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Group of States against Corruption



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

EVALUATION REPORT

LUXEMBOURG

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	4
I. INTRODUCTION AND METHODOLOGY	5
II. CONTEXT	7
III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT	10
OVERVIEW OF THE PARLIAMENTARY SYSTEM	10
TRANSPARENCY OF THE LEGISLATIVE PROCESS	10
REMUNERATION AND ECONOMIC BENEFITS.....	10
ETHICAL PRINCIPLES AND RULES OF CONDUCT.....	12
CONFLICTS OF INTEREST AND DISCLOSURE REQUIREMENTS.....	13
DECLARATIONS OF ASSETS, INCOME, LIABILITIES AND INTERESTS; REGISTRATION OF DECLARATIONS.....	15
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES.....	16
<i>Gifts and other benefits</i>	16
<i>Incompatibilities and accessory activities</i>	18
<i>Misuse of public resources; other limitations</i>	19
SUPERVISION AND ENFORCEMENT.....	19
ADVICE, TRAINING AND AWARENESS	23
OTHER ASPECTS	23
IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES	25
OVERVIEW OF THE JUDICIAL SYSTEM.....	25
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE	29
<i>Recruitment</i>	29
<i>Careers</i>	32
<i>Employment conditions</i>	34
CASE MANAGEMENT AND COURT PROCEDURE	34
ETHICAL PRINCIPLES AND RULES OF CONDUCT.....	36
CONFLICTS OF INTEREST.....	37
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES.....	38
<i>Incompatibilities and accessory activities</i>	38
<i>Gifts and post-employment restrictions</i>	39
<i>Contacts with third parties outside court proceedings and misuse of confidential information</i>	40
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS.....	41
SUPERVISION AND ENFORCEMENT MEASURES.....	41
ADVICE, TRAINING AND AWARENESS	43
V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS	44
OVERVIEW OF THE PROSECUTION SERVICE	44
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE	44
CASE MANAGEMENT AND PROCEDURE.....	45
ETHICAL PRINCIPLES, RULES OF CONDUCT AND CONFLICTS OF INTEREST.....	46
INCOMPATIBILITIES AND ACCESSORY ACTIVITIES; GIFTS, POST-EMPLOYMENT RESTRICTIONS, THIRD-PARTY CONTACTS AND CONFIDENTIAL INFORMATION.....	47
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS	47
SUPERVISION AND ENFORCEMENT MEASURES.....	47
ADVICE, TRAINING AND AWARENESS	48
VI. RECOMMENDATIONS AND FOLLOW-UP.....	49

EXECUTIVE SUMMARY

1. Luxembourg belongs to a group of GRECO member states which has traditionally been unscathed by corruption. However, the country is becoming more and more aware of the problems and shortcomings attributed by its preventive and repressive measures. In this regard, significant improvements have been made over the past 4 to 5 years (regarding, for example, incrimination of corruption, access of investigators to financial information, regulation of political financing, the protection of whistleblowers) and are still on-going (for example a law on freedom of access to information is currently being elaborated). The 'Livange-Wickrange' case from 2011, has proven to be an unprecedented case, in that it highlighted various practices related to bonuses and other benefits traditionally granted to elected officials by private groups, or business relationships with the state. Polemics emphasised the lack of follow up in an attempt to close this case, and it also highlighted the limited capacity of the country to deal with such sensitive issues.

2. Members of the unicameral parliament are currently subjected to minimum requirements which ensure the preservation of their integrity and prevention of corruption. These consist basically in the declaration and publication of business functions or other remunerated activities since 2004. For the time being, the mechanism is proving to be ineffective due to the wholly voluntary nature of the arrangement and the fact that it is taken seriously by elected officials to a variable degree. To redress the deficiencies posed by this, a set of rules which take the form of a code of conduct is being currently elaborated and is expected to enter into force in 2014. It will govern the conduct of members in terms of laying down rules on how to preserve integrity, how they manage potential conflicts of interest, and will also regulate gifts and other benefits. It also aims to reinforce the declaration system of 2004 with new topics, and by establishing a supervisory collegial body which would be entrusted with rendering disciplinary measures in the event of breaches. Whilst welcoming these initiatives, GRECO recommends a series of further improvements, including that the future text requires the declaration of more detailed financial information and that the consistency of the rules for gifts and other benefits offered to members be increased. There is also a need to regulate contacts with third parties who seek to influence the legislative work, and to review the range of disciplinary measures.

3. As concerns the prevention of corruption of judges and prosecutors, which constitute a single body of magistrates in Luxembourg, GRECO has noted various deficiencies, above all the lack of harmonised legislation in this area. The existing legislation addresses in a manner which is difficult to read, the existing obligations and the conduct of professional and non-professional judges in the various categories of courts. This may be explained by the fact that Luxembourg created a judicial structure which was worthy of a larger country. Reforms which were carried out in June 2012, began to harmonise the conditions of recruitment of judges and professional prosecutors, and it also abolished recourse to lawyers which was a source of potential problems, as well as the status of these persons. A code of ethics was adopted in May 2013 with a view to regulating the conduct of judges and prosecutors in such areas as impartiality, integrity, professionalism, non-interference of personal, political or religious views. GRECO deems that reforms are still needed to harmonise and clarify the current rules which are often misunderstood by practitioners, such as the rules pertaining to the management of conflicts of interest. It furthermore strongly supports the current projects of constitutional reforms to create an independent Prosecutors office and a National Council of Justice. The latter should be entrusted to handle disciplinary matters, and the promotion of judges and prosecutors. As part of its attempts to modernise the justice system, the management of courts should also be harmonised, possibly by subjecting judges and prosecutors on a periodic basis for evaluations, which would thereby facilitate the work of supervisors and would promote taking into account merits in their career development.

I. INTRODUCTION AND METHODOLOGY

4. Luxembourg is a founder member of GRECO, which was established in 1999. The country was subject to evaluation in the framework of GRECO's First (June 2001), Second (May 2004) and Third (June 2008) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

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

6. 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.

7. 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, provided they are subject to national laws and regulations.

8. In preparing the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2011) 9F) by Luxembourg, 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 Luxembourg from 1 to 5 October 2012. The GET was composed of Mr Richard GHEVONTIAN, a university professor and Vice-Chancellor of University Paul Cézanne Aix-Marseille III (France), Ms Natália Fernanda PEREIRA DE LIMA E SILVA, Deputy Prosecutor General at the Lisbon Court of Appeal dealing with criminal proceedings against members of courts of first instance (Portugal), and Ms Muriel BARRELET, a judge at the Regional Court of Montagnes and Val-de-Ruz (Switzerland). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat.

9. The GET interviewed representatives of the Bureau of the Chamber of Deputies, of the Institutions and Constitutional Review Committee, of Luxembourg political parties, of the Principal State Prosecutor's Office – including the Prosecutor General – and the Diekirch and Luxembourg Prosecutor's Offices, of the District Courts, of the Supreme Court of Justice, of the Investigating Judges, of the Administrative Courts, of the Ministry of Justice, of the Corruption Prevention Committee (COPRECO), of the "Ethics" working group and of the Mediator's services – including the Mediator herself. Moreover, the GET held interviews with members of the Groupement des Magistrats and of the Luxembourg section of Transparency International, with journalists, with members of the Press Council and the Luxembourg and Diekirch Bars Council, and with an academic.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the authorities of Luxembourg 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 Luxembourg authorities, which are to determine the relevant institutions/bodies responsible for taking the requisite action. Luxembourg has no more than 18 months following the adoption of this report, to report back on the action taken in response.

II. CONTEXT

11. Luxembourg has traditionally figured amongst the least affected countries with regard to the level of perceived corruption as established in the Transparency International index (11th out of 183 countries in 2011, 12th out of 174 countries in 2012). According to the findings of the 2011 Eurobarometer survey,¹ only 34% of people in Luxembourg believe that corruption is a major problem in their country, compared with an average 74% for the 27 EU member states studied. A number of other indicators are also far lower than the European average. The same survey shows that close links between business and politics are considered to be the main reason for corruption in Luxembourg. People working in the judicial service are one of the three categories of public servant deemed to be the least involved in corrupt activities. Those regarded as most involved include elected representatives at the national or local level and officials issuing building permits or awarding public tenders, which reflects a perception of corruption similar to that prevailing in the other EU 27 countries, but here too lower than average.

12. Luxembourg has generally maintained that the country's small size results in a natural form of social supervision that deters people from resorting to corruption in the broad sense. The offences of active and passive bribery of elected officials, trading in influence and unlawful taking or acceptance of an interest were established in September 2001. These offences all apply to judges and prosecutors as well as to elected officials, but some caveats must nonetheless be raised here. The number of cases dealt with by the justice system in recent times indeed remains very low,² and the recording and processing of official data in this area – as in others – is still hampered by the lack of a central statistical data base (a project is currently under way to implement such a data base with a view to responding, inter alia, to requests for information from international monitoring mechanisms). Nor are data kept on disciplinary matters: consultation of the various courts and prosecution services revealed that – as far as those questioned could remember – four or five judges or prosecutors had been subject to disciplinary measures in recent years (for delay and negligence in dealing with cases, for example). In most of these cases the person concerned had resigned before the disciplinary proceedings reached a conclusion. Similarly, a (non-aligned) parliamentarian had been issued a warning and received a criminal sentence in June 2010 for using false invoices (so as to embezzle public funding provided by the Chamber).

13. GRECO has for its part always pointed out that close social relations could also hamper the detection and prosecution of corruption cases. The people from various backgrounds interviewed by the GET during this visit themselves provided examples of this³ and pointed out, above all, that a number of bad practices are traditionally tolerated and that there is a general lack of awareness of the importance of integrity and of combating corruption. The GET was informed that it was only with the emergence of a

¹ Special Eurobarometer survey on Europeans' attitudes to corruption:
2011 : http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_fact_lu_en.pdf
2009 : http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_sum_en.pdf
2007 : http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf

² The cases listed by GRECO include a first case of unlawful taking of an interest involving a parliamentarian, dating from around the year 2000; the parliamentarian in question was eventually acquitted (see the First Round Evaluation Report, paragraph 49). Only one final judgment imposing a sentence for bribery has been reported so far (in 2005); it concerned passive bribery committed by an employee of a public service body (see the footnote to paragraph 23 of the Third Round Evaluation Report). In the past possible corruption cases were dealt with under related offences. The Luxembourg authorities added, during the adoption of the current report, that more sentences for bribery have been passed since and that some other criminal proceedings for such acts are currently underway.

³ For example, the journalists interviewed on-site indicated that journalists who took their investigations too far could suffer negative repercussions in terms of their employment prospects. Another example cited was that of a police officer who had come under pressure after reporting a driver who had insulted him and who turned out to be the son of a member of government.

recent controversy of a rare magnitude – the "Livange-Wickrange affair"⁴ – that Luxembourg society had begun to question the legitimacy, for example, of various forms of inducements or advantages (travel opportunities, reservations for international sports events, loans extended at very advantageous rates, gifts of luxury watches, appointments to the governing bodies of major companies) offered to politicians by private sector groups or business people with whom projects were or had been under discussion. Further controversy surrounded the lack of follow-up action to this affair and the manner in which the case-file was closed.

14. The GET also noted that, again according to the previously cited survey of 2011, Luxembourg has a number of specificities compared with other countries, for example: a) 27% of those questioned consider that many people accept corruption as part of daily life in Luxembourg; this is higher than the average (19%) for the EU 27; b) only 16% of those questioned consider themselves to be informed about the level of corruption within the country (the lowest figure among the same 27 countries).

15. The interviews conducted during the visit showed that local elected representatives (and decision-makers) and members of the government were regarded as particularly exposed to potential bribery, whereas the risks concerning parliamentarians themselves were deemed less significant. The main explanation given is that pressure can far more easily be brought to bear directly at the levels of central and local government, where decisions are reached less collectively. It is nonetheless reportedly difficult to draw definitive conclusions because of certain specific risks and problems: the fact that there are virtually no preventive provisions regarding corruption of parliamentarians, the existence of interest groups behind local and national politicians with opportunities for transfers from public office to positions in the private sector ("revolving doors"); simultaneous holding of office in local government and, in parliament, the recent nature of the political financing legislation of 2007 which is still not applied in a sufficiently consistent manner. The GET was informed that these were grey areas that remained to be explored and examined.

16. With regard to the justice system, the information obtained brought to light no specific controversies linked to corruption. Alleged corporatism in the judiciary and a degree of opacity, combined with some risk of nepotism, were the main complaints voiced during the interviews. This allegedly concerns, especially, decisions affecting the management of judges' and prosecutors' work or their careers and decisions linked, in particular, to the appointment of lawyers to deal with liquidation in bankruptcy cases. The bar associations' representatives underlined the difficulties in obtaining information from judges regarding court decisions but, according to the authorities, these criticisms are unfounded since centralised services (through the CREDOC and the central database JU-Doc) allow anyone to obtain in any branch of law information regarding case law and the decisions of any court.

17. The above-mentioned "Livange-Wickrange affair" had resulted in a desire to speed up the drafting of codes of conduct for public officials, holders of local and national political office and members of the government (for the latter, such a Code was adopted and published in March 2013, after the GET's visit)⁵. At the same time, the work initiated in 2010 for drawing up a Compendium of deontological standards for *magistrats*, that is judges and prosecutors (this is also part of a more wide-ranging reform of the profession) has finally led to the adoption of the aforementioned Compendium on 13 May

⁴ The "Livange-Wickrange Affair", which came to the fore in 2011, concerned conflicting interests relating to a major urban development project (construction of a football stadium together with a shopping centre). Two rival contractors competed for the contract, proposing projects on two different sites. According to the press, secret agreements were reached with one of these contractors, known to be particularly generous to elected officials, following which disputes broke out and allegations of extortion (physical threats) and bribery were raised.

⁵ http://www.gouvernement.lu/salle_presse/communiqués/2013/03-mars/12-biltgen/code.pdf

2013. These texts remedy significant lacuna which will be discussed in greater detail later in this report. It was pointed out that one characteristic to be noted regarding Luxembourg is that the functioning of the country's political and judicial institutions frequently follows practices and habits that remain in force for many years before a decision is taken to legislate so as to plug any legal gaps.

18. People from various backgrounds interviewed by the GET also referred to the specific judicial culture in Luxembourg (the existence of many grey areas, deficiencies, inconsistencies, administrative practices and working methods which sometimes take precedence over legislative requirements). Lastly, mention should perhaps be made of the fact that the capacity to detect and process corruption cases was for many years limited by factors already raised in part by GRECO in previous evaluation reports. During this visit further weaknesses were pointed out, in particular: a) there is still no adequate legal framework guaranteeing access to (public) information; a reform was nonetheless initiated recently⁶, b) according to the activity reports drawn up each year on the Luxembourg justice system – an initiative to be welcomed – significant efforts have been made to increase the number of staff and improve working conditions; however, the courts continue to experience considerable difficulties in managing their workload and dealing with complex cases, and the proportion of complex criminal cases where prosecution is time-barred is reportedly high.

⁶ A draft law n.6540 on citizens' access to documents held by the administration was sent to Parliament on 5 February 2013.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

19. The Grand Duchy of Luxembourg has a unicameral parliamentary system. The [Chamber of Deputies](#) has 60 members, all elected by direct universal suffrage under a system of proportional representation. Parliament has full control over its own agenda and sits continuously. It has the right of legislative initiative, together with the government. Nonetheless, in practice, it is mainly the government that tables bills (i.e. about 95% of legislation, apart from that based on an EU-related initiative).

20. According to the [Constitution](#) (Article 50), members of parliament are to represent the general interests of the country.⁷ They do not hold a professional mandate. Individuals who are elected to Parliament and who are not public sector officials are granted political leave of 20 hours per week. For reasons of incompatibility, MPs originating from the public sector are automatically retired or removed from office (depending on whether they took up their public sector duties before or after 1.1.1999). They then receive a temporary salary or a special pension. It is possible to hold office simultaneously in the national parliament and in local government, and the GET was informed in particular that the mayors of the principal municipalities are generally also members of parliament.

Transparency of the legislative process

21. Bills tabled by the government (*projets de loi*) or by members of parliament (*propositions de loi*) become public after being filed and registered by Parliament, which assigns them a document number. Government bills are referred a) to the Conseil d'Etat for an obligatory prior opinion (before their filing) and in some cases also to professional chambers or associations and b) to the Economic and Social Council or the Ombuds-Committee for children's rights on an optional basis.

22. The [Rules of Procedure of the Chamber of Deputies](#) determine the public nature of proceedings (Articles 22 and 43 in particular), whether in committee (committees' membership is made public) or in plenary. Sittings are in principle public, unless a majority of the members decides otherwise, and are broadcast, in full or in summary form, using new information technology. No provision is made for broader public consultations. When examining a bill, a parliamentary committee can nonetheless organise hearings of extra-parliamentary parties (individuals or bodies). Committee proceedings are not public, save in exceptional cases (when they are broadcast direct on the parliamentary television channel). Verbatim records of committee meetings are nonetheless drawn up and are made public, including publication on-line following their approval at the following meeting, unless the committee concerned exceptionally decides to keep its proceedings confidential. Since the Law of 27 February 2011 on parliamentary investigations, meetings of investigating committees are public, but a committee may decide to meet in camera at any time (Article 3).

Remuneration and economic benefits

23. The average annual salary in the general population in Luxembourg in 2011 was around EUR 52 414.⁸

24. The remuneration and other benefits received by members of parliament, political groups (or groups by affinity)⁹ are laid down by the Constitution (Art. 75), the [Electoral](#)

⁷ "The Chamber of Deputies represents the country. Deputies vote without referring to their constituents and may have in view only the general interests of the Grand Duchy." (Article 50)

⁸ Data for 2009: the exact figure is €48 914 (source: Eurostat, Labour Market Statistics)

⁹ A political group must include at least 5 members, failing which it is referred to as a group by affinity.

[law](#) (Art. 126) and decisions of the Chamber's Bureau, which is i.a. responsible for: representation of the Chamber at national and international level, management of the Chamber's daily business and deciding on the organisation and discipline of its personnel, financial and organisational management concerning parliamentarians, the parliament and its bodies. The following table provides an overview of resources allocated to parliamentarians:

Remuneration	
Parliamentary allowance	<u>Monthly</u> allowance: € 6 433.45 (50% of which is not subject to taxation or social contributions)+ a <u>monthly</u> supplement for Chairs of groups in an amount of € 3 337.60 (50% exempt as above) and € 5 006.39 for the President (exempt)
Attendance fee	€ 15 (index 100) per half day of presence at plenary committee meetings, paid only if the presence is noted in the record of the meeting and if the member participates in voting in person;
Leaving allowance	€ 6 433.45 paid for three months after the end of the parliamentary mandate
Other	a) Solely for members who, for reasons of incompatibility, have been obliged to resign from their duties as a state or municipal official: officials in active service prior to 1/1/1999: a pension calculated according to the general rules applicable to civil servants; officials in active service after 1/1/1999: a temporary salary of 66% of their last remuneration; b) solely for members belonging to an independent profession: reimbursement of part of social contributions paid to date
Further benefits	
Staffing costs	A <u>monthly</u> allowance capped at € 3 337.60 (+1/12th for the end-of-year bonus + possibly a redundancy or leaving allowance) is paid to a member who hires a member of staff ¹⁰ (after submission of the employment contract and after the Bureau has verified the genuineness of the employment relationship) or who reaches a fees agreement for the hire of a legal counsel or other professional adviser.
Offices	At the request of a member, the Chamber provides an office in the vicinity of the Parliament building
Grants to political and technical groups	Since 2011: Political and technical groups are awarded an annual amount (broken down and paid by quarter): a) a basic allowance of € 3 100 per group member (whether aligned or not); b) costs inherent to the hiring of staff: € 28 950 per group (or an amount prorated to the size of a group by affinity); c) IT equipment and services: € 49 600 per group (or € 10 000 per member of a group by affinity); d) care hire and fees for participating in congresses and colloquies: total amount of € 49 000 + € 15 000 distributed proportionally between groups. The Bureau of the Chamber has also decided to grant each group an allowance per legislature (or a proportionate amount for groups by affinity): capped at € 12 400 for a photocopier + €12 400 for purchase of furniture, + € 500 per member for furniture.
Other	The Chamber's budget also includes an amount for reimbursing travel and accommodation for domestic and international trips made on behalf of the Chamber.

25. Overall, the GET regards this remuneration and benefits package as falling in the lower middle category for economically similar countries in Europe. No controversies concerning the use of parliamentary resources or the standard of living enjoyed by members have been noted. A single case of fraud came to the GET's attention (see paragraph 12), and in general parliament and its staff seem to exercise restraint.

26. The Luxembourg authorities point out that members of parliament can benefit from private financial support, in the form of cash contributions or the supply of staff or equipment, at any time in connection with their political activities, since this kind of support is not prohibited. Such support is additional to the resources provided by the Chamber of Deputies and must, in principle, be included in the parliamentarians' periodical declarations. In the last 10 years, no MP has ever declared any such support. At the time of adoption of the present report, the Luxembourg authorities also stress that

¹⁰ The same capped allowance can also be paid to each MP where one or more MPs hire a staff member together.

the future Code of conduct is meant to address this matter (see also paragraph 40 below, concerning Article 168 of the Rules of Procedure).

Ethical principles and rules of conduct

27. At present there are no specific rules of conduct aimed at preventing corruption, apart from a few general principles.¹¹ At the time of the visit, in line with the resolutions adopted in 2011, the idea of a code of conduct was being studied, drawing on a number of models including the European Parliament code (with a view to ensuring consistency for national elected representatives who also sit in the European Parliament).

28. A [draft](#) dated 5 March 2013 became available after the visit, and was published on the [Chamber's web-site](#). The Luxembourg authorities indicated that the draft shall be finalised after the adoption of the present report by GRECO. The intention is that it should become applicable as from 1 January 2014. It contains eight articles of a wide-ranging nature, which go well beyond rules of ethics and in fact regulate the following points: 1. General principles; 2. Pursuit of the public interest and prohibition of bribery and trading in influence; 3. General rules governing conflicts of interest; 4. Declaration and registration of paid activities and certain other activities, disclosure of financial support and other political contributions; 5. Rules governing gifts; 6 to 8: Establishment of an advisory committee, procedure in the event of a breach, etc. Articles 1 and 2 of the draft code read as follows:

Article 1 - Guiding principles

In the exercise of their duties, members of the Luxembourg Parliament shall:

- a) be guided by and act in accordance with the following general principles of conduct: disinterest, integrity, openness, diligence, honesty, accountability and respect for the reputation of the Chamber of Deputies,
- b) act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit in relation with their office.

Article 2 – Main duties of members

In the exercise of their duties members shall:

- a) not enter into any agreement to act or vote in the interest of any other legal or natural person that would compromise their voting freedom, as enshrined in Article 50 of the Constitution,
- b) not solicit, accept or receive any direct or indirect financial benefit or other reward in exchange for influencing or voting on legislation, motions for a resolution, written declarations or questions tabled in the Chamber of Deputies or any of its committees, and shall consciously seek to avoid any situation which might imply bribery or corruption.

29. Following its adoption and entry into force – in 2014 - this code will remedy considerable shortcomings not only concerning general rules of conduct aimed at preventing bribery, but also regarding gifts and conflicts of interest, particularly through the introduction of a supervisory and advisory mechanism. The GET can but encourage the final adoption of this document. In view of its nature (and probably also of Luxembourg tradition in legislative matters), this document is characterised by an economy of language and it is clear that many provisions will necessitate further explanations – not only the guiding principles and main duties, but also the other articles discussed below. Tangible examples could be a useful means of clarifying the document

¹¹ These concern the oath to respect the institutions taken by members when they are sworn in and the general rules set out in Article 34 of the Chamber's Rules of Procedure, the aim of which is to guarantee the smooth running of proceedings (prohibition of personal attacks, unruly behaviour and so on, for which parliamentarians may incur the penalties set out in Articles 49 et seq, coming under Chapter 9 of the Rules of Procedure dealing with disciplinary matters). Four disciplinary penalties exist: 1. calling to order with an entry in the record; 2. Calling to order with withdrawal of speaking rights; 3. a reprimand with entry in the record; 4. a reprimand with temporary exclusion.

for MPs. The draft code moreover provides that the Bureau – for a description of its main tasks, see paragraph 24 – shall lay down implementing measures (Article 8). It would nonetheless be a good thing to reinforce the consistency of the wording of Articles 1 and 2 (or at least to provide clarifications): for example, Article 2 prohibits favouring third parties, whereas Article 1 appears to be confined to favouring MPs’ own interests; Article 1 is also restricted to financial interests (which excludes appointments, the award of honours, favours, or the provision of insider information, for instance), while Article 2 appears broader in scope and mentions other rewards. Lastly, in view of the practice applied to date under the current disclosure requirements contained in Article 168 of the Rules of Procedure (see below), it would doubtless be worth taking stock of the situation after the first few months of the code’s existence so as to verify its effectiveness and provide any changes if necessary. **GRECO recommends that i) as intended with the current draft code of conduct, a set of ethical rules and standards is adopted with the aim of preventing corruption and safeguarding integrity in general; ii) these rules be supplemented by an implementing instrument providing the necessary clarifications.**

Conflicts of interest and disclosure requirements

30. In criminal law matters, the replies to the questionnaire indicated that Article 245 of the Criminal Code outlaws conflicts of interest, including in respect of holders of an elected public office. However, as the GET indicates in the section on “Supervision, enforcement and penalties”, the applicability of this article to parliamentarians raises questions given the rarity of the administrative and managerial acts which parliamentarians actually carry out.

31. At the time of the visit, there were no general rules on managing conflicts of interest (apart from the specific disclosure requirements discussed below), which would for example require MPs to declare any conflict of interest and therefore to abstain where any decision to be taken in connection with their parliamentary activities could directly or indirectly concern their interests or those of their relatives (spouse or family members).

32. Here too, the draft code of conduct of March 2013 introduces some improvements, via Article 3 which concerns conflicts of interest in general, in that it addresses prevention, reporting to the President and seeking of advice where necessary:

Article 3 - Conflicts of interest

(1) A conflict of interest exists where a member has a personal interest that could unduly influence the performance of his or her duties as a member of Parliament. A conflict of interest does not exist where a member benefits only as a member of the general public or of a broad class of persons.

(2) Any member who finds that he or she has a conflict of interest shall immediately take the necessary steps to address it, in accordance with the principles and provisions of this code of conduct. If the member is unable to resolve the conflict of interest, he or she shall report it to the President in writing. If the situation is unclear, the member may seek advice, in confidence, from the advisory committee on members’ conduct, established under Article 6.

(3) Without prejudice to paragraph 2, members shall disclose, before speaking or voting in plenary or in one of the Chamber’s bodies, any actual or potential conflict of interest relating to the matter under consideration, where such conflict is not evident from the information declared pursuant to Article 4. Such disclosure shall be made in writing or orally to the President during the parliamentary proceedings in question.

33. Concerning declarations of interests, Article 168 of the Chamber’s Rules of Procedure has, since 2004, made provision for public disclosure, inter alia, of occupations and other remunerated posts or activities:

Art. 168 of the Rules of Procedure. – *The parliamentary administration shall keep a register in which all members shall disclose: – their occupations or any other remunerated posts or activities; – financial support, in the form of cash contributions or the supply of staff or equipment, which is additional to the resources provided by Parliament and is made available for their political activities by third parties, whose identity must be specified. Disclosures shall be made under a member’s personal responsibility and shall be updated. The Bureau may periodically publish a list of elements which, in its opinion, should be subject to disclosure. The register shall be public. It shall be published on the Chamber’s web-site and be available for consultation at the parliamentary administration’s offices.*

34. This article and the currently fairly limited disclosure arrangements established therein are to be replaced by Article 4 of the draft Code of Conduct:

Article 4 - Declaration by members

(1) For reasons of transparency, members shall be personally responsible for submitting a declaration of financial interests to the President within 30 days of taking the oath. These declarations shall be submitted using the form appended hereto. Members shall notify the President of any changes that affect their declaration, within 30 days of a change’s occurrence.

(2) The declaration of financial interests shall contain the following information, to be provided in a precise manner:

- a) the member’s occupation(s) during the three-year period before he or she took office within the Chamber of Deputies and his or her membership, during the same period, of any boards or committees of companies, non-governmental organisations, associations or other bodies established in law,
- b) any remuneration which the member receives for the exercise of another political mandate,
- c) any regular remunerated activity which the member undertakes in parallel with the holding of his or her office, whether as an employee or on a self-employed basis,
- d) membership of any boards or committees of any companies, non-governmental organisations, or associations or any other outside activity undertaken by the member, whether or not remunerated,
- e) any occasional remunerated outside activity, if the total remuneration exceeds EUR 5 000 per calendar year,
- f) any holding in a company or partnership, where there are potential public policy implications or where that holding gives the member significant influence over the affairs of the body in question,
- g) any support, whether financial or in terms of staff or equipment, additional to that provided by Parliament and granted to the member in connection with his or her political activities by third parties, whose identity shall be disclosed,
- h) any other financial interests which might influence the performance of a member’s duties.

Any income a member receives in respect of each item declared in accordance with paragraph 2 shall be placed in one of the following brackets: 1. EUR 5 000 to 10 000 EUR per year; 2. EUR 10 001 to 50 000 per year; 3. EUR 50 001 to 100 000 per year; 4. more than EUR 100 000 per year.

Any other income received by a member in respect of each item declared in accordance with paragraph 2 shall be calculated on an annual basis and placed in one of the brackets set out in paragraph 2.

(3) The information provided to the President under this article shall be published on the Chamber’s web-site in an easily accessible way.

(4) Members may not be elected to offices in Parliament or one of its bodies, be appointed as a rapporteur or participate in an official delegation, if they have not submitted their declaration of financial interests.

35. This article establishes a new system for declaring parliamentarians’ occupations and professional activities. It encompasses information on the relevant income, assigned to brackets along similar lines as for members of the European Parliament (members are asked to tick a box corresponding to one of four tranches of remuneration). However, the exact amount of remuneration received for other mandates (which is already public) and of private financial support must be indicated. A standard form reflecting the substance of Article 4 is appended to the draft code. As was previously the case, declarations are made under the member’s personal responsibility, but failure to submit a declaration now entails a prohibition on exercising any responsibility within Parliament (Article 4, paragraph 4).

36. The GET notes that the general disclosure system and the arrangements for declaring personal or professional interests could be clarified. In fact, Article 3, paragraph 2 is too vague to be sufficiently effective, and it could be advisable for the Chamber to specify how a parliamentarian should avoid a conflict of interest by, for example, having

the duty to abstain or withdraw, or to make a statement on conflicting interests. The implementing instrument recommended above should make this possible.

37. Moreover, the proposed system – in its general philosophy – seems to concern only those conflicts that may arise between parliamentary activities and a member's strictly personal interests. It disregards the interests of relatives or other persons close to the MP, despite the country's small size and the inevitably close relations between individuals and between the political and economic spheres, for example. Nor does it clearly indicate to what degree interests held indirectly should be taken into account under Articles 3 and 4 of the draft code. A parliamentarian could for example hold indirect interests in certain economic sectors via legal arrangements and the use of legal entities such as capital or assets management companies. To ensure the system's effectiveness, indirect interests should be taken into account and/or information on the sectors in which parliamentarians ultimately hold interests should be required. Other countries' experience has shown that personal interests may overlap with those of family members or be difficult to ascertain as a result of use of intermediary structures (which would then constitute the sole holdings to be mentioned in the periodical declarations). These are deficiencies that should be remedied, also because of additional risks specific to Luxembourg¹².

38. According to information obtained during the visit, a proportion of parliamentarians (less than 10%) are barristers or have similar consulting activities. In some instances these parliamentarians may therefore simultaneously be representing third party interests, and consulting activities can thus prove a source of risks involving dealings with political supporters (in legislative matters, for example). Although "traditional" lobbying reportedly does not exist in the Luxembourg parliament, it stands to reason that such consulting activities may provide a means of influencing legislation through the back door (the interviews showed that improper pressure does exist, for example regarding anti-smoking policy or the promotion of new information and communication technologies). For the reasons discussed further on in this report, it is difficult to establish very strict disqualification rules on grounds of incompatibility, as that would deprive the Luxembourg Parliament (which is only small in size) of some legislative and legal expertise. The GET nonetheless considers that the new rules on conflicts of interest to be included in the draft code of conduct would be a means of regulating these matters (for example, through an obligation to declare the activity sectors and interests represented by parliamentarians or a ban on setting up consulting firms or similar structures after taking up parliamentary duties). It would certainly be appropriate to improve the provisions of the future code of conduct dealing with conflicts of interest so as to cover conflicts also arising in respect of persons close to a parliamentarian (friends and family, clients) or with direct or indirect interests held through intermediary structures.

Declarations of assets, income, liabilities and interests; registration of declarations

39. As already indicated, Article 168 of the Rules of Procedure of the Chamber provides that the information shall be recorded in a publicly accessible register which may be consulted at the Chamber. The latest form available appears on each MP's [Internet presentation page](#). The information presented takes the form of a copy of the original of the individual form ("A" or "B" format), dated and signed. The GET was able to satisfy itself that parliamentary officials do have a register where previous declarations are kept, including those of former MPs. At the present time, the system is neither efficient nor reliable (see paragraphs 50 et seq.), something that the GET attributes – at least partly – to the wholly voluntary nature of the arrangement, and thus an absence of supervision and sanction.

¹² See previous GRECO reports as well as the evaluations carried out by the Financial Action Task Force (FATF), which pointed to important insufficiencies concerning transparency in general of legal persons and legal arrangements – see FATF third round evaluation report dated February 2010, page 227 et seq.

40. It is not the aim of the current system to publish details of MPs' income. The March 2013 draft code of conduct in this respect reflects the spirit of the Code of Conduct for Members of the European Parliament adopted in 2011. It does not make it possible to declare and record precise details of resources (MPs are invited to tick boxes corresponding to the brackets within which their resources fall and the ceilings of these brackets are of little use in the case of Luxembourg, especially in the case of MPs who are already in the highest bracket). Similarly, neither the current arrangement nor the draft code covers MPs' wealth, i.e. various kinds of movable and immovable property, assets and liabilities such as loans taken out, debts etc. Reform along these lines would enable the public to find out more about the people they vote for and would have a greater deterrent effect against corruption among MPs. The taking into account of relatives' assets would also enable such a system to be made more efficient. Consequently, **GRECO recommends that the declaration system be further developed in particular i) by including data which is sufficiently precise and pertinent, for instance on financial assets, debts and resources of parliamentarians; ii) by considering including information on assets of spouses and dependent family (it being understood that such information would not necessarily need to be made public).**

Prohibition or restriction of certain activities

Gifts and other benefits

41. The current rules on gifts and similar benefits given to MPs remain a particular cause of concern to the GET. At the time of the visit, there were no specific rules covering these. The draft code of conduct is intended to plug this gap:

Article 5

Gifts and similar benefits

(1) MPs shall not, in the course of their duties, accept gifts or similar benefits other than those with an approximate value of less than EUR 150 given as a matter of courtesy by a third party or when they are representing the Chamber in an official capacity.

(2) Any gift presented to MPs in accordance with paragraph 1 when they are representing the Chamber in an official capacity shall be reported to the President, or to the Bureau if the recipient is the President.

(3) The payment by a third party, other than an international public institution, of MPs' travel, accommodation or subsistence expenses shall be reported to the Bureau and shall be published in accordance with Article 4 (3).

The scope of this article, particularly the rules to guarantee transparency, may be clarified by the Bureau.

42. The GET points out that, while anti-corruption regulations should normally prohibit cash payments to members of the executive and the judiciary, the same should in principle apply to the third branch of power, the legislature: political funding is the admissible exception because it is essential in a democracy. The regulations above in principle prohibit "gifts or similar benefits" other than those worth less than EUR 150 and those given during official representation of the Chamber. The latter merely have to be reported to the President or to the Bureau: in the GET's opinion, it would be preferable to provide for these to be transferred to parliamentary (or state) ownership, to achieve consistency with the principle of the prohibition of donations (for otherwise benefits of considerable value could be kept by an MP, although he or she is representing parliament as a whole). Paragraph 3 excludes from the prohibition benefits in the form of travel, accommodation or subsistence expenses: these must merely be published. The GET has reservations about the fact that the regulations thus allow MPs to benefit from certain benefits which may be of considerable value. Furthermore, this dual arrangement might well in practice cause problems in terms of the distinction between, on the one hand, the concept of "gifts or similar benefits" (prohibited above EUR 150) and, on the other, that of "travel, accommodation or subsistence expenses" (allowed, but subject to

declaration): how, for instance, are forms of hospitality which involve differing benefits to be treated? For the GET, the most consistent possible rules for MPs would be preferable, with application of the EUR 150 limit to all kinds of benefit. This is in any case what would be expected where members of the other branches of power – the executive and the judiciary – are concerned. At the time of adoption of the present report, the Luxembourg authorities point out that the Institutions and Constitutional Review Committee intends to remedy this situation. Consequently, **GRECO recommends that the future rules relating to gifts and other benefits be made more consistent, based on prohibition in principle.**

43. In particular, the aforementioned draft code is intended to keep within the declaration mechanism set out in Article 4 (2)(g) that support currently covered by Article 168 of the Rules of Procedure: “whether financial or in terms of staff or equipment (...) granted to the member in connection with his or her political activities by third parties”. In the GET’s opinion, it is illusory to try to regulate gifts and other benefits – with prohibition in principle of gifts above a certain value – when at the same time the possibility is retained and organised of receiving without any restriction or limitation any form of contributions in cash or in kind, on the pretext that this last possibility is related to “political” activities. In practice, how would the distinction be drawn in the case of an MP between, on the one hand, gifts and similar benefits (unrelated to political activity) which would be prohibited, and, on the other hand, gifts related to such activity, which would be allowed? Furthermore, no MP has yet declared such contributions related to his or her political activity, and the GET has been unable to obtain a definitive explanation of this state of affairs, some people saying that such donations do not in practice exist, whereas others say that they certainly do exist. Notwithstanding the praiseworthy ambition of the arrangement, its practical usefulness therefore remains disputable, especially as details have apparently never been given of its application to the different conceivable forms of support (such as travel expenses, costs of services met directly by a donor, or benefits provided free of charge). At the time of adoption of the present report, the Luxembourg authorities point out that the Institutions and Constitutional Review Committee intends to address this matter by amending further the draft Code so as to remove any contradiction with the law of 2007 on the financing of political parties.

44. Finally, as emphasised by GRECO in its previous report on Luxembourg:¹³ “(...) *the fact that parliamentarians (or their respective political group) are entitled to receive private support directly (...) confirms the need for Luxembourg to ensure the coherency of the texts and the supervisory procedure; as things stand, such funding is subject to the Rules of Procedure of the Chamber of Deputies, but the rules are different from those on political funding (...). For instance, because contributions by legal persons to parliamentarians are not explicitly prohibited by the Rules of Procedure while they are forbidden for party funding and, since January 2012, for election campaign funding, it is theoretically possible for parliamentarians to collect funds from legal entities and to pass them on to their parties as a special member’s or elected representative’s contribution, or to keep the payments to finance part of their campaign on a personal basis. Even if this kind of donation were not prohibited, the fact of elected representatives collecting funds - which are then passed on to the party as personal contributions, as ‘special’ membership fees or in another form - obscures the origin of the payment (whether deliberately or not). Furthermore, there would not seem to be any real machinery for supervising declarations of donations received by parliamentarians, apart from their publication. GRECO has already had occasion to point out that where regulations on the transparency and monitoring of political funding do exist, it would be logical either to make donations to elected representatives subject to these regulations or to prohibit such donations outright.*” GRECO pointed out that recommendation vi made in the Third

¹³ Paragraph 28 of the Second Compliance Report on Luxembourg relating to the Third Evaluation Round report, Theme II – Transparency of political party funding, on the subject of the still partial implementation of recommendation vi: “*that the financing of campaigns, including of candidates for elections, be subject to rules on transparency, accounting obligations, control and sanctions similar to those applicable to political parties*”.

Evaluation Round report had never been fully implemented in the light of this situation,¹⁴ and it seems that Luxembourg has still not taken measures along the expected lines. GRECO can only urge Luxembourg to resume its examination of this matter, which is crucial to the prevention of political corruption.

Incompatibilities and accessory activities

45. An MP's mandate is incompatible with the duties of a member of the government, member of the Conseil d'Etat, judicial magistrate, member of the Audit Chamber, district commissioner, state collector or accounting officer or career soldier on active service (Article 54 of the Constitution), and with the duties of an official or employee of the state, a local authority or union of local authorities, a public establishment subject to government supervision or the state railway company, as well as with those of a polling station official in certain cases (Article 129 (1), and Article 67 (2) of the Law on Elections). The GET notes that this system of incompatibilities is clear evidence of the Luxembourg legislature's will to preserve the separation of powers. Nevertheless, from this point of view, the question of the incompatibility of an MP's mandate with an occupation in other courts has not been dealt with in a clear-cut manner in all situations. Proposals have been made to address this matter by a special law in the context of the constitutional review currently under way. GRECO can only support these proposals¹⁵.

46. Other than in the aforementioned cases, an MP may therefore engage in any other activity that he or she wishes, and, if the activity concerned is gainful, it is declared in the register to which Article 168 refers (Article 4 of the draft code of conduct). The Law on Elections also prohibits the existence of certain family or marital ties between members of the Chamber. In the context of Luxembourg, a small country, it seems difficult to introduce an excessively strict incompatibilities regime without this affecting the operation of parliament, as was frequently emphasised during the visit. For these reasons, the issue of MPs working as business lawyers may be approached through the mechanism for dealing with conflicts of interest.

47. The simultaneous holding of office in local government and in the national parliament is one of the subjects currently under discussion in Luxembourg. In practice, a large number of MPs are also elected representatives at local level, and are often the mayors (*bourgmestres*) of large local authorities. It is in the large communes that the main economic and industrial activities of the country are concentrated. It was also in connection with local elected representatives that it was observed that political or other financial support – of a questionable nature – was collected from private-sector firms through associations set up by elected representatives (such as an association set up to promote the image of a certain region). The Luxembourg authorities point out that in principle, this is prohibited by the legislation of 2007, as amended, on the financing of political parties and that they are unaware of the existence of such associations. While in Luxembourg, as in many other countries, holders of elective office represent the interests of the nation as a whole, and not those of their constituencies (as already stated, there is no requirement for MPs to comply with their electorate's instructions), the fact that a municipal councillor holds a parliamentary mandate is perceived by his or her local electorate as facilitating access to additional means of defending the local authority's interests (or certain more specific interests). One well-known problem with the simultaneous holding of different offices is in practice the risk of confusion between

¹⁴ Cf. paragraphs 23 et seq. of the [Second Compliance Report of the Third Evaluation Round](#)

¹⁵ The GET notes that the government had apparently, in the context of draft Law No. 6030 on the revision of the Constitution, proposed to make a reference also to administrative court judges. After the visit, the Luxembourg authorities indicated that the Institutions and Constitutional Review Committee currently proposes to limit the enumeration of occupations which are incompatible with the mandate of an MP to those of member of government, member of the European Parliament and member of the Conseil d'Etat, and to complete the list of incompatibilities with other public functions by means of a separate piece of legislation. <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public/DossiersEnCours&id=6304#>

specific interests at the different levels represented. Furthermore, as local elected representatives, and mayors in particular, are vested with significant individual powers in terms of decision-making and administrative management, it might seem logical to extend the current incompatibility between an MP's mandate and any office in the central or local administration by prohibiting the simultaneous holding of a mandate as a local elected representative. Several of the persons spoken to, including some among the MPs themselves, felt that different mandates should not be held simultaneously, either for the aforementioned reasons or in order to restore elected local representatives to a central role at their level of representation (because of the impossibility of appropriately discharging the duties of a dual mandate, especially if the holder also, in principle, exercises a gainful activity). The taking into account of the other recommendations made in this report should, in normal circumstances, help to limit some of the aforementioned risks, and the GET does not consider it useful to place too much emphasis on this, bearing in mind the specific characteristics of Luxembourg.

Misuse of public resources; other limitations

48. Since the revision of the Rules of Procedure of the Chamber which came into force in September 2011 (and following up a recommendation made by GRECO in the Third Evaluation Round), "*financial grants to political groups shall be exclusively geared to covering expenditure relating to parliamentary activities, and may not be used to cover expenses incurred by political parties*" (Article 16 of the Rules of Procedure). Otherwise, there are no parliamentary or other rules to ensure the proper use of the public resources made available to MPs. Possible misappropriation of those funds would be dealt with as a criminal case. The case of fraud already mentioned (cf paragraph 12) is an example of this. The resources made available to members of Luxembourg's parliament, however, remain reasonable and seem to offer few opportunities for abuse.

Contracts with State authorities, post-employment restrictions and contacts with third parties

49. Beyond the foregoing and the provisions of the Criminal Code referred to in paragraphs 58 et seq., the current Rules of Procedure of the Chamber do not provide for any other regulations/limitations relating for instance to contracts with national authorities (directly or through companies, for example), to taking up certain duties or activities on expiry of a mandate, or to the use of confidential information for personal or relatives' benefit. Above all, contacts with third parties are not addressed. Only the passing to third parties of information derived from secret deliberations in committee is covered. The draft code of conduct, which has a total of only eight articles, remains a succinct document, and it is silent about this and the other issues addressed above. While lobbying is an activity which does not exist as such in Luxembourg (and the presence on parliamentary premises of associations, for instance, remains exceptional), possible contacts are made in practice directly by telephone or within associations of local elected representatives and in the course of their relations with the business sector. Given its particular importance for the prevention of corruption of parliamentarians, the issue of contacts with third parties deserves to be better regulated where these amount to some form of (non-institutionalised) lobbying. **GRECO recommends the introduction in the Code of conduct of rules on the way in which MPs should conduct themselves with third parties seeking to influence the work of the legislature.** It is of course understood that this does not concern the contacts which Parliament must generally maintain with the various institutions and representative organisations in the framework, for example, of consultations, hearings or debates.

Supervision and enforcement

50. There is no specific supervisory system. Where the register referred to in Article 168 of the Rules of Procedure of the Chamber is concerned, the role of the Bureau

of the Chamber is confined to that of periodically indicating the information to be declared. MPs bear full individual responsibility for their declarations.

51. The samples of declarations from the register examined by the GET show that the system is currently ineffective; for example: a) the forms are often completed by hand and not easily legible; b) some MPs continue to use without distinction the old form from 2007, with four headings, and the current form, with five headings; c) manifest errors are made in the placement of information in the correct spaces, and some MPs do not take the system at all seriously (not even indicating their business activity when it is well known); d) very few MPs declare income from gainful activity (or even from other offices held); no MP had ever declared contributions in cash or in kind as at the date of the visit.

52. During the on-site interviews the GET pointed to the lack of credibility and manifestly incorrect nature of the information declared by a good number of MPs (others, in contrast, make detailed declarations). A number of the people spoken to – MPs and others – confirmed the ineffectiveness of the current system. Parliamentary officials expressed a wish to remedy the main shortcomings speedily by reminding MPs of the rules. The GET nevertheless believes that in order for it to be effective and help to prevent corruption among MPs, the declaration system should be accompanied by a supervisory or monitoring system. The draft code of conduct is intended to effect a change, whereby declarations will no longer be a matter solely for the MPs concerned. Thus Article 7 provides for a specific procedure in the event of violations of the code.

Article 7

Procedure in the event of violations of the code of conduct

- (1) When there is reason to believe that an MP may have breached this code of conduct, the President may inform the advisory committee.
- (2) The advisory committee shall examine the circumstances of the alleged breach and may interview the MP concerned. On the basis of its conclusions, it shall make a recommendation to the President of the Chamber on a possible decision.
- (3) If, having taken that recommendation into account, the President concludes that the MP concerned has breached the code of conduct, he shall, after interviewing the MP, adopt a reasoned decision laying down a penalty, which he shall notify to the MP.
- (4) The penalty imposed shall be one of the penalties for which Article 50 (3) to (6) of the Rules of Procedure of the Chamber of Deputies provides. The penalty shall be announced during a public sitting.
- (5) If the acts of which the MP is accused may constitute offences under the Criminal Code, the file shall be sent to the public prosecutor, in pursuance of Article 23 of the Code of Criminal Investigation.

53. This is not, however, a supervisory system as such, since a check would only be made subsequently in order to establish a violation and have a penalty applied by the President of the Chamber. The latter is assisted by an advisory committee set up in pursuance of Article 8 of the code, and the opinion of which he/she may request.

Article 6

Advisory committee on members' conduct

- (1) An advisory committee shall be set up with a view to application of the code of conduct.
- (2) The advisory committee shall comprise five members appointed by the Bureau at the beginning of each parliamentary term. The advisory committee shall appoint its chairperson.
- (3) The members of the advisory committee shall be selected from outside the Chamber of Deputies.
- (4) Upon request by an MP, the advisory committee shall give him or her, in confidence and within 30 calendar days, guidance on the interpretation and implementation of the provisions of this code of conduct. The MP in question shall be entitled to rely on such guidance.
At the President's request, the advisory committee shall also assess alleged breaches of this code of conduct and advise the President on possible action to be taken.
- (5) The advisory committee may, after consulting the President, seek advice from outside experts.
- (6) The advisory committee shall publish an annual report on its work.

54. It is interesting to note that the advisory committee has five members, all appointed by the Bureau from outside the Chamber. This being said, the system leaves significant scope for individual decision-making by the President, on issues from the expediency of requesting the advisory committee's opinion to the final finding of violations and the choice of penalty. It would be worth clarifying the procedure in certain respects, such as the possibility for anyone to refer a question to the President and the extent to which he/she should in principle follow this up. It is also important for the committee and/or the President to have access to information sources enabling the accuracy or inaccuracy of any declarations which are the subject of allegations to be established. The draft is in any case to be supported and the supervisory system to be refined, for example with some level of advance monitoring of compliance in terms of format and the reliability and credibility of the information supplied, and additional measures to ensure the effectiveness of the system, particularly details about the procedural rules to be followed and access to appropriate information sources in the event of a dispute. The Luxembourg authorities stated during the adoption of the current report that initiatives moving in this direction are foreseen.

55. Where penalties are concerned, the current texts are characterised by the extremely small number of provisions. The divulging to third parties of confidential information connected with committee work ("insider" or other information) may give rise to a reprimand by the Conference of Presidents, acting on the initiative of either the President or any MP. As for incompatibilities, Article 130 of the Law on Elections states that, if an MP accepts an office, post or responsibility which is incompatible with his or her mandate, he or she is automatically relieved of his or her mandate as an MP, except in respect of his or her pension rights. No other specific relevant sanction mechanism is provided for, for instance in the event of failure to make the declarations required by Article 168: as already stated, the spirit of the system is based on voluntary declarations. Nor are there any provisions in the event of misappropriation of the funds allocated to parliament, for example in the context of Article 16 on grants to political groups, or in another context. That said, cases of fraud are subject to criminal penalties, as has happened on one occasion in the past – cf. paragraph 12).

56. The draft code of conduct is intended to improve the current situation in this respect as well. As already stated, Article 4 (4) provides for submission of a declaration to be the *sine qua non* of the exercise of any responsibility within parliament. This means that the submission of a declaration which is manifestly incorrect, or even a blank one, does not prevent the exercise of such responsibility. Article 7 (4) and (5) (cf. text in paragraph 52) provides for a mechanism which would enable disciplinary consequences to be attached to all breaches of the code.

57. This in itself would constitute progress, provided that it is clear that, when paragraph 1 refers to the code of conduct being "breached", this may be any failure, including failure to submit certain information/declarations or the submission of inaccurate or false declarations. Paragraph 4 refers to Article 50 of the Rules of Procedure of the Chamber of Deputies, which provides for the following measures: a) reprimand; b) reprimand and temporary exclusion from the Chamber entailing deprivation of the allowance payable to the MP. As acknowledged in the explanatory document accompanying the draft code of conduct, "*the texts of Articles 49 and 50 of the Rules of Procedure of the Chamber of Deputies are not necessarily geared to the new breaches which arise from the code of conduct*". The GET notes in fact that Articles 49 and 50 of the Rules of Procedure would be difficult to apply as they stand in respect of failures to comply with the future code of conduct: they are so worded as to penalise behaviour which disturbs parliamentary deliberations. Furthermore, even if these measures were effectively applicable, they would still have little deterrent effect in terms of penalising failures to comply with a text as important as the future code of conduct: a reprimand in itself brings essentially symbolic consequences, suspension is for a maximum of 15 days (30 days in the event of repetition) and may be immediately cancelled if written apologies are sent to the President. Ultimately, an MP alleged to be concealing income

does not risk the consequences that an effective preventive policy would require in this respect (such as partial or complete loss of parliamentary allowances and other assistance from parliament or an order to repay these, publicity of the measures imposed, suspension for a period sufficiently long to be effective). In view of the various considerations in paragraph 50 et seq., **GRECO recommends the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of conduct for parliamentarians.**

58. Article 7 (5) of the draft code of conduct provides for a disciplinary file on criminal offences to be forwarded to the prosecution service. The GET welcomes this link between the two mechanisms, which should foster a degree of self-discipline among MPs in terms of compliance with the future code of conduct. The Luxembourg authorities pointed out in their replies to the questionnaire that the various provisions of the Criminal Code (CC) on corruption and trading of influence¹⁶ have been applicable to MPs since 2001. As stated in the First Evaluation Round report, active and passive bribery of MPs is covered by Articles 246 to 249 CC, and trading of influence involving MPs is the subject of the same articles (both when the MP is the target of the trading of influence and when he/she is the person responsible for the trading).

59. The authorities particularly emphasised the importance, for the system for preventing corruption among MPs (and judges and prosecutors), of Article 245 of the Criminal Code (CC), which criminalises conflicts of interest:

Art. 245 of the Criminal Code (Law of 15 January 2001) Persons exercising public authority and other public officials, law enforcement officials and persons performing public duties or holding elective public office who, directly or through the intervention of other persons, or through simulated acts, have taken, received or kept any interest whatsoever in acts, contracts, enterprises or authorities for the management or supervision of which they were wholly or partly responsible, at the time of the act, or who, being responsible for authorising or making a payment, have taken any interest whatsoever therein, shall be punishable by a prison sentence of between six months and five years and by a fine of between EUR 500 and EUR 125,000, and may also be prohibited from holding public responsibilities, posts or offices.

The above provision shall not be applicable to anyone who could not, because of the circumstances, derive benefit for his or her private interests through his or her position, and who acted openly.

60. The GET believes that Article 245 of the CC is a useful punitive tool which, in future, would supplement the preventive system and the disciplinary penalties for which the future code of conduct provides in this respect. Nevertheless some questions remain unanswered: a) as currently worded, Article 245 of the CC is only marginally applicable to MPs, a viewpoint often shared by those to whom the GET spoke. The scope of the text is effectively restricted to conflicts of interest "*in acts, contracts, enterprises or authorities for the management or supervision of which [the official, authority or elective representative was] wholly or partly responsible, [or] responsible for authorising or making a payment*". This wording covers mainly members of the executive and elected representatives at local authority or union of local authorities level, who are effectively involved in the management of public affairs. Effective applicability to MPs would require some amendments taking account of the nature of their activities. Other aspects, such as the question of the absence of accountability (absolute immunity) might need to be addressed on that occasion;¹⁷ b) it might be necessary to make clear the boundary between conflicts of interest which come under the future code of conduct (Article 7) and those likely to be the subject of far more severe criminal penalties in pursuance of Article 245 of the CC. In conclusion, Luxembourg might wish to resolve these issues of the applicability to MPs of the offence of unlawful taking or acceptance of an interest, and

¹⁶ For a description and analysis of these provisions, see the Evaluation Report on Luxembourg from the [Third Evaluation Round](#), relating to theme I - "Incriminations" and the subsequent reports produced in the context of the "compliance procedure".

¹⁷ Where conflicts of interest linked to participation in collective decision-making are concerned, since such decisions are shaped by what is said and by the voting.

its future linkage with the preventive mechanism for which the future code of conduct for MPs provides.

61. Members of the Luxembourg parliament enjoy limited immunity from prosecution for criminal offences (in addition to the classic immunity protecting freedom of opinion and free voting). The Constitution (Article 69) foresees in fact that MPs may be subject to criminal prosecution even during the session. Only the arrest of an MP during the period of the session, except in the case of *flagrante delicto*, is subject to prior authorisation by the Chamber. Nor is authorisation by the Chamber required for the enforcement of sentences against MPs, even those entailing deprivation of liberty (Articles 171 to 177 of the Rules of Procedure of the Chamber of Deputies relate to the procedure for examining requests for the arrest of a member of the Chamber of Deputies). The on-site interviews confirmed that, as already noted during the First Evaluation Round, immunity from criminal prosecution or “inviolability” (for acts committed by the MP – passive bribery, trading of influence) had not hitherto raised any problems in practice.

Advice, training and awareness

62. A collection of the main legislative texts relating to the parliamentary mandate and the functioning of the Chamber, as well as the document entitled “La Vie Parlementaire” (which contains facts and information about parliamentary life), are issued to each MP. These and other fundamental documents (legislative and regulatory procedure, Rules of Procedure, Constitution, Law on Elections, etc.) are published on the Chamber’s portal.

63. According to the replies to the questionnaire and the on-site interviews, the parliamentary administration issues a reminder each year – at the start of each new parliamentary session – of the provisions of Article 168 of the Rules of Procedure of the Chamber of Deputies and invites MPs to update their declarations. At the moment, and in the light of the content of a good many of the – manifestly inaccurate – declarations lodged to date, it is clear that the problems lie elsewhere, not in awareness-raising and information. The introduction of a system of accountability in the event of breaches of the future code of conduct should therefore help to improve things. The GET nevertheless emphasises that the handing to addressees of a copy of the text is among the general good practices where rules of conduct are concerned (codes of conduct, rules of ethics, etc.), with a signature ideally being required of addressees as an official acknowledgement that they are aware of them. The nature of the future code of conduct might require such a procedure to be put in place.

64. The GET also notes that the aforementioned advisory committee is given, in addition to its advisory function in the event of a breach of the code, an assistance and advice function in respect of application of the code.

Other aspects

65. MPs drew the attention of the GET to the fact that, in Luxembourg, the Constitution is imperfect in so far as it makes no provision for the consequences of a decision of the Constitutional Court, in this case the amendment of disputed legislative provisions. Thus texts exist which, in theory, are unconstitutional, but in practice they continue to be applied. Such monitoring of the constitutionality of laws may, in a democracy, afford an additional safeguard against legislative provisions which are unconstitutional as a result of illegitimate considerations (connected with, for example, conflicts of interest or corruption). This issue lies outside the scope of this evaluation, but Luxembourg is invited to finalise the legislative work initiated¹⁸ to remedy this problem,

¹⁸ The Institutions and Constitutional Review Committee has already foreseen the inclusion, in the draft law n.6030/05 concerning the reform of the Constitution, of a general constitutional principle according to which any law declared unconstitutional would cease to be applicable after a certain amount of time.

which is essential in terms of the values defended by the Council of Europe, including the rule of law.

66. MPs also drew the attention of the GET to the incomplete nature of the texts on enforcing the accountability of ministers and MPs. Where the former are concerned, the Chamber of Deputies in principle has the power to accuse ministers, while it is the role of the Supreme Court of Justice to decide the case (Article 116 of the Constitution). However, the procedure would not appear to be governed by any texts, for there is no Grand Ducal Regulation in application of Article 82 of the Constitution. As things stand, it would therefore be impossible to begin a criminal case against a minister. The Luxembourg authorities underline however that the absence of a Regulation is not really problematic and that ministers have already been subject to criminal charges. In the context of the legislative work mentioned in the previous paragraph, a change is foreseen in order to remove any ambiguities.

67. Where MPs are concerned (from whom ministers are generally recruited), it is unclear which procedural defects were referred to by those people to whom the GET spoke. Insofar as the GET can judge, MPs are subject to the general rules, so there do not seem to be defects or special restrictions connected with the conditions for investigation, prosecution and trial – the Luxembourg authorities confirmed this analysis at the time of adoption of the present report. At all events, it would be worth clarifying this with elected representatives themselves, in order to dispel any risk of MPs feeling that they enjoy impunity, a feeling which might result from this apparently inaccurate perception of the rules.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

68. The Luxembourg judicial system is currently the subject of a major reform bill, which has been divided into two. Firstly, the Law on judicial assistants (*attachés de justice*) of 7 June 2012 (published on 21 June 2012)¹⁹ – shortly before the on-site visit – has given rise to various changes²⁰ and, in particular: (a) increased staff numbers at some courts; (b) reformed access to the functions of judge or public prosecutor and judicial assistant; (c) harmonised recruitment, selection and training conditions for such staff (introducing a competitive examination for admission to these posts, a selection committee and a skills and worthiness requirement); (d) the abolition of exemption from jurisdiction for judges, prosecutors and law enforcement officers; (e) the abolition of substitute judges and their subjection (and that of judicial assistants and judicial staff with civil servant status) to the general civil service regulations (covered solely by the law on the organisation of the courts).

69. Secondly, draft Law No. 6030 on the amendment and new layout of the Constitution, tabled on 21 April 2009, concerns a series of major amendments including: (a) the removal of all prerogatives of the Grand Duke in judicial matters; (b) a constitutional guarantee of the independence of the public prosecutor's office and mobility for public prosecutors based solely on legal criteria. The establishment of a National Judicial Council, tasked in particular with supervising judges, is one of the innovations which was also discussed in this context. A discussion was also launched on ways of reforming the Court of Cassation to increase its independence.

70. The website www.justice.public.lu is entirely given over to general information on the justice system in Luxembourg. It includes, in particular, the [annual activity reports](#) of the courts and the public prosecution service, with statistics and qualitative assessments, some of which (for example those for 2009 and 2010) describe certain recurring problems such as a lack of resources, the fact that many cases of economic and financial crime cannot be dealt with properly and are time-barred (the Principal State Prosecutor said the same in his statement on taking up office in 2010). These reports also contain suggestions on how to improve the situation. The reform of June 2012 takes up some of these ideas where it comes to increasing staff numbers.

Categories of courts and jurisdiction levels

71. Despite Luxembourg's small size, it has relatively diverse institutions and there are five types of court: ordinary courts ("*tribunaux judiciaires*"), administrative courts, social security courts, military courts and, lastly, the Constitutional Court. The latter two categories are hardly dealt with, if at all, in the replies to the questionnaire given their marginal role compared to other courts. The GET has attempted nonetheless to compile some information about them.

72. The organisation of the ordinary courts (which does not include the four other types of court including the administrative courts) is mainly governed by the [law of 7 March 1980 on the organisation of the courts](#) (LOJ).

¹⁹ [The Law of 7 June 2012 on judicial assistants \(*attachés de justice*\), amending:](#)

- the Code of Criminal Investigation;
- the amended law of 16 April 1979 establishing the general civil service regulations;
- the amended law of 7 March 1980 on the organisation of the courts;
- the amended law of 10 August 1991 on the profession of lawyer;
- the amended law of 7 November 1996 on the organisation of administrative courts.

²⁰ For a description of the entire legislative process (including the position of professional lawyers' or judges' associations), see <http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&id=6304B#>

73. The first level of the ordinary courts (“*tribunaux judiciaires*”) comprises the two district courts (*tribunaux d’arrondissement*) of Luxembourg and Diekirch, and the three magistrate’s courts (*justices de paix*) of Luxembourg, Esch sur Alzette (which both form the territorial jurisdiction of Luxembourg) and Diekirch (which forms the territorial jurisdiction of the same name). Cases are allocated to these courts according to the subject matter, the sums of money at stake, the seriousness of the offence and other criteria prescribed by law. District courts also hear appeals against the judgments of magistrate’s courts. The Supreme Court of Justice (*Cour supérieure de justice*) is the second and last level of the courts and is made up of the Court of Appeal and the Court of Cassation.

Courts of 1 st instance: three magistrate’s courts: 33 full judges and a number of assessors (non-professional judges)		
Magistrate’s courts	Civil and commercial cases	Single judge
Police courts	Criminal cases	Single judge
Labour courts	Labour disputes, pensions, insolvency	A bench comprising a magistrate and two assessors (lay judges, one appointed by employers and the other by employees)
Courts of 1 st instance (and appeal): District courts (two judicial districts, one court per district): 83 judges in total		
District courts	18 divisions specialising in the subject matter outlined above.	A three-judge bench.
Youth and Guardianship Court	One section in each of the two district courts	Single youth or guardianship judge, as appropriate
2 nd instance and cassation: Supreme Court of Justice		
Court of Appeal: 10 divisions	Hears civil, commercial and criminal cases and labour disputes	Three judges (<i>conseillers</i>) except in criminal cases (five) and juvenile cases (single judge)
Court of Cassation: 1 division	Hears civil, commercial and criminal cases and labour and social security disputes	A five-judge bench

74. Magistrates are appointed by the Grand Duke (Article 4 LOJ). Labour law assessors are appointed by the Minister of Justice for a five-year renewable term, on the basis of a list put forward by the relevant associations (Article 56-2 LOJ). They are then assigned to cases by the president of the Labour Court (magistrate; Article 56-1 LOJ). District court judges are appointed by the Grand Duke, as are their presidents following an opinion from the Supreme Court. Presidents of the Court of Appeal, the Court of Cassation and the Supreme Court are selected by the Grand Duke from a list of three names supplied by the general assemblies (of the Court of Appeal, the Court of Cassation and the Supreme Court).

75. The administrative courts are a relatively recent creation following a constitutional reform of 1996 and the adoption of the [Law of 7 November 1996 on the organisation of the administrative courts](#), which includes the rules governing these courts and provides for a double degree of jurisdiction:

1 st instance: Administrative court	Three divisions; 11 career judges and 9 substitutes	A three-judge bench
2 nd instance: Administrative court of appeal	Single division; five career judges and 5 substitutes	A three-judge bench

76. Career judges at the administrative court and the administrative court of appeal, as well as their substitutes, are appointed by the Grand Duke (Articles 11 and 58 LOJA). Appointments are based on a proposal by the court concerned except for the

administrative court, of which only the president and vice-president are appointed on the basis of a proposal by the court. Substitute judges of the administrative courts and administrative court of appeal are selected among candidates who are acting judges of ordinary courts. They are thus always professional judges.

77. Social security courts are governed by Articles 454 et seq. of the [Social Security Code](#) and by the amended [Grand Ducal Regulation of 24 December 1993](#). They hear disputes over social benefits and have a double degree of jurisdiction. There is also the possibility of an additional appeal on points of law to the Court of Cassation described above. For social security proceedings there is only one judicial district for the entire country.

1 st instance: Social security arbitration court	Three-person bench: one president (a professional judge) and two assessors (lay judges put forward by employees and employers) or a single judge in some specific cases
2nd instance: Supreme social security court	Five-person bench: one president, two assessors appointed from among the judges for a period of three years and two deputies (lay judges put forward by employees and employers)

78. The assessors at the arbitration court are appointed by the Minister of Justice for a five-year term on the basis of lists submitted by employers' and employees' organisations. The president, the vice-president and the judges are state officials appointed by the Grand Duke. They must have a doctorate in law and they are covered by Articles 174 to 180 LOJ (on compulsory retirement) as well as Articles 155 to 169 on disciplinary aspects (in accordance with Article 454 paragraph 5 which makes a cross reference to these provisions).

79. Military courts comprise the military court (*conseil de guerre*), the military court of appeal and the military high court:²¹

Military court	Tries offences under the Military Criminal Code	Three-person bench: an officer of the rank of lieutenant colonel, at least, as president, a district court judge and an officer of the rank of captain, at least.
Military court of appeal	Hears appeals against decisions of the military court	Three-person bench: a judge from the ordinary courts with the rank of appeal court judge as president, a trial-court judge with the rank of judge, at least, and an officer with the rank of major, at least.
Military high court	Tries crimes and offences against the external security of the state and certain specific offences	Five-person bench: two members of the court of appeal, with the one who has been serving longest acting as president, a judge from the district court and two officers with the rank of lieutenant colonel, at least.

80. The Constitutional Court, which rules on the compatibility of laws with the Constitution, is the fifth type of court. It is governed by Article 95ter of the Constitution of 17 October 1868 and the [Law of 27 July 1997 on the organisation of the Constitutional Court](#).

Constitutional Court	Rules on the compatibility of laws with the Constitution. Is made up of one five-judge chamber.	Comprises the president of the Supreme Court of Justice (who chairs the Constitutional Court), the president of the administrative court and the two judges at the Court of Cassation (all four are ex officio members) and five judges, appointed on an ad hoc basis. It sits in a five-judge formation.
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81. The nine members of the Constitutional Court – four of whom are ex officio members – are all appointed for an indefinite term by the Grand Duke. The five judges

²¹ Their functioning is governed in particular by the [Military Criminal Code and Military Code of Procedure as amended by the Law of 31 December 1982](#).

who are not ex officio members are appointed following a joint opinion of the Supreme Court of Justice and the administrative court. For each vacant place the nine-member assembly must present three candidates.

82. Luxembourg has also adopted the institution of the investigating judge. Accordingly, each district court has its own investigating office. The Luxembourg office has 13 investigating judges (the chief investigating judge, two judges with the rank of vice-president and ten with the rank of judge or magistrate) while the Diekirch office has just one investigating judge (Article 19 LOJ). Investigating judges are charged with investigating criminal cases and, where appropriate, misdemeanours referred to them by the prosecutor's office or directly, on the basis of a complaint combined with an application to join the proceedings as a civil party (Articles 50 and 56 of the Code of Criminal Investigation). They are also in charge of international mutual assistance cases. Investigating judges work together in a single office, which is managed by the chief investigating judge. The investigating judges attached to the district court of Luxembourg are constituted as a single working unit.

83. All investigating judges are appointed by the Grand Duke. The chief investigating judge is appointed for an indefinite term while the other investigating judges are appointed for a three-year renewable term on the advice of the chief investigating judge. To date, only one investigating judge has not had his term renewed.

84. The GET wishes to point out that, bearing in mind Luxembourg's specific characteristics and in order to avoid duplication, it considered it preferable to deal with prosecutors – who, together with the judges, constitute a professional category called *magistrats* – in the recommendations in this section of the report, namely chapter IV, while concentrating in chapter V, which is given over to prosecutors, on certain specific aspects linked solely to their status. The GET did not go into the detail of the situation of military courts and military prosecutors given the relatively marginal role of this part of the justice system (and moreover the lack of any obvious controversy concerning it). In the GET's view, what is immediately striking is the diffuse and scattered nature of the organisational provisions that apply to the various bodies and the lack of co-ordination of the rules on the functioning of the justice system, together with the various statuses, rights and duties of judges (and prosecutors) and of other categories of person called on to sit in the courts without being professional judges who have taken the oath (in labour and social security-related matters). This is despite the fact that, in principle, Luxembourg has opted for a degree of standardisation of the various functions that make up the category of *magistrats*. In the following pages, this report highlights the complexity and inconsistency of the rules (even within the same text) – see for instance paragraphs 90 to 92, and 129 hereinafter. Ultimately, it is difficult for members of the public to understand how the judicial system is organised and, as the GET noted, even legal practitioners and the most senior officials themselves have such problems. A serious effort at harmonising and aligning the various texts should therefore be made bearing in mind that high legal standards always contribute to the fight against corruption. Another factor which argues in favour of such an alignment is the fact that during their careers, judges and prosecutors are required to change functions between various courts or between the functions of judge and prosecutor. Furthermore, the judges of the Constitutional Court (made up of judges from differing types of court in particular the ordinary and administrative courts) are subject to their original regulations, which may vary in spheres such as combating corruption – even if a specific disciplinary procedure applies to Constitutional court members. However, as the Constitutional Court sits as a bench, the potential consequences of the current situation can be inferred. The recommendations set out below should help to harmonise the rules, though only in the areas covered by this report. Luxembourg might wish to consider a standard set of conditions of service for judges and prosecutors, along with the application by analogy of anti-corruption measures to other persons sitting in courts or working for the public prosecutor's office. That would at least be in keeping with the spirit of Luxembourg's

institutions and with the need for harmonised and easily readable regulations for practitioners and subjects of the law.

The principle of the independence of the judiciary

85. Currently, the principle of the independence of the judiciary is only implicit in the provisions of the constitution, as is the principle of the separation of powers. The Luxembourg authorities state that it is acknowledged, however, that neither the executive nor the legislature have the right to “interfere with judicial functions”. In this specific instance, this only relates to the work of judges (for prosecutors, see chapter V of this report).

86. [Draft Law No. 6030/05 on the reform of the Constitution](#), tabled in parliament on 21 April 2009, provides for a series of major reforms concerning the relationship between the branches of power, the reduction of the role and prerogatives of the Grand Duke (this amounts, to a large extent, to the modernisation of procedures which have become outmoded) and express provision for the independence of the judiciary through the incorporation of a new Article 105 in the Constitution establishing the independence of both judges and public prosecutors. It is also planned to set up a National Judicial Council, which would be responsible, inter alia, for managing careers and for regulations relating to judges and prosecutors. For the time being, it seems to be the Principal State Prosecutor who plays the pivotal role in the management of justice. To cite just a few examples, (a) the preparation of the annual reports on the justice system is coordinated by him/her; (b) he/she plays a key role in the disciplinary procedure relating both to judges and to prosecutors; (c) his/her opinion is sometimes perceived as having a decisive influence over judges’ careers, including investigating judges’; (d) the LOJ assigns him/her special supervisory duties vis-à-vis the proper functioning of courts (he/she may call on the Supreme Court of Justice to take measures); (e) finally in practice, he/she plays an essential role in reforms (the establishment of an ethics committee and other similar initiatives can be attributed to him/her). This makes for a large number of responsibilities for a single person and an institution which is at present still formally subject to the authority of the Minister of Justice. Even though the independence of the judiciary does not currently seem to be a particular subject of debate in Luxembourg (as far as the Prosecution service itself is concerned, see chapter V of this report), the GET welcomes the current plans. These initiatives and reforms deserve to be vigorously supported and pursued.

Recruitment, career and conditions of service

Recruitment

87. Persons who wish to be appointed to a judicial function must undertake a course of preparatory study for the profession of lawyer and satisfy the requirements with regard to age, qualifications, experience and training set out in Article 16 LOJ²² for “judicial functions” (ordinary court judges and public prosecutors) and Articles 12 and 59 of the law on the organisation of the administrative courts (LOJA)²³ for administrative

²² **Article 16 LOJ** Nobody may be appointed to a judicial function unless:

- 1) he/she is 25 years of age or over;
- 2) he/she has a doctorate in law issued by a Luxembourg board of examiners, or a foreign higher education grade in law, approved and transcribed in accordance with the Law of 18 June 1969 on higher education and the approval of foreign higher education certificates and grades;
- 3) he/she meets the legal requirements with regard to judicial training;
- 4) (Law of 24 July 2001) he/she has completed a probationary period of at least one year in the judicial services in accordance with the legal and regulatory provisions on judicial assistants.

²³ The two provisions relating to judges at the administrative court and the administrative court of appeal are identical except for the age requirement.

Article 12 LOJA Judges at the administrative court of appeal must meet the following conditions:

- 1) have Luxembourg nationality;

court judges. Candidates must then sit an entrance examination consisting of three written papers and an interview with a jury.

88. Following this theoretical training, judicial assistants work successively for the various judicial and police departments under the supervision of the head of the body concerned, including the prisons department. Throughout their probationary period, assistants are guided and supervised by a probationary committee made up exclusively of judicial and administrative *magistrats* (Article 15 of the June 2012 law on judicial assistants). After six months, they may sit on a panel of judges and after twelve they may deputise for a judge. The committee gives an opinion at the end of the probationary period and establishes a ranking. In case of a vacant post, and for their first appointment as a judge or prosecutor, assistants are appointed by the Grand Duke on the advice of the probationary committee (Article 11 of the afore-mentioned law). In the event of a positive opinion endorsed by an appointment, judicial assistants may request a permanent post as judge or prosecutor. If no post is vacant at the end of the probationary period, they become judicial assistants on a permanent basis pending a vacant post. They are then covered by the general [civil service regulations](#) (on the subject of judicial assistants, see below).

89. As to administrative court judges, their recruitment is the same as for judicial judges, as a result of the June 2012 law on judicial assistants, which establishes a common pool of new recruits for both categories of judges.

90. In the GET's opinion, the reform of the procedure for the recruitment and training of judicial assistants, forming the reservoir from which both judges and prosecutors are subsequently recruited, has come just at the right moment. Luxembourg should be congratulated on its efforts to enhance the skills of justice professionals and make their recruitment more transparent. The June 2012 law on judicial assistants has also established once and for all the condition of a candidate's "good character" and that the selection committee may ascertain this with information from judicial and police authorities (Article 2). In addition, the general civil service regulations, which have applied since June 2012 to at least some judges and prosecutors and to judicial assistants (see paragraph 119 below on managing conflicts of interest), require all civil servants to be of "good character". The impact of these innovations was still little known at the time of the on-site visit and the GET encourages the country to make active use of their potentials since up to now, practice in this area was little developed and consisted mainly in checking the absence of a criminal record, or to use *ad hoc* information available thanks to prosecutors seating on selection juries. The GET considers that the judiciary forms part of those institutions in which the highest degree of integrity must be required of the personnel. In fact, "Good character" requirements should also expressly apply to persons already performing or called on to perform judicial functions without going through the general selection process (assessors, substitutes, etc.). The harmonisation of rules on integrity referred to earlier (see paragraph 84) and which is likely to result also from the implementation of the recommendations for improvement contained in this report, would allow to address these matters.

91. The GET notes that Luxembourg's judicial (ordinary) courts – at least at first instance and appellate levels – traditionally made use both of judges and substitute judges recruited among lawyers, especially to sit in temporary chambers, to occupy vacant posts, to replace a public prosecutor or to replace a serving judge on an

2) enjoy civil and political rights;

3) reside in the Grand Duchy;

4) be thirty years of age or over;

5) have a doctorate in law issued by a Luxembourg board of examiners or a foreign higher education grade in law, approved and transcribed in accordance with the Law of 18 June 1969 on higher education and the approval of foreign higher education certificates and grades;

6) have met the legal requirements with regard to the probationary period.

occasional basis. The reform of June 2012 put an end to this and abolished the substitutes at all judicial (ordinary) court levels. The GET welcomes this change, in view of the many potential problems the previous situation could have raised, including conflicts of interest and the absence of statutory guarantees similar to those of professional judges concerning issues such as integrity and impartiality. Nonetheless some courts still use assessors or deputies, who are non-professional judges: this is the case of magistrates' assessors on labour disputes and social security court assessors. In practice, these are retired officials, civil servants or employees depending on the subject concerned. Substitutes are also appointed to these functions. By definition these are temporary functions (assessors, deputies and their substitutes are elected by professional chambers then appointed by the relevant minister for a five-year renewable term). The GET asked what rules were applicable to them specifically or by analogy in order to safeguard their integrity and impartiality. The judges' representatives met on site confirmed that there was in fact no special condition for their selection, including evidence of good character, and that there was no procedure for them to be struck off the list if they were guilty of misconduct. More important still is the fact that as judges do not regard them as persons performing "judicial functions" within the meaning of the LOJ, it seems that many of the measures studied in this report are not applicable to them. Nor do they seem to have to be regarded as a judge or a prosecutor and therefore, in the absence of any provision applying certain rules to them by analogy, they are not covered by any of the relevant regulations (such as the need to withdraw if they have a marital or family tie with a party). Although assessors and deputies generally form part of benches which have to be chaired by a professional judge, the GET is concerned about this situation and considers that a minimum number of safeguards, transparency measures and rules to prevent corruption should apply to this category of person. The harmonisation of rules on integrity mentioned earlier (see paragraph 84) and which should result from the implementation of recommendations contained in this report, would allow to address these matters.

92. It is also still possible, as in the past, to call on judicial assistants (*attachés de justice*) to temporarily perform judges' (or prosecutors') functions in exceptional situations (vacant posts, staff shortages, excessive workload, multiple withdrawals of judges from a case). The GET was unable to determine in what proportions this occurs or to establish precisely which of the rules linked with the status of judge (or prosecutor) applied in such cases with regard to integrity, impartiality and prevention of corruption. According to the judges it met, the notion of "judicial functions" relates to the functions of judge or prosecutor. Legally, as long as judicial assistants have not been appointed to a post and taken their oath, they cannot strictly speaking be regarded as a judge or a prosecutor, and as exerting a "judicial function". The Luxembourg authorities stressed after the visit that assistants are at least subject to the general civil service rules (in accordance with the 2012 reform), to the extent that this does not contradict the specific provisions of the LOJ and LOJA, in particular as regards disciplinary aspects. In the GET's view, the situation is still not clear enough for the practitioners concerned and this is a shortcoming to be remedied in the context of the harmonisation of rules mentioned in paragraph 84 and of the implementation of the recommendations.

93. Lastly, in the event of problems in assembling a body to hear a case, it is also possible, under Article 136 LOJ²⁴, to set up ad hoc courts or tribunals. This possibility dates back to the origins of the LOJ in 1885 and such courts have sometimes been used

²⁴ Article 136. *Where it is impossible to assemble a court or a tribunal for the judgment of any case in accordance with the procedure described in this law, the Grand Duke shall set up an ad hoc court or tribunal for special cases, made up of judges, judicial assistants or persons who meet the legal requirements on probationary periods, but not including persons exercising the profession of lawyer. The impossibility of forming a court or tribunal shall be confirmed by a report drawn up by the members present, which shall be submitted to the government at the behest of the public prosecutor's department, together with a list of persons who can be called on to serve. This list shall be drawn up by the members of the national legal service who are required to serve in court and must be approved by the Grand Duke.*

in practice (3 or 4 times), but not after the turn of the XXth century. The GET therefore does not consider it necessary to look further into this matter despite the absence of legal standards for members of such courts.

Careers

94. According to the information obtained during the on-site visit, few judges or prosecutors leave office to seek employment elsewhere, for example in the private sector. In principle these persons spend their whole careers working for the national legal service, although their functions within it may change. Other than when affected by matters of discipline, health or age (retirement), magistrates, district court judges and judges of the Supreme Court of Justice are irremovable. They may only be dismissed or suspended by a judgment and may not be transferred unless they have been appointed to a new post and agreed to the move (Article 91 of the Constitution). This also applies to administrative court judges (Article 95 bis of the Constitution and Articles 13 and 60 LOJA) and Constitutional Court judges (Article 95 ter, paragraph 3). However, the new law on judicial assistants provides that the Supreme Court can assign a district court judge to another district court or to a magistrate’s court. This possibility has triggered some controversies from the perspective of the principle of non-removability of judges but it would appear that some safeguards are in place: the assignment can only be temporary and with the approval of the judge concerned.

95. The function of investigating judge seems temporary by nature in that investigating judges are always appointed by the Grand Duke (from among the country’s court judges) for a limited three-year term. This term is renewable at the judge’s own request.

96. In principle, judges and prosecutors are promoted according to their length of service, particularly at the lower levels of the hierarchy. There is, however, a special procedure for the appointment of judges from the rank of vice-president upwards.²⁵ The appointment of judges to the Supreme Court of Justice and the administrative court of appeal and of presidents and vice-presidents to the district courts and the administrative court also requires the opinion of the respective court. Promotion decisions for prosecutors lie with the Principal State Prosecutor for persons under his/her direct authority (such as substitutes). Otherwise, they lie with the Minister of Justice.

97. Special length-of-service conditions are imposed for appointments to posts with responsibilities. Credits are awarded to persons applying for positions of responsibility in district courts, the Supreme Court of Justice (appeal and cassation) or the public prosecutor’s office who have worked as lawyers or members of the government or the administrative authorities.

Post	Conditions	Position considered equivalent to judicial functions (over an identical period)
President, first vice-president or vice-president of a district court (art. 17 LOJ)	Over 30 years of age and at least three years’ experience in judicial functions	- barrister - member of government, head of administrative department, government advisor
Public prosecutor (art. 17 LOJ)	Same as above	Same as above
President of the Supreme Court of Justice, judge at the Court of Cassation, president of a division of the Court of Appeal (art. 41 LOJ)	Over 35 years of age and at least seven years’ experience in judicial functions	- barrister - member of government or head of administrative department

²⁵ The Court takes its decision in a general assembly called by the Principal State Prosecutor. The Court presents three candidates for each vacant place and the Principal State Prosecutor gives his/her opinion. At the end of the process the Grand Duke appoints the candidate proposed by the general assembly (Article 43 LOJ).

Principal State Prosecutor, Deputy Principal State Prosecutor or First Advocate General (art. 41 LOJ)	Same as above	Same as above
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98. There are provisions which enable staff to be redeployed. Under Article 13 LOJ, where, in a district court, a judge has to be absent for a legitimate reason or a judge's post is vacant, the President of the Supreme Court of Justice may issue an order assigning a judge from the other district court, who accepts the task, to carry out the absent judge's functions temporarily. The order is issued at the request or on the advice of the Principal State Prosecutor. The assignment ends when the reason that prompted it ceases to apply. However, for cases still being heard or discussed, the assignment remains effective up to delivery of the judgment. Throughout the assignment, the judge or substitute judge concerned retains jurisdiction over cases still being heard or discussed in which he or she was involved before the assignment took effect.

99. In the public prosecution service, where the exigencies of the service so warrant, the Principal State Prosecutor may ask a prosecutor from one of the offices to work temporarily as a prosecutor in the other office.

100. As stated above, judicial assistants may also be delegated by Grand Ducal Order to replace a magistrate or a district court judge temporarily if the post is vacant or if the post holder has to be absent for a legitimate reason.

101. Judges' or prosecutors' functions come to an end on retirement or as the result of certain disciplinary measures. For ordinary court judges, dismissal, temporary suspension and compulsory retirement are provided for in Articles 155 et seq. LOJ. These measures are pronounced by the Supreme Court of Justice (sitting in chambers) at the instigation of the Principal State Prosecutor (Article 157, paragraph 2 LOJ). As stated previously, it is planned to set up a National Judicial Council which would deal with disciplinary matters in future.

102. As to the administrative courts, suspension, compulsory retirement or dismissal are pronounced at the request of the Minister of Justice by the administrative court or administrative court of appeal sitting in chambers (Articles 40 and 79 LOJA). The measures apply in the same way to substitutes in the administrative courts (Articles 49 and 80 LOJA).

103. Labour courts at first instance level are composed of one court judge and 2 non-professional assessors. Appellate courts dealing with such cases are composed only of professional judges. There are no career-related issues in their respect since they are subject to the rules applicable to judicial (ordinary) courts. Insofar as social security courts are concerned, Article 454 of the Social Security Code provides under paragraph 5 for the appointment conditions for the President, Vice-President and judges of the Social security arbitration court (to be a civil servant, holder of a PhD and to have accomplished the judicial internship), and under paragraph 7 for those concerning the President and two magistrates' assessors of the Superior arbitration court (being a *magistrate*; same for the substitutes). There is no specific career system for labour court judges since their function has a limited duration (3 or 5 years).

104. The interviews held on site showed that appointment and promotion procedures are often perceived as being non-transparent. Promotion seems to be based exclusively on length of service or on a recommendation from the superior (with a motivated proposal), particularly for judges, with, in certain cases, the final approval of the Grand Duke. As to investigating judges, it would seem that the deciding factor is the Principal State Prosecutor's opinion, although this is not provided for by the law. In addition, the lack of any human resources management policy means that merit – including self-improvement through further training – is not taken into account or encouraged. This is

compounded in particular by the lack of any regular individual appraisal within either the courts or the public prosecutor's offices. A system of this sort, which is commonly used today in companies and public services, would make it possible to set up a dialogue on the respective expectations of judges and prosecutors and their superiors, for superiors to monitor judges' and prosecutors' work regularly on the basis of objective criteria and for there to be means of both acknowledging and criticising their work when necessary. Especially in a national legal service with so few members and as tight knit as the Luxembourg one, this tool would have the benefit of enabling presiding judges and supervising prosecutors to hold their colleagues accountable, so as to ensure that complex cases are not neglected or buried or that time limits for prosecuting offences or executing judicial decisions do not expire for invalid reasons. **GRECO recommends that under the rules of the future National Judicial Council, the procedures for the promotion of the various categories of judges and public prosecutors, including access to senior functions of president or vice-president of a court and Principal State Prosecutor, should be reviewed and made more transparent, particularly through the use of objective criteria and periodic appraisal.**

Employment conditions

105. Remuneration for ordinary court judges (and prosecutors) is calculated according to a grade-related scale based on civil service pay, set out in the LOJ. At the beginning of their careers (grade M2, step 3), judges (or prosecutors) earn a gross monthly wage of about €6 500. Pay for administrative judges is comparable, while the gross salary for a judge in the highest ordinary or administrative court (grade M7) is about €12 000. Judges receive additional allowances or benefits such as the meal allowance (€110 per month for 10 months a year) or the special monthly benefit of about €680 paid to all investigating judges and to members of the Constitutional Court. In the circumstances provided for in law, substitute judges in administrative matters (substitutes in judicial courts were abolished in 2012) receive an allowance equal to 125€ per hearing. Magistrates' assessors on labour disputes and assessors in social security courts receive allowances for the time they spend working in court (attendance fees, reimbursement of expenses). The remuneration of judges (and prosecutors) in Luxembourg does not call for particular comments.

Case management and court procedure

106. Each court has its own form of organisation prescribed by a specific text, although there are similarities between courts. Thus the courts are usually headed by a presiding judge: Chief Magistrate, District Court President, President of the Supreme Court of Justice, President of the Administrative Court of Appeal. They are responsible for the general management and efficient operation of the court. As part of their general prerogatives and responsibilities, presiding judges of courts apportion business between the chambers, have overriding discretion where a judge is to be withdrawn from the bench about to try a case (for example where the judge is liable to be considered biased by a party or where there is a definite risk of a conflict of interest).

107. Where investigating judges are concerned, the apportionment of cases rests in principle with the Chief Investigating Judge (article 18(2) LOJ). In practice, they perform a duty service, normally during alternate weeks. During the week on duty, the investigating judge will deal with all ordinary cases referred to him or her in addition to cases which pertain to special matters and whose handling is assigned to that judge (drug trafficking, economic and financial cases, cases of child pornography, pimping, execution of international letters rogatory). Likewise, an investigating judge can be relieved of a case, in favour of another investigating judge, in the interests of satisfactory administration of justice. For that purpose, a reasoned application is made by the public prosecutor to the Chief Investigating Judge, whether of his own motion or at the request

of the accused or the plaintiff in criminal proceedings (Art. 55(1) of the Code of Criminal Investigation (CIC)).

108. The GET notes that the legislation contains provisions to guarantee the proper functioning of the courts and the prompt handling of cases. For example, the Supreme Court of Justice "has the right to oversee the two district courts and the magistrate's courts. It is required in particular to ensure the efficient operation of the various courts" (Article 67 LOJ). Another example: the respective presiding judges of the Administrative Court of Appeal and the Administrative Court must ensure that "cases are promptly expedited" (Articles 16 and 63 LOJA). Moreover, as with the ordinary courts, general supervision exists for the administrative courts in so far as under Article 65 LOJA "the Administrative Court of appeal has the right to oversee the Administrative Court" and "in particular, shall ensure the efficient operation of the court".

109. Furthermore, with specific regard to criminal cases, since the Principal State Prosecutor must ensure the enforcement of criminal law, all public prosecutors submit to him, on a monthly basis, a docket of the cases in their jurisdiction. A certain degree of oversight is also exercised by civil parties or victims in criminal cases, who must be advised by the public prosecutor, within 18 months of receiving the complaint, of the action taken on a case, including, where relevant, any closure of a case and the ground for doing so (Article 23 CIC).

110. In general, failure to deal with cases and to draft judgments within a reasonable time is regarded as professional misconduct on the part of judges, possibly leading to disciplinary measures.

111. The Constitution secures the principle of public hearings and delivery of judgments with no distinction between courts (Articles 88 and 89). Judges' deliberations are never public. In certain cases, the court may rule by judgment delivered in a public hearing that the proceedings are to be held in camera (for a court ruling in a criminal case under Articles 153 and 190 CIC).

112. The GET would point out that the supervision exercised by the presiding judges of courts is not regulated in more detail. For example, as was noted earlier, there is no system of periodic appraisal based on common, objective elements. In practice, the effectiveness of supervision is also undermined by the fact that it depends solely on each presiding judge's good will, professional sense and personal conceptions of management. This relates as much to the internal functioning of a given court, as to the supervision exercised by the higher courts over the lower courts. Many of the persons with whom the GET had meetings consider this management of the courts too ineffective and lacking in transparency. For example, the judges of certain divisions (the specific case of a criminal division was mentioned) would have less opportunity to apply their own reading of the case-law if the system for rotating judges was properly applied. Practice and procedure would not vary so greatly between divisions of the same court, nor would the length of proceedings, which can take up to three times as long in certain cases according to the GET's respondents. Reasons put forward to explain the above situation included the existence of a working culture based on independence taken to extremes, or refusal of confrontation between colleagues. The GET's attention was also drawn to the fact that the criteria for the selection of judicial auxiliaries (lawyers, bailiffs, notaries, experts, etc.) called upon to assist courts do not allow for sufficiently regular renewal in some cases and might be a source of risks (for example, a tendency has been observed for certain judges/courts consistently to assign bankruptcy and insolvency proceedings to the same lawyers).

113. It is also evident that presiding judges of higher courts do not call to account their fellow-judges heading the lower courts. Apparently because of a strict conception of the separation of powers, the Ministry of Justice does not concern itself with these questions.

The forthcoming establishment of a National Judicial Council might therefore allow concerted progress to be made, unless the Ministry of Justice deals with this issue. The GET considers that, whatever the general philosophy of justice management (supervision included) best suited to the context of Luxembourg, it is desirable to harmonise and improve the arrangements, which would enhance general transparency and help limit the potential risks for the integrity (possibly leading to neglect of sensitive cases for instance). In the light of the foregoing considerations, **GRECO recommends that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits risks for the general integrity of judges.**

Ethical principles and rules of conduct

114. The disparate rules presently applicable to the various courts made it difficult for the GET to gain an overview (despite the general philosophy whereby judges and prosecutors are deemed to form a single magistracy (*corps de magistrats*)). The exact source of ethical principles or rules of professional conduct is imprecise, to say the least, and the members of the courts and prosecution service encountered were unable to provide the clarifications which the GET required.

115. Where members of the ordinary and administrative courts are concerned, the same clause designates as misconduct liable to disciplinary proceedings and penalties *"any act committed in or out of office which may damage the status with which magistrates are vested, cause scandal, offend against proprieties or compromise the administration of justice, as well as any breach of the duties of their office."* (wording used in article 155 LOJ and article 38 LOJA). Article 49 LOJA extends the application of these rules to substitute judges (substitutes in the judicial sphere were abolished in June 2012): *"The provisions of this chapter are applicable even to those who have only served as substitutes and, while acting as such, have failed in the duties of their office."*

116. Nor did the on-site interviews make it possible to ascertain the rules defining for instance *"the status with which magistrates are vested ("le caractère dont les magistrats sont revêtus")* and concerning the obligations which are relevant for the purposes of this report, for example the duty of impartiality, probity / integrity, etc. The GET noted that judges of the ordinary, but also the administrative, courts, for example, swore the oath stipulated in Article 110 of the Constitution (under the terms of the LOJ and LOJA) *"I swear allegiance to the Grand Duke and obedience to the Constitution and the laws of the State. I promise to fulfil my duties with integrity, exactitude and impartiality."* Labour court judges seem to be required at least to swear the above oath (Article 56-2(3) LOJ) and to be subject to other obligations such as preserving the secrecy of deliberations. The same applies to the social insurance courts where the oath is concerned – Article 455 of the Social Security Code – but apparently not secrecy. When questioned on the effect of the oath, the Luxembourg practitioners met by the GET did not seem to assign any special value to it from the standpoint of corruption prevention and gave more weight to principles based on each individual's basic common sense.

117. At the behest of the Principal State Prosecutor an ethics commission made up of members of the ordinary courts (the bench and the prosecution, first and second instance) and the administrative courts, had been working since 2010 on drawing up a "Digest of ethical rules", which was to be the subject of further consultations at the time of the on-site visit. It can be seen from a copy of the draft document released to the GET (and discussed on site) that it bears upon the conduct expected of judges and prosecutors a) in the discharge of their office and compliance with the general principles of upholding the law, independence, impartiality, integrity, professional competence and diligence in areas including the conduct of proceedings and relations with the media; b) out of office with regard to integrity, probity, tact, reserve and discretion; more specifically, political, trade union, community or religious affiliations must not interfere with a member's duties, nor must members give legal advice outside the circle of their

close contacts (family, friends, neighbours) and the text recalls the conditions under which the functions of arbitrator/mediator/conciliator may be exercised, and educational and scientific work carried out. The Digest was finally approved and became effective as of 16 May last.

118. The GET welcomes this initiative, which constitutes a major step. It appreciates the document's relevance to many of the matters covered by this evaluation, which sometimes raise or are deemed to raise problems in practice. The document also covers several aspects relating to the fight against corruption, such as prohibition of seeking or obtaining advantages for oneself or others, the wielding of improper influence, or the avoidance of incompatibilities. The final version of the document covers judges and also, explicitly, prosecutors even though the functions referred to are primarily those of judges (for example, the independence of judges is referred to even though that principle does not yet apply to prosecutors – cf. paragraphs 145 *et seq.*). The Luxembourg authorities had stated that the Digest also applies to judicial assistants called upon to sit on court cases or to work with the prosecution service, as well as to non-professional judges in the context of their judicial functions. The Luxembourg authorities also stressed that in case of non-compliance sanctions would be applicable in accordance with the LOJ. The GET had the opportunity to state some reservations concerning the content, for example the distinction drawn between the standards applicable in office and out of office (prohibitions concerning donations and gifts – which would deserve greater differentiation – are not mentioned under conduct “on duty”, but only under “off duty” whereas non-professional judges are explicitly only subject to “on duty” obligations). As the Digest of ethical principles is meant to be an evolutive text permitting improvements according to need, it should not be hard to make any possible desirable changes in the future.

Conflicts of interest

119. Luxembourg's replies to the questionnaire did not address the various aspects of the questions asked (definition and typology of conflicts of interest; mechanisms for the prevention and resolution of such conflicts). The topic of incompatibilities, discussed below, was the only one dealt with. After examining the legislation, the GET noted that there are nevertheless various provisions applicable to judges (and prosecutors) and that once again the core subject-matter is dispersed in the various texts (LOJ, LOJA, Code of Civil Procedure etc.) to the point that it is difficult to decipher even for practitioners in the country undergoing evaluation. For example, with reference to the ordinary courts alone, provisions on the duties of withdrawal and of recusal can be found both in the LOJ (Article 105, applicable both to judges and prosecutors) and in Article 378 (as well as former articles 379-381, now Article 521 of the New Code of Civil Procedure) of the Code of Civil Procedure concerning judges of the “lower courts”. The provisions are divergent in their substance. In the LOJ itself specific provisions deal with the different judicial offices. These provisions are not always consistent either (sometimes mentioning relatives as far as the 4th degree of kinship, at other times relatives to the degree of uncle and nephew, etc.). In this selection of rules studied by the GET, the consequences of non-compliance with the provisions are not always specified. Improvements are therefore desirable. **GRECO recommends clarifying the status of the various rules on recusal applicable to members of the courts, and ensuring their uniform application to the various categories of persons required to decide cases, whatever the subject-matter.**

120. The GET also notes a) the existence of Articles 14 and 15 of the General Civil Service Regulations, which lay down certain obligations to declare gainful activities, also with regard to civil servants' close friends and relatives, and a general mechanism for management of conflicts of interest; b) that the law of June 2012 on judicial assistants

(Article 18)²⁶ amends these general civil service regulations by extending their application to all “*magistrats*” and judicial assistants, in so far as this would not conflict with the special statutory rules concerning them (at least for all courts except the social security courts, military courts and the Constitutional Council). As construed by the GET, it follows from the foregoing that, in addition to the above-mentioned provisions which mainly concern recusal on the ground of personal relations with a party, there is indeed a general apparatus for declaring and managing conflicts of interest, potentially applicable to most Luxembourg judges in the various types of courts, including judicial assistants with civil servant status. The GET’s respondents seemed on the whole unaware of this innovation and its effect. Owing to the significant uncertainties, speedy clarifications are therefore necessary. **GRECO recommends that it be clarified which of the provisions of the General Civil Service Regulations – on management of conflicts of interest or other matters relevant for the purposes of preventing corruption – are in force at present and in respect of which categories of justice posts, with a view to enforcing the applicable clauses of the Regulations.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

121. Incompatibilities and secondary activities are governed by specific provisions, summed up in the following table:

Offices concerned	Restrictions concerned
Under the LOJ	
Any judicial office (article 100)	Incompatible with a parliamentary mandate, any public or private salaried appointment, office of notary, bailiff, military service, ecclesiastical duties and the profession of barrister + judicial offices not to be held concurrently (Art. 99)
Members of the Supreme Court of Justice, district and magistrate’s courts, members of prosecution departments (Art. 101)	Incompatible with the office of burgomaster, alderman or municipal councillor
Serving tenured judges, members of prosecution departments, registrars (Art. 102)	Cannot defend or advise litigants (except for pleading their own case or that of close relatives)
Substitute judges (abolished in June 2012)	-
Any member of the judiciary (Art. 104)	Forbidden to engage personally or under the name of a spouse or any proxy in any business venture, brokerage, or management, administration or supervision of any industrial or financial company or establishment.
Under the LOJA	
Members of the Administrative Court of Appeal and the administrative court (Art. 19-22, 24 and 67)	- Similar incompatibilities to Art. 99 and 100 LOJ (+ substitute members of the Court may be ordinary court judges) - additional incompatibilities with duties of member of the Conseil d’Etat - titular and substitute members are subject to similar prohibitions to Art. 104 LOJ

²⁶ **Art. 18.** The amended law of 16 April 1979 establishing the general state civil service regulations is amended in article 1, paragraph 2, sub-paragraph 1, worded as follows:

“These regulations shall also apply to members of the judiciary, to judicial assistants (*attachés de justice*) and to court staff with the status of civil servant, subject to the provisions in the Constitution, in the law on the organisation of the judiciary, in the law on the organisation of administrative courts and in the law on judicial assistants, relating especially to recruitment, training, security of tenure, incompatibilities, residence, absences, leave, servicing of hearings and discipline.”

Law of 1997 on the Organisation of the Constitutional Court	
Members of the Constitutional Court	In practice, they retain the rules of the courts from which they originate
Social Security Code and amended Grand-Ducal Regulation of 24 December 1993	
Members of the arbitration board and Higher Council of Social Insurance	Nothing in the above legislation

122. In the opinion of the GET, the rules on incompatibilities and secondary activities generally establish limitations regarding various risks of corruption. However, they remain quite diverse and, once again, difficult to decipher because of the vague concepts and the interconnection of the provisions. For instance, the concept “judicial office” in Article 100 LOJ, construed by the judges encountered on site as embracing judges, prosecutors but also bailiffs (the Luxembourg authorities later pointed out that bailiffs are in fact not included): it is unclear whether the concept is identical to that of “member of the judiciary” in Article 104 LOJ, which has other implications. The consequences of non-compliance with the rules are not systematically stipulated either, nor which rules judicial assistants may precisely come under and in which case (General Civil Service Regulations, LOJ, LOJA), considering that they are sometimes called upon to sit as judges or to represent the prosecution. The members of the social security courts are apparently not subject to any restriction. The GET therefore considers that improvements would be desirable or conceivable. **GRECO recommends that the rules on incompatibilities and secondary activities be clarified and made more coherent in respect of all persons required to sit as judges or act as prosecutors.**

123. During the visit, the GET’s attention was also drawn to the fact that the possibility for established “*magistrats*” to agree to engage in private arbitration could in some cases prove problematic, especially as the remuneration for this type of activity is often lavish. In the opinion of the GET, this situation may also trap them in a dependent relationship with certain barristers. The “Digest of ethical rules for *magistrats*” introduces certain limitations (prior information of, and consultation with the superior, need to avoid any dependence). In due course, Luxembourg will need to ensure that these new limits are effectively applied and have the positive impact expected. It was also emphasised that one career judge is sitting in the Conseil d’Etat, a consultative political organ, which makes pronouncements on legislative bills, and that this situation was in principle coming into conflict with the principle of separation of powers, as applied in Luxembourg. The GET itself has not identified any issue in practice that would justify a more in-depth analysis of this situation.

Gifts and post-employment restrictions

124. The Luxembourg authorities and the practitioners interviewed on-site considered at the time of the visit (i.e. pending the adoption of the Compendium referred to in paragraphs 117 and 118) there were no specific rules governing gifts. For reasons unknown to the GET, no reference was made to Article 10 (2) of the civil service regulations, applicable – since the amendments made in June 2012 by the law on judicial assistants – to “*magistrates, judicial assistants and justice staff with the status of civil servants*” except where incompatible with the provisions governing certain courts.²⁷ At all events, this article only makes reference to pecuniary advantages and is thus of limited scope (not covering promises of employment, a title or distinction, a favour, etc.).

²⁷ See also the preceding footnote on the application of the regulations. **Art. 10.** (...) 2. “A civil servant may not seek, accept or secure a promise from any source, whether directly or indirectly, of pecuniary benefits whose acceptance might bring him into conflict with the obligations and prohibitions imposed on him by the laws and regulations, in particular the present regulations.”

125. The aforementioned Compendium of Ethical Principles (see paragraphs 117 and 118) is partly intended to plug the gaps, even though for the time being the applicable sanctions and the recipients of the rights and duties remain to be clarified. Where gifts and other advantages are concerned, under the heading "probity" with regard to conduct off duty: "*Magistrates must in no circumstance lend credence to the idea that they benefit or might benefit from privileged treatment. (...) Magistrates shall not make use of their capacity or act to obtain for themselves by virtue of their office, whether for themselves or for relatives or acquaintances, favours or advantages of any kind. (...) Magistrates shall not accept any donation, in particular where offered in connection with events relating to their professional life, such as may impair their impartiality or place them in an obligated position.*" The GET considers that these stipulations afford extensive and at all events satisfactory coverage of the various situations likely to arise in practice. As mentioned earlier, the final version of the compendium applies at present to all persons sitting in a court or – provided the person has the status of a *magistrat* – forming part of the prosecution, and its mandatory effect remains to be clarified. A recommendation has been made to that effect, as well as concerning clarification of the applicability of the civil service regulations which apply "*saving incompatibility with the provisions governing certain courts*". This should answer the concerns of the GET, which has stressed the need for Luxembourg to ensure that rules on gifts do not conflict with the regulations applicable to *magistrats* and judicial assistants having civil service status.

126. Regarding professional opportunities after leaving offices in the justice department ("*pantouflage* - revolving door"), this issue comes within the ambit of the above rules on donations and other gifts. In principle, to be appropriate, the regulations in this matter should include objective restrictions in the form of disqualifications or waiting periods. At the same time, the interviews conducted in Luxembourg showed that the office of judge (and prosecutor too) was discharged on a lasting basis and that very few of the persons concerned left office to work in another field, which limits certain risks. The GET therefore refrains from recommending changes.

Contacts with third parties outside court proceedings and misuse of confidential information

127. According to the replies to the questionnaire, all judges or prosecutors are required to observe the general rules of professional secrecy laid down in Article 458 of the Criminal Code²⁸ and the secrecy of investigations stipulated in Article 8 of the Code of Criminal Investigation.²⁹ The same penalty is reportedly prescribed in Article 83-3 of the LOJA. In addition to the criminal sanctions in article 458 of the Criminal Code, disciplinary proceedings for breach of the professional obligations of a judge or prosecutor may be brought on the basis of the general law on the civil service. In 2009 a "Justice department press and communication service" was set up. It informs the press and the public about cases pending before the courts in accordance with the applicable statutory provisions.

128. In the GET's view, the regulations referred to above raise certain queries as to their consistency. Article 458 of the Criminal Code constitutes a generally applicable

²⁸ **Art. 458 CP.** Doctors, surgeons, medical practitioners, pharmacists, midwives and all other persons entrusted by condition or profession with secrets who disclose such secrets, shall, except where summoned to testify in court or where required by law to disclose them, be punished by eight days' to six months' imprisonment and a fine of 500-5,000 euros.

²⁹ **Art. 8.CIC** (L. 16 June 1989) (1) Except in cases where the law provides otherwise, and without prejudice to the rights of the defence, procedure during police and judicial investigations shall be secret.

(2) (L. 11 April 2005) Subject to the exemptions deriving in domestic law from the international undertakings on international co-operation, any person involved in this procedure shall be bound by professional secrecy under the conditions and subject to the penalties stipulated in Article 458 of the Criminal Code.

(3) The Principal State Prosecutor or the public prosecutor may nevertheless give the press information on the conduct of proceedings, with due regard to the rights of the defence and to privacy, as well as to the needs of the investigation.

provision and it is not limited to professional secrecy in specific branches (healthcare, banks, postal services...), as the authorities point out: this would be a consequence of Belgian legal theory and jurisprudence since the drafters of the provision drew inspiration from this neighbouring country. However, this information would deserve to be more accessible to individual judges and prosecutors of Luxembourg. The GET noted that the detailed annotations to this article, on Luxembourg's on line information system, makes no reference to members of the courts (which the Luxembourg authorities explain by the absence of case-law in their respect). Likewise, Article 83-3 LOJA, again as far as the GET can ascertain, concerns quite a different question (the situation of foreign judges or prosecutors serving within administrative courts in Luxembourg). The rules governing the civil service (presumably Article 11 of the Civil Service Regulations) might indeed be applicable, despite the fact that the linkage between the instruments concerning justice and these regulations raises queries in other respects, as already mentioned in the other chapters of this report. However, this would be relevant to persons sitting in the courts – or acting for the prosecution – only in so far as they have the status of civil servants, which is not true for all the courts. Concerning contacts with third parties, the GET noted the existence of such provisions only in connection with certain courts, in the framework of the LOJA (Article 19) and the 1997 Law on the Organisation of the Constitutional Court (Article 22), in this instance a ban on conferring with parties or counsel.

129. An improvement in the coherence of the rules so that the various types of courts and persons sitting on cases (including non-professional judges) be subjected to adequate and clear measures is therefore in principle desirable. The harmonisation mentioned in paragraph 84 and the implementation of the various recommendations contained in this report would allow to take these concerns into account.

Declaration of assets, income, liabilities and interests

130. According to the information provided by the Luxembourg authorities before and during the visit, apart from the obligations regarding declaration of income and assets purely for taxation purposes, there are no provisions requiring professional or lay judges (or prosecutors) to make other declarations of relevance to preventing corruption and safeguarding their independence and impartiality vis-à-vis parties to proceedings or regarding the outcome of a given civil, criminal, administrative or other case. In view of the nature and extent of the corruption issues specifically concerning judges and prosecutors, the GET considers that there is no justification for introducing a mechanism governing declaration of their income and assets in the broad sense.

Supervision and enforcement measures

131. Concerning the judicial offices that come under the LOJ, breach of the obligations described above is liable to be classed as a disciplinary offence³⁰ within the meaning of Articles 155-173 LOJ. The prescribed penalties include a simple warning, reprimand, fine, temporary disqualification, enforced retirement and dismissal. A warning is issued routinely, or at the request of the prosecution, by the President of the Supreme Court of Justice in respect of all its judges and magistrate's court judges, and by the presiding judges of district courts in respect of their members. The other measures are ordered by the Court ruling in chambers at the prosecutor's request. The Court's decisions have the force of a final judgment. Administrative or judicial proceedings may result in the suspension of a *magistrat* (which is mandatory if he/she is detained).

³⁰ "Art. 155 LOJ. Any act committed in or out of office which may be prejudicial to the status with which magistrates are vested, cause scandal, offend against proprieties and compromise the administration of justice is classed as a disciplinary offence, as is any dereliction of the duties of office."

132. Besides these general provisions on discipline, the provisions of the Criminal Code expressly dealing with corruption of magistrates as an offence are also applicable.³¹ Article 250 concerns the corruption of a *magistrat* or any other person sitting in a court, whether active or passive. As the GET observed, the concept of "*magistrat*" under criminal law is clearly understood as including judges but also prosecutors (which is not always the case of administrative rules). It may be added that decisions delivered by irregularly constituted benches are open to appeals challenging their formal regularity which may result in their annulment for breach of essential procedural requirements. Lastly, judges (and prosecutors) of the ordinary courts regulated by the LOJ enjoyed exemption from jurisdiction and were subject to a special criminal prosecution procedure (formerly prescribed by Article 479 CIC), which was repealed by the law of June 2012 on judicial assistants.

133. According to the information gathered by the GET, the practical implementation of the various measures noted above has not given rise to any tangible cases over the past three years. During the on-site discussions, the GET noted a total of 4 or 5 *magistrats* subject to disciplinary measures over the past few years (for delay and negligence in handling case files, for instance). Most of those concerned resigned before the completion of the disciplinary proceedings, with the result that only one in fact underwent measures.

134. The disciplinary system applicable to members of the administrative courts is established by Articles 38 et seq. of the LOJA. The penalties are the same as under the LOJ. A warning is issued by the President of the Administrative Court of Appeal, either of his own motion or at the request of the Minister of Justice. The other disciplinary penalties are applied by the Administrative Court of Appeal in chambers, at the request of the Minister of Justice.

135. The situation regarding the other courts varies. For example, the legislation provides that the disciplinary procedure stipulated in Articles 155-169 LOJ shall be applicable to members of the labour courts. As to the Constitutional Court, prosecution and investigation rest with the President, while penalties are ordered by the full court.

136. In the GET's opinion, the disciplinary procedure is again not very clear and transparent. The Luxembourg authorities state that through cross references within the provisions, it is clear that all persons called to sit in court or to work for the prosecution are, from that moment, subject to disciplinary rules and that those rules can be applied in principle with regard to most, even to all of the corruption prevention rules and to all those examined in this report. That said, if the various recommendations in this report are taken into account, it should be possible to align the various statutory rules and thus improve the clarity of the disciplinary and sanctioning regimes. At present, the authorities' understanding as stated above is not reflected clearly enough in the text. Moreover, the lack of information on cases heard or brought to date prevents any assessment of its application in practice. Indeed, there is no centralised data on the disciplinary records of judges and prosecutors (even though the prosecution service retains information on all disciplinary procedures applied to judges and prosecutors, information related to warnings is retained by the presiding judges of courts). A systematic recording of this kind of data would be useful in future in the context of a desirable modernisation of staff management. The planned setting up of a National

³¹ "Art. 250 of the Criminal Code (L. 13 February 2011) Corruption of magistrates. Judges and any other persons sitting on judicial bodies (...) who unlawfully request or receives, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages, or who accept such an offer or promise, to perform or refrain from performing actions in connection with their duties shall be punishable by ten to fifteen years of imprisonment and a fine of EUR 2 500 to 250 000. The same penalties shall apply to whoever, in the conditions provided in the first paragraph, offers or give to a magistrate or any other persons sitting on a judicial body (...) any benefits, promises, donations, gifts or other advantages, or makes such offers or promises, for themselves or others." For more details, see Third Round Evaluation Report on Luxembourg, [Theme I - Incriminations](#).

Judicial Council – which will in principle be responsible for disciplinary matters – again comes at an opportune moment. **GRECO recommends that information on disciplinary procedures and the sanctions applied in respect of persons called upon to sit in court or work for the prosecution be kept in a systematic and centralised manner.**

137. In the course of setting up the National Judicial Council, the Luxembourg authorities may also wish to provide effective possibilities for private individuals to lodge a complaint about the functioning of a court or a prosecutor's office (Section 7 of the draft law establishing the NJC deals with such mechanisms, according to the latest information made available). At present it is not clearly known to the public which authority to turn to in the event of a grievance against a judge or prosecutor. The GET has noted in particular that the Luxembourg institution of mediator receives a fair number of applications from citizens complaining about the operation of justice (some of which may be prompted mainly by frustration at not having won a case, although this is not true in all cases) but these questions are not within the mediator's remit. The Luxembourg authorities underlined, at the time of adoption of the present report, that complaints can be filed with the superior of the judge (or prosecutor) concerned, or with the Minister of Justice, and that a case can be taken to the civil law courts of the District Courts, on grounds of a malfunction of state institutions.

Advice, training and awareness

138. The system of initial and in-service training for the judicial service formerly included no instruction on questions of integrity (this concerns, at least, judges of the ordinary courts or administrative courts, hence logically those of other courts). As part of their in-service training, *magistrats* are normally able to attend seminars and colloquies organised in France by the National College of the Judiciary and specifically dealing with corruption from various angles. As stated above, administrative court judges did not take the initial training course required of their counterparts in the ordinary courts. Since the law of June 2012 on judicial assistants and the reform which it ushered in, judicial assistants under initial training have followed a more advanced compulsory course on corruption in general, lasting about six to eight hours.³² The law in question (Article 7) stipulates the inclusion of a compulsory training module for judicial assistants (from whom the bulk of future judicial and administrative judges and of prosecutors are to be recruited); the GET was able to examine the content of the first training session, which nevertheless remains inadequate in its view, and it is desirable that this training be given an ambitious content. The exchanges on site showed that in practice awareness-raising remains inadequate on the whole: as stated above, many of the GET's respondents could not indicate the exact source of their obligations regarding integrity, or of their exact scope (also resulting, at least partly, from the inadequacy of the rules on the subject). Besides, one should bear in mind the diversity of rules and the complexity of certain issues – heightened by the applicability of the civil service regulations since June 2012 (for example in respect of gifts or the declaration of interests). The impending introduction of new rules of conduct or ethics would also justify making additional efforts concerning awareness-raising and information. Finally, there is no arrangement either for counselling a judge (or prosecutor) concerning these questions or for informing the public of the conduct expected of judges and other persons sitting in courts. Apart from the above measures for new recruits/judicial assistants, no measure exists or is contemplated for staff in office or required to serve pro tempore (non-professional judges, etc.). **GRECO recommends that dedicated training programmes be established for the various persons required to sit in court or to work for the prosecution, focusing on the questions of judicial ethics, conflicts of interest (including their management, recusal and withdrawal), the rules on gifts and**

³² In 2011 and in September 2012, four hours of additional training were given on this subject by the former prosecutor of Diekirch, Jean Bour, in view of his lengthy acquaintance with the themes dealt with at GRECO meetings. The training course will be repeated in September 2012.

other advantages, relations with third parties and the various other measures for preventing corruption and preserving integrity generally.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

139. As in other countries, the prosecution service represents and defends the interests of society. There are no prosecutors attached to the administrative courts in Luxembourg – prosecutors are only involved in the proceedings of the ordinary courts. In Luxembourg the prosecution service forms part of the judiciary and its basic organisation therefore derives from the provisions of the Law of 7 March 1980 on the organisation of the courts (LOJ), cited in connection with judges. The section relating to the organisation of each court includes one or more articles on the prosecution service. In view of Luxembourg's specific characteristics, and in order to avoid duplication, the GET has included prosecutors – as *magistrats* – in the wording of the recommendations of Chapter IV³³ and will confine itself in this part of the report to highlighting certain aspects specific to prosecutors.

140. The Principal State Prosecutor's Office, headed by the Principal State Prosecutor, represents the prosecuting authorities in the Supreme Court of Justice, and particularly in the Court of Appeal and the Court of Cassation. It comprises a Principal State Prosecutor, an Assistant State Prosecutor, four First Advocates General, five Advocates General and a Secretariat. Public Prosecutor's Offices represent the prosecuting authorities in the two district courts (and the magistrate's courts): a) in the Luxembourg district court, the office consists of a State Prosecutor, two Assistant State Prosecutors, five Senior Deputy Public Prosecutors, 12 First Deputy Public Prosecutors and nine Deputy Public Prosecutors; b) in the Diekirch district court, it consists of a State Prosecutor, a Deputy State Prosecutor, a First Assistant Deputy Public Prosecutor, a Second Assistant Deputy public Prosecutor and one Assistant Deputy Prosecutor.

Recruitment, career and conditions of service

141. Like judges, prosecutors are recruited, as and when posts fall vacant, from among the reserve of judicial assistants described in Chapter IV of this report. Following their period of training and probation, they are appointed by the Grand Duke following an opinion from the probation commission. In the event of a positive opinion and subsequent appointment, a judicial assistant may apply for a permanent post in the prosecution service. The appointment of prosecutors and deputy prosecutors takes place following a call for candidacies, which are then sent to the Minister of Justice (together with an opinion of the Principal State Prosecutor) who addresses the Ministers' Council with the matter. The Council then proposes the selected candidate to the Grand Duke who proceeds with the appoint by decree. Appointments are made for an indefinite period, until they retire, resign or leave office for other reasons (or are redeployed/promoted in the case of State Prosecutors). The rules governing termination of a prosecutor's duties, in the event of retirement or for disciplinary reasons, are similar or identical to those applying to judges (however, see below the doubts with regard to the applicable disciplinary procedure).

142. As stated in the chapter on judges, there are plans to set up a National Judicial Council, which would be responsible in future for matters related to the careers of judges and prosecutors. In view of the major role played by the Principal State Prosecutor not only in the running of the prosecution service but also in the careers of individual prosecutors (and other members of the judiciary) and disciplinary matters relating to

³³ See paragraphs 104, 113, 119, 120, 122, 135 and 137

them, this important reform warrants support and a recommendation to that effect was made in Chapter IV.

143. Prosecutors' salaries are determined in the same way as those of judges, and the salary scale is similar, bearing in mind that the gross salary of a State Prosecutor, which is the highest grade (grade M7), is around 12 000€ (as for judges of the highest grade). Prosecutors also receive additional allowances, which may be general (meal allowance) or specific (monthly allowance of 510 € paid to members of the prosecution service who perform standby duty).

Case management and procedure

144. Work is allocated in the Principal State Prosecutor's Office and the State Prosecutor's Offices by the Principal State Prosecutor and the State Prosecutors respectively (Articles 129 and 130 LOJ).³⁴ In practice, in the Principal State Prosecutor's Office, the distribution of criminal cases among the Advocates General following their reception³⁵ is the responsibility of a First Advocate General. In the Public Prosecutor's Offices, cases are distributed on the basis of a degree of horizontal specialisation, experience, the availability of each of the Advocates General, and the relevant duty roster. In subordinate offices, newly registered cases are allocated to the duty prosecutor (weekly rota) where they concern general legal issues (ie not falling within any of the fields allocated to specific prosecutors, such as economic and financial crime, narcotics and organised crime) and offences against road traffic regulations.

145. Although it is part of the judiciary, the prosecution service is in principle subject to its own hierarchical structure: a) the Principal State Prosecutor comes under the authority of the Minister for Justice; b) the Principal State Prosecutor directs and supervises the members of his office, the State Prosecutors and their deputies; c) the latter are at the same time under the supervision and leadership of the State Prosecutors (Article 71 LOJ).³⁶ At the same time, the Minister for Justice is responsible for supervising all members of the prosecution service (Article 72 LOJ).³⁷

146. Unlike judges (including administrative judges), and despite the fact that judges and prosecutors theoretically form a single professional group, prosecutors do not enjoy independence and security of office. A prosecutor can therefore be transferred or taken off a case by decision of the Principal State Prosecutor. It would appear that this power is not sufficiently circumscribed. During the discussions held on site, it was also confirmed that instructions are permitted in individual cases subject to some restrictions: a) a prosecutor's freedom of speech is safeguarded by Article 16-2 of the Code of Criminal

³⁴ **Art. 129** "The Principal State Prosecutor shall be responsible for organising the Court's prosecution service and the court services to be performed by the Advocates General."

Art. 130 "Court and prosecution services shall be distributed by the State Prosecutor between him/herself and his deputies. The State Prosecutor shall at all times have the power to change that distribution. He/she may also, when he/she deems it appropriate, take personal responsibility for performing duties which he/she has specifically allocated to a deputy."

³⁵ Appeals on judgments are received by the single point of contact set up in each of the two State Courts by the respective registries and registered in the JUCHA system, which is the computer tool common to all courts for the management of criminal cases. These cases are then forwarded to the Principal State Prosecutor's Office and registered in the same computer programme.

³⁶ **Art. 70.** Public prosecution duties shall be performed, under the authority of the Minister for Justice, by the Principal State Prosecutor and, under the supervision and leadership of the latter, by the members of his/her office, the State Prosecutors and their deputies.

Deputy Public Prosecutors shall perform their duties under the supervision and leadership of the State Prosecutors.

³⁷ **Art. 72.** The Minister for Justice shall exercise supervision over all members of the prosecution service. The Principal State Prosecutor shall be responsible, under the authority of the Minister for Justice, for maintaining order in all courts and shall exercise supervision over all officers of the criminal police and judicial officers.

Investigation (CIC);³⁸ b) once a public prosecution has been formally and properly initiated through referral to the competent judge, the prosecutor's hierarchy no longer has any influence over the proceedings and cannot reverse decisions; c) the power to give instructions applies only to positive instructions (i.e start criminal proceedings against X) and not to negative instructions (i.e do not start criminal proceedings against X). According to the Luxembourg authorities, this derives from Article 19 CIC concerning prosecution injunctions from the Minister to the Principal State Prosecutor, and from Article 20(2) CIC for prosecution injunctions from the latter to subordinate prosecutors. But, in the view of the GET, it would be worth setting it out more clearly. Furthermore, despite the merits of a positive right of instruction (in particular to ensure consistency in the processing of cases), the GET considers that there is always a risk of misuse in sensitive cases. The Luxembourg authorities stressed that the right of instruction is a corollary of the principle of discretionary prosecution which was adopted in Luxembourg (as opposed to the principle of mandatory prosecution).

147. As stated in Chapter IV, draft Law no. 6030/05 on the reform of the Constitution provides for a series of major reforms concerning the relations between the branches of government, including a new Article 105 in the Constitution proclaiming the independence of the prosecution service. The GET considers this to be a key development and a step in the right direction which should not only be supported (at least in order to enhance the public perception of its independence) but also supplemented by legal provisions aimed at translating this independence into practice in the texts on the functioning of the prosecution service. The representatives of the prosecution service said that the new law will probably abolish ministerial instructions, but that instructions would remain in force within the hierarchy of the prosecution service. GRECO has always underlined the importance of having clear mechanisms to ensure a proper balance between, on the one hand, the consistency of prosecution policy, general responsibility for – therefore supervision of – its action, and the implementation of crime policy, and on the other, the risk of undue considerations being introduced into individual cases. In the light of the foregoing paragraphs, **GRECO recommends that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service's decisions be completed.**

Ethical principles, rules of conduct and conflicts of interest

148. Under these headings, the situation of prosecutors is – in principle – the same as that of judges under the LOJ, which also lays down the conditions of service of prosecutors; reference is therefore made to the previous chapter on judges. The strengths and weaknesses of the existing arrangements are therefore the same, eg the lack of clarity of the rules and the need to specify the applicable rules, including those of the Civil Service Regulations which have applied to the judiciary as a whole (judges and prosecutors) since the amendments introduced by the Law on judicial assistants in June 2012.

149. As already mentioned in the previous chapter on judges, a *Compendium of ethical principles for the magistrates* was in preparation at the time of the visit and finally adopted and implemented as of 16 May 2013. As it was indicated, the judicial functions and tasks to which the Compendium refers make primarily references to the work and statute of judges, and improvements can still be made as regards the coherence of the content. The discussions held on site also showed that, like judges, prosecutors are unfamiliar with the actual implications of the existing rules and the latest reforms. A general recommendation on the needs in respect of training and awareness-raising was made in Chapter IV, in order to remedy this situation.

³⁸ Art. 16-2 "[prosecutors] shall be required to make written submissions in accordance with the instructions given to them under the conditions laid down in Articles 19 and 20. They shall freely make such oral observations as they believe suitable for the good of justice".

Incompatibilities and accessory activities; gifts, post-employment restrictions, third-party contacts and confidential information

150. As far as the evaluators are able to judge, the situation of prosecutors under these headings is the same as that of judges under the LOJ, which also lays down the conditions of service of prosecutors. The strengths and weaknesses of the existing arrangements are therefore the same and recommendations have been made in chapter IV to address those issues. The *Compendium of ethical principles for the magistrates* adopted in May 2013 also contributes to filling part of the gaps.

Declaration of assets, income, liabilities and interests

151. The situation of prosecutors is the same as that of judges. At present there are no arrangements for declaring income and assets in the broad sense and, as mentioned in Chapter IV, the situation and characteristics of corruption of judges and prosecutors in Luxembourg do not seem to justify the introduction of such restrictive arrangements.

Supervision and enforcement measures

152. Various articles of the LOJ deal with the question of supervision and the GET found the mechanisms to be unclear. Generally, prosecutors are subject to the hierarchical supervision described previously and, ultimately, to the supervision of the Minister for Justice (Articles 70 and 72 LOJ). In addition, the Principal State Prosecutor and the State Prosecutors are responsible for ensuring, under the authority of the Minister for Justice, "the maintenance of discipline, the regularity of the service and the enforcement of laws and regulations".

153. It would seem that, despite the specific disciplinary rules relating to "officers of the prosecution service" (Articles 170 et seq. LOJ), the rules applying to magistrats generally (Articles 155 et seq. LOJ) also obtain in respect of prosecutors, although the legal situation is confused to say the least. Indeed, the term magistrat itself sometimes causes confusion (see above the views expressed by some parties concerning the scope of the *Compendium of ethical principles*), as does the term "officers of the prosecution service", a category which no longer exists, thus rendering the rules concerning them obsolete. According to the representatives of the prosecution service, the rules in Articles 155 et seq. are the ones which should apply to prosecutors. In the opinion of the GET, however, this is inconsistent with the information provided by the same people at the same time to the effect that "disciplinary matters are the exclusive responsibility of the Principal State Prosecutor", because this is not mentioned in Articles 155 et seq. and is more in keeping with the spirit and text of Articles 170 et seq. The same people also stressed at the same time that, in their view, the question of whether responsibility for ruling on dismissals lay with the Supreme Court of Justice rather than the Principal State Prosecutor remained unanswered. Furthermore, the answers to the questionnaire made it quite clear that Articles 155-173 LOJ as a whole remained applicable (there was no question of Articles 170-173 being obsolete). The GET therefore notes a good many contradictions on questions which are, however, of key importance and, ultimately, a risk that the procedures might not be applied in accordance with the relevant provisions.

154. Under Articles 170 et seq., "officers of the prosecution service whose conduct is reprehensible shall be called to order by the Principal State Prosecutor. A report shall be made to the Minister for Justice, who, depending on the seriousness of the circumstances, shall have such orders as he/she deems necessary issued to them by the Principal State Prosecutor" (Article 170 LOJ). At the same time, the Court is required to notify the Minister of any breaches of duty committed by prosecutors when they compromise "honour, propriety and dignity" (Article 171 LOJ). Article 172 LOJ lays down the following penalties for failure to comply with laws and regulations: a) orders and calls to order in accordance with Article 170; b) application of the disciplinary provisions of the

relevant laws and regulations (however, the wording does not refer to specific provisions of the LOJ or any other text); c) suspension; d) conviction together with possible publication of the judgment; and e) removal from office (and not “dismissal” as in the case of judges).

155. The situation prompts several comments. First, unlike in the case of judges, there are arrangements for monitoring the handling and progress of cases. These are based on the provisions of the Code of Criminal Investigation and Article 18 thereof, which requires a report on the status of cases to be made to the hierarchy every month. The GET was unable to obtain information on how this works in practice. What is clear, however, is that, as with judges, there is no regular individual evaluation system permitting an objective assessment of work carried out. This question is dealt with in more detail in Chapter IV, where it is the subject of a recommendation.

156. Secondly, the fact that prosecutors are subject to hierarchical authority up to ministerial level, including as regards supervision and observance of their rights and obligations, places them in a situation of dependence and very close control. A process involving a professional collegial body – the setting up of such a body is planned in Luxembourg and strongly supported in Chapter IV on judges – would offer more guarantees and make prosecutors less subject to the political authorities, which seem to enjoy wide discretionary power in deciding measures and determining the applicable sanctions.

157. Thirdly, even if the existing disciplinary penalties ultimately seem proportionate, effective and dissuasive, there is an urgent need to clarify the disciplinary and sanction system applicable to prosecutors, as emerged from the discussions. It is of utmost importance that the prosecutors know clearly which are the rules applicable to them. Consequently, **GRECO recommends i) that the future collegial body for the judiciary be involved in supervision and in disciplinary decisions concerning prosecutors; ii) that the disciplinary arrangements applicable to prosecutors , including the applicable sanctions, be defined more clearly.**

Advice, training and awareness

158. In principle, the situation is the same as for judges, and, in the light of the on-site discussions, the GET came to the conclusion that, in practice, awareness-raising/training for prosecutors on corruption prevention and questions of integrity in general exhibits the same shortcomings. This is reflected in the great uncertainty shown by the prosecutors’ representatives when they have to interpret the rules considered above. This concerns at least serving prosecutors, but as they are also partly responsible for training, it would be desirable if measures were taken in future to ensure that training of new recruits is of the highest quality and precision. A general recommendation on training/awareness-raising needs is made in Chapter IV, to remedy these shortcomings.

VI. RECOMMENDATIONS AND FOLLOW-UP

159. In view of the findings of the present report, GRECO addresses the following recommendations to Luxembourg:

Regarding members of parliament

- i. that i) as intended with the current draft code of conduct, a set of ethical rules and standards is adopted with the aim of preventing corruption and safeguarding integrity in general; ii) these rules be supplemented by an implementing instrument providing the necessary clarifications (paragraph 29);**
- ii. that the declaration system be further developed in particular i) by including data which is sufficiently precise and pertinent, for instance on financial assets, debts and resources of parliamentarians; ii) by considering including information on assets of spouses and dependent family (it being understood that such information would not necessarily need to be made public) (paragraph 40);**
- iii. that the future rules relating to gifts and other benefits be made more consistent, based on prohibition in principle (paragraph 42);**
- iv. the introduction in the Code of conduct of rules on the way in which MPs should conduct themselves with third parties seeking to influence the work of the legislature (paragraph 49);**
- v. the introduction of an effective system of monitoring and sanctions concerning breaches of the rules of the future Code of conduct for parliamentarians (paragraph 57);**

Regarding judges

- vi. that under the rules of the future National Judicial Council, the procedures for the promotion of the various categories of judges and public prosecutors, including access to senior functions of president or vice-president of a court and Principal State Prosecutor, should be reviewed and made more transparent, particularly through the use of objective criteria and periodic appraisal (paragraph 104);**
- vii. that steps be taken to introduce harmonised management of the courts that meets the need for transparency and limits risks for the general integrity of judges (paragraph 113);**
- viii. clarifying the status of the various rules on recusal applicable to members of the courts, and ensuring their uniform application to the various categories of persons required to decide cases, whatever the subject-matter (paragraph 119);**
- ix. that it be clarified which of the provisions of the General Civil Service Regulations – on management of conflicts of interest or other matters relevant for the purposes of preventing corruption – are in force at present and in respect of which categories of justice posts, with a view to enforcing the applicable clauses of the Regulations (paragraph 120);**

- x. **that the rules on incompatibilities and secondary activities be clarified and made more coherent in respect of all persons required to sit as judges or act as prosecutors** (paragraph 122);
- xi. **that information on disciplinary procedures and the sanctions applied in respect of persons called upon to sit in court or work for the prosecution be kept in a systematic and centralised manner** (paragraph 136);
- xii. **that dedicated training programmes be established for the various persons required to sit in court or to work for the prosecution, focusing on the questions of judicial ethics, conflicts of interest (including their management, recusal and withdrawal), the rules on gifts and other advantages, relations with third parties and the various other measures for preventing corruption and preserving integrity generally** (paragraph 138);

Regarding prosecutors

- xiii. **that the planned introduction of arrangements for ensuring greater independence and objectivity of the prosecution service's decisions be completed** (paragraph 147);
- xiv. **i) that the future collegial body for the judiciary be involved in supervision and in disciplinary decisions concerning prosecutors; ii) that the disciplinary arrangements applicable to prosecutors, including the applicable sanctions, be defined more clearly** (paragraph 157).

160. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Luxembourg to submit a report on the measures taken to implement the above-mentioned recommendations by 31 December 2014. These measures will be assessed by GRECO through its specific compliance procedure.

161. GRECO invites the authorities of Luxembourg to authorise, at their earliest convenience, the publication of this report.

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.

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