at the Court of Cassation can exercise control over the activity of chief prosecutors, avoid and prevent conflicts between prosecution offices and guarantee respect for the principles of a fair and equitable trial.

Advice, training and awareness

197. Prosecutors follow the training sessions organised by the High Judicial School, as already explained under paragraphs 169 to 172; a recommendation for further improvements in this area has been issued in paragraph 136.

VI. RECOMMENDATIONS AND FOLLOW-UP

198. In view of the findings of the present report, GRECO addresses the following recommendations to Italy:

Regarding members of parliament

- i. strengthening the integrity framework for parliamentarians, including through (i) the formalisation of the Code of Conduct in the Rules of Procedures of the Chamber of Deputies; (ii) its further refinement through detailed guidance on its provisions; and (iii) the establishment of an effective enforcement and accountability regime. The same measures are recommended for the Senate (paragraph 46);**
- ii. that (i) clear and enforceable conflict of interest rules be adopted for parliamentarians, including through a systematisation of the currently dispersed ineligibility and incompatibility regime; and (ii) the process of verification of ineligibility/incompatibility be further streamlined and thereby performed in an effective and timely manner (paragraph 51);**
- iii. establishing a robust set of restrictions concerning donations, gifts, hospitality, favours and other benefits for parliamentarians, and ensuring that the future system is properly understood and enforceable (paragraph 55);**
- iv. that (i) a study be carried out in order to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interests; and (ii) post-employment restrictions in such cases be introduced, as necessary (paragraph 66);**
- v. further developing the applicable rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the parliamentary process, including by developing detailed guidance on the matter and securing its effective monitoring and enforcement. The same measures are recommended for the Senate (paragraph 70);**
- vi. that practical measures be put in place to support the implementation of clear parliamentary integrity rules including through the development of dedicated training activities (paragraph 81);**

Regarding judges and prosecutors

- vii. that (i) a deliberate policy for preventing and detecting corruption risks and conflicts of interests be developed within the fiscal jurisdiction; (ii) appropriate measures be taken with a view to enhancing the professional and integrity supervision over members of fiscal courts, *inter alia*, by introducing a system of periodic assessment and regular training, including on questions of ethics, expected conduct, corruption prevention and related matters; (iii) a set of clear standards/code of professional conduct, accompanied by explanatory comments and/or practical examples, is established (paragraph 98);**

- viii. **that (i) the authorities continue in their endeavours to ensure efficiency of the justice system through a prompt adoption of the planned reforms in civil and criminal matters, including the reform of the appeal system and of the statute of limitation; (ii) an analysis be carried out of the budgetary and staff situation in courts and prosecution offices, with a view to ensuring that the resources necessary are available and efficiently used across the judicial system** (paragraph 130);
- ix. **that (i) a Code of Judicial Ethics, which covers in scope all magistrates, whether associated or not, is further developed and complemented by explanatory comments and/or practical examples, including guidance on conflicts of interest, gifts, etc.; (ii) the proper application of the rules of conduct is ensured via an effective supervisory mechanism and accompanied by dedicated and regular training, advice and counselling for both professional and lay magistrates** (paragraph 136);
- x. **(i) that a restriction on the simultaneous holding of the office of magistrate and that of a member of local government be laid down in law; and more generally, (ii) that the issue of political activity of magistrates be dealt with in all its aspects at legislative level, given its impact on the fundamental principles of independence and impartiality, both real and perceived, of the judiciary** (paragraph 153);
- xi. **strengthening the follow-up of the financial declaration forms filed by magistrates, notably, by ensuring a more in-depth scrutiny of the declarations and subsequently sanctioning the identified violations** (paragraph 159);
- xii. **that the supervisory role of the High Council of the Judiciary over organisational programmes of prosecutorial offices is strengthened with the aim of enhancing transparency and objectivity in case management** (paragraph 188).

199. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Italy to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2018. These measures will be assessed by GRECO through its specific compliance procedure.

200. GRECO invites the authorities of Italy to authorise, at its earliest convenience, the publication of this report, to translate the report into its 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.
