FOURTH EVALUATION ROUND

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

EVALUATION REPORT

BELGIUM

Adopted by GRECO at its 63rd Plenary Meeting
(Strasbourg, 24-28 March 2014)

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EXECUTIVE SUMMARY

1. Although regular surveys have shown that over 70% of the population still consider that corruption is a major problem in Belgium, people say that they encounter little corruption in their daily lives. In international comparisons the perception of corruption is moreover at a relatively low level. The justice system is generally well regarded, unlike political institutions and elected officials, which are among those sectors considered most affected by integrity issues. At the same time, Belgium reportedly no longer attaches the same importance to fighting corruption, and the judicial and prosecuting authorities have to contend with funding and staffing shortages. The drive to make savings has also led to an in-depth reform of the Senate, which will gradually come into effect in 2014.

2. No MPs have been convicted of corruption in connection with their mandates (as far as those people interviewed on-site could recollect). Belgium has a number of preventive mechanisms, including a system for the declaration of donations, official appointments, other positions held and assets. The recent introduction of codes of deontology by the parliamentary chambers as well as of a Federal Ethics Committee, which shall all become effective in the course of 2014, are welcomed additional initiatives. The country also relies on mutual supervision within society at large and between political parties to limit misconduct. This approach nonetheless has its limits. For the time being, the regulations put in place are sometimes unnecessarily complex or of limited applicability, notably concerning donations, gifts and other benefits, and it suffers of a lack of effectiveness. The risks are augmented by the fact that relations with third parties, in particular lobbyists, have not been regulated to date, despite recurring controversies in this area. Belgium must therefore remedy these shortcomings and supplement its system with more ambitious arrangements, including in respect of the declarations of MPs' financial situations, which should be public including their income and assets. More effective supervisory mechanisms to ensure compliance with the obligations and the accuracy of declarations made (including sanctions of a disciplinary or criminal law nature) are also needed both inside and outside Parliament. A reinforcement of the measures to safeguard MPs' integrity could also be an opportunity for Parliament to affirm its undertakings in these matters, especially as the reformed Senate will no longer play the role of watchdog that the upper chamber habitually assumes vis-à-vis the lower chamber in a bicameral system.

3. The Belgian justice system can be seen to be independent and decentralised. To offset the lack of means and understaffing problems considerable recourse is had to lawyers, in particular, to serve as judges and prosecutors (the umbrella term "magistrat" is used to refer to both these functions),[1] which raises various problems, not least an undesirable confusion as to these professions' different roles. Since the courts are self-managed, there is also currently no general system to assess their functioning on the basis of periodical reports. To make good this deficiency, the role of the High Council of Justice could be reinforced, including its auditing activity. It would then be able to identify reasons for the apparent disparities in the quality of the work done by comparable courts and for certain practices reported by legal practitioners, which they describe as "little arrangements between friends". The managerial function within the courts and the prosecution service should be developed for the same reasons. Overall, even though the judiciary seems to be scarcely affected by breaches of integrity and to enjoy public confidence, it would benefit from measures to raise awareness of the standards of conduct required of "magistrats" in their daily activities and the manner in which those who breach the rules in this area are dealt with. Lastly, meeting the highest standards of judicial integrity is a requirement that concerns all parts of the judicial system, including the administrative courts. However, to date the organisation of the system of administrative justice has not been finalised and there is not even a list of all the administrative courts. Belgium should ensure that appropriate measures to guarantee integrity are also in place concerning this branch of the justice system.

[1] This report follows the standard format for the fourth cycle. Given the strong unicity of the profession of "magistrat", Chapter IV on judges also largely concerns prosecutors, who are dealt with in Chapter V. The latter chapter is therefore shorter than usual, also in view of the absence of particular problems.

I. INTRODUCTION AND METHODOLOGY

4. Belgium joined GRECO in 1999. Since its accession the country has been subject to evaluation in the framework of the First (December 2001), Second (December 2004) and Third (May 2009) 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 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 MPs, 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 and regardless of whether 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 (document Greco Eval IV (2013) 8F REPQUEST) by Belgium. In addition, a GRECO evaluation team (hereafter referred to as the "GET") carried out an on-site visit to Belgium from 21 to 25 October 2013, which made it possible to gather a significant amount of information and additional documents supplied by those interviewed on-site and/or obtained from public sources. The GET was composed of Mr Jean-Pierre DRENO, Chief Prosecutor (Monaco), Ms Helena PAPA, Inspector/Coordinator, Internal Administrative Control and Anti-Corruption Department attached to the Council of Ministers (Albania), Mr Jean-Baptiste PARLOS, Judge, First Vice-President of the Tribunal de grande instance, Paris (France) and Mr Gaetano PELELLA, Parliamentary Adviser, Head of the Party Funding Unit of Parliament (Italy). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat.

9. The GET interviewed representatives or members of the following institutions: the Chamber of Representatives and the Senate (MPs, secretariat members, the quaestors, members of the legal services and members of the committees responsible for immunity issues), the Federal Ministry of Justice (SPF Justice), the ministerial departments in charge of institutional reform, the Court of Audit, the courts (Court of Appeal, Commercial Court, Police Court) investigating judges, lay judges sitting in the Commercial Courts, the Conseil d'Etat (the highest administrative court), the prosecution service (federal and regional levels), the Board of Prosecutors General (Collège des Procureurs Généraux), the High Council of Justice, the Judicial Advisory Council (Conseil Consultatif de la Magistrature), the National Disciplinary Board, the Judicial Reform Committee (Commission de modernisation de l'ordre judiciaire), and the Judicial Training

Institute. The GET also had meetings with academics and civil society representatives, representatives of the legal profession and representatives of judges' and prosecutors' associations.

10. The main objective of the present report is to evaluate the effectiveness of measures adopted by the Belgian authorities in order to prevent corruption in respect of Members of Parliament, judges and prosecutors and enhance their integrity as perceived 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 GRECO's practice, the recommendations are addressed to the Belgian authorities, which are to determine the institutions/bodies responsible for taking the requisite action. Belgium has no more than 18 months following the report's adoption for reporting back on the action taken in response.

11. It should be noted that in Belgium, as in a number of other GRECO member states, the term "magistrat" covers both judges and prosecutors. The persons performing these duties form a single magistracy and are subject to largely the same rules concerning their rights and obligations and the relevant anti-corruption mechanisms. So as to retain the usual format of Fourth Evaluation Round reports, this report deals separately with judges and prosecutors (respectively in Chapters IV and V). However, most of the information in Chapter IV – concerning the status of "magistrats" (that is judges and prosecutors) – is also relevant to prosecutors. Chapter V of the report therefore does not reiterate this information. Together with the fact that the prosecution service enjoys considerable autonomy, obviating the need for specific comments on prosecutors, this explains why Chapter V is relatively short.

II. CONTEXT

12. In the (2012) Corruption Perceptions Index, as published annually by the NGO Transparency International, Belgium currently ranks 16th of a total of 174 countries, with a score of 75 out of 100. Its rank varies little from one year to the next and Belgium also performs well at international level. In the (2012) Eurobarometer survey[2] on perceptions of corruption, 71% of those questioned in Belgium nonetheless considered that corruption remained a major problem in the country (EU average: 74%), even if only 3% indicated that they had personally encountered this problem in their daily lives during the last twelve months (EU average: 8%). According to this survey, Belgium has few distinctive features. For example, as in a number of other EU countries people believe that corruption in Belgium is mainly caused by too close links between business and politics. At the same time, the issue of basing appointments in the public administration on criteria other than merit or qualifications seems to pose a particular problem. Of the 11 categories of public servants cited by the pollsters, politicians at the national and local levels (along with officials awarding public tenders or issuing permits) are perceived as the most involved in bribery or illegal financing. People working in the judicial system are regarded as one of the three professional categories least affected (along with people working in the public health or public education sectors) of the 11 categories cited by the pollsters.

13. Specific national surveys on the functioning of the justice system, also in comparison with other institutions, were carried out in 2002, 2007 and 2010. These showed a) that there is room for improving the Belgian population's confidence in their justice system (which, for the three years mentioned above, achieved an increase from 41 to 66% of positive opinions before falling back to 61%); b) that people think the justice sector does good work, but is poor at communicating; c) that there is still the impression that there are two standards of justice (depending on the notoriety of individuals involved in proceedings), despite the overall perception that proceedings are generally fair and conducted by independent "magistrats"; d) that confidence in Parliament fell between 2007 and 2010 (when 53% of opinions were positive, equivalent to the 2002 level). The Belgian section of Transparency International analysed overall institutional integrity in its report of May 2012 evaluating the National Integrity System. Some factors that encourage corruption in Belgium were cited, drawing on various academic works: mention was made of tolerance of unethical behaviour combined with the culture of patronage prevailing between politicians and the electorate and of the traditionally central role played by politicians in appointments to state positions and in decision-making (where they often operate within a vacuum). This study makes a number of interesting recommendations.[3]

14. According to a number of people interviewed by the GET, fighting corruption is no longer given the importance it deserves in Belgium. The media fail to play the role of a "counter-power" for lack of independence, and there is little investigative journalism. This explains why public controversy over integrity issues often quickly dies down. Civil society organisations working on the themes of transparency, integrity and combating corruption today seem to be losing ground and to lack support. The shortage of resources in the police and the justice system significantly restricts their capacity to take timely action in major cases of financial and economic crime or covert criminal behaviour such as bribery.

[2] Special Eurobarometer survey on Europeans' attitudes to corruption:
2011 (published in 2012): http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_fact_lu_fr.pdf
2009 (published in 2010): http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_sum_fr.pdf
2007 (published in 2008): http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_fr.pdf

[3] In particular, reinforcing ethics and transparency (parliament and the justice system) and preventing the current geographically fragmented approach, addressing the lack of resources and improving appointment/evaluation/discipline procedures as well as training and the treatment of complaints (the justice system).

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

15. In connection with the sixth state reform, a wide-ranging reform of Parliament was under way at the time of the on-site visit, marking the end of traditional bicameralism. The reasons for this include a desire to economise and a transfer of powers and responsibilities to the regions and communities. The Senate is particularly affected and is destined to become a non-permanent institution, since it will sit only 8 times a year, on average once per month. It will henceforth deal solely with reforms of the state, the Constitution or special laws, as well as legislation on the federal State structure. It shall retain the ability to draft reports on certain cross-field subjects. This reform, which was passed in December 2013, will take effect only after the parliamentary elections of May 2014. The new Senate will emerge only in the second half of this election year, and its real importance in the context of its new competences remains to be determined. In view of these unknowns, the GET confined itself to examining the situation of the Senate as at the time of the visit.

Overview of the parliamentary system

16. Federal legislative power operates under a bicameral system. It is exercised by the Chamber of Representatives and the Senate (jointly with the Crown). Since a 1993 reform the Chamber has taken precedence over the Senate (in the sense that the former has more prerogatives than the latter). The 150 members of the Chamber are elected by direct universal suffrage for four years from the country's 11 electoral constituencies.

17. At the time of the visit the 71 members of the Senate were either elected or appointed: a) 40 senators were elected directly for four years by two electoral colleges and from three constituencies; b) 21 members (the Community senators) were appointed by and from the Community Parliaments for a term of office of four years; c) 10 co-opted senators were appointed for four years by the first two groups of senators.

18. With the reform, the upper chamber will in future have 60 members, namely: a) 50 elected by and from the regions and the communities, of whom 29 will be Dutch-speaking, 20 French-speaking and 1 Germany-speaking; b) 10 co-opted members: 6 Dutch-speaking and 4 French-speaking, to be designated by the other senators.

19. The basic principle of representation is that those elected to the Chamber or the Senate must defend not just the interests of their electoral district, but also national interests and those of the population as a whole: Article 42 of the Constitution provides "The members of the two Houses represent the Nation and not only those who elected them." The GET notes that this wording can be given different interpretations and has different implications, but Belgium in any case prohibits any binding mandate for MPs, who can therefore not receive any "instructions" from their electorate.

Transparency of the legislative process

20. Proposals for legislation, whether "propositions de loi" (private members' bills) or "projets de loi" (Government bills) are made public as soon as they have been printed by the two chambers, which publish them in hard copy and electronic form. The legislative process does not require the holding of public consultations, although in practice, in the course of parliamentary debates, a committee may deem it necessary to seek the opinions of people or bodies from outside Parliament (by holding hearings).

21. Article 47 of the Constitution provides that sittings shall be public, but this is not an absolute requirement since each chamber may decide to meet in camera (at the request of its President or of ten members); in practice, increasingly scarce use has been

made of this possibility for a long time now.[4] Minutes of in camera meetings are not prepared, and there may even be no other information on them. For both the Chamber of Representatives and the Senate (see in particular Articles 31 and 39 for the committees and Article 56 for the plenary sessions of the Rules of Procedure of the Chamber ; and Articles 23 and 26 of the Rules of Procedure of the Senate), committee proceedings are in principle public, including those of special committees apart from in specifically determined cases or where certain committees have to deal with particularly sensitive issues (such as the Committee on Credentials or the Legal Proceedings Committee, at the level of the Chamber, or the Senate committee responsible for monitoring overseas missions). In some cases ultra-secret meetings are held, which are also closed to MPs not members of the committee concerned. In such cases, the committee will decide whether or not to publish a meeting report. The work of each chamber is normally recorded in a detailed verbatim record or a written or audio-visual report, which also records the votes cast by each member (which are in principle also public, with the exception of votes on appointments or referrals, for example in respect of the members of the Court of Audit).

22. The GET notes that, in theory, there is still broad scope for holding meetings in camera outside plenary sessions and that such meetings are not always limited to specifically determined cases. For example: a) the Chamber of Representatives may decide to hold an in camera meeting on any "point of a main issue" being examined by a committee (an in camera meeting is obligatory if the request comes from the Government or a two-thirds majority of the committee itself) and also when examining a private member's or Government bill. In such cases a meeting report is published only if the committee concerned so decides. b) Similarly, any special committee of the Chamber may meet in camera if necessary; c) in the Senate when sub-committees or working parties are established, they in principle meet in camera (for working parties without exception and for sub-committees unless decided otherwise by the Bureau or the President) and their work is made public only if the relevant committee gives its approval; d) the Chamber of Representatives can also set up sub-committees and working parties; publicity of the working groups' activities is not regulated, but in practice most of their meetings are public. The GET was not informed of any recent controversies surrounding these rules, but consideration could be given to the possibility of better guaranteeing the public nature of parliamentary work and further clarifying the cases when meetings are to be held in camera.

Remuneration and economic benefits

23. According to the results of an official study conducted in partnership with academics, in 2012 the average gross monthly salary in Belgium for full-time work was € 3 133, corresponding to a net salary of € 1 984. The parliamentary allowance is determined by the chambers by reference to the salary of a junior member of the *Conseil d'Etat*. The following table gives an overview of the allowance and other benefits:

<table>
<tr><th></th><th>Chamber members</th><th>Senators</th></tr>
<tr><td rowspan="2">Remuneration (gross monthly allowance)</td><td colspan="2">- Basic monthly allowance (current index): € 7 172 gross (annual gross amount 86 067.09) or about € 3 500 after taxation and deduction of pension contributions
+ expenses allowance (28% of the gross basic monthly allowance, or € 2 008.23 per month – current index), which is non taxable and paid without proof of expenditures = € 5 508.23 per month in total
- bonuses (year-end bonus, holiday bonus) are payable as for state civil servants</td></tr>
<tr><td>- the allowance is reduced by between 10 to 60% in the event of absence (deduction applied as from a threshold of participation in less than 80% of plenary votes)</td><td>(no reduction for absence)</td></tr>
</table>

[4] From the 1920s meetings in camera were no longer organised, except for the examination of the budget of the Chamber of Representatives (this practice ceased in 1996) or the Senate, for impeachment of ministers or for a few other exceptional reasons.

Other benefits (staffing costs)	- Staff expenses (1 to 2 persons depending on circumstances) are covered; Bureau members can hire an additional staff member; the same applies to political groups, which are permitted a staff complement proportional to their membership - Staff management is centralised (contracts concluded and managed by the Chamber, which also commits and pays the expenses); unutilised benefits are forfeited.	- Expenses for staff and personal assistants (2 to 3 persons depending on circumstances) are covered; the same applies to political groups and their Presidents - A mixed system of management applies (contracts concluded and managed by the senator/group; expenses committed and paid by the Senate); unutilised amounts are forfeited
Material benefits (transport, etc.)	- free use of public transport services (whether run by the state or under licence) - kilometric allowance of €0.3456 - provision of an office, with furniture and equipment, and cover of the cost of a home IT system, cover of correspondence costs	
Other personal benefits	- Leaving allowance calculated on a proportional basis: equivalent to 1 year's basic allowance for MPs who have served a mandate of 1 to 6 years and a maximum of 2 years' basic allowance for a mandate of 6 to 12 years and four years' basic allowance for a mandate of more than 12 years; as of 26 May 2014: 4 months + 2 months per year of mandate with a maximum of 24 months, in case of resignation (except if force majeure) - specific supplementary insurance and health cover costs are reimbursed at the end of the MP's mandate in case a voluntary scheme was subscribed to (if no coverage from another source) - MPs receive a pension calculated according to the length of their mandate (for instance a max. of 75% of the basic allowance after a mandate of 20 years); pensionable age is 55.[5]	
Collective benefits	Annual indemnity for parliamentary groups (about € 46 000 per year and per member of a recognised group of 5 or more persons in the Chamber, without any scrutiny of expenditure by the general services or the Bureau); in the event of a change of group, the indemnity is transferred to the new group in the Chamber but is forfeited in the Senate.	

24. The Belgian authorities have indicated that, in addition, MPs may receive amounts originating from public grants for the financing of political parties or private donations, which can be made to political parties and their components, candidates and political office holders solely by individuals. Such support comes under the 1989 legislation in this field,[6] which GRECO analysed in its Third Evaluation Round report (Theme II). That report underlined inter alia the need to regulate sponsorship of candidates/parties (as it is not taken into account as a monetary or in-kind donation). This issue is dealt with below, in the section on gifts, donations and other benefits from non-parliamentary sources. Overall, the public funds paid to MPs seem to be managed in a fairly responsible manner, and the GET mainly heard criticisms concerning the social benefits they enjoy as compared with the rest of the population.

Ethical principles and rules of conduct

25. At the time of the visit, there were no specific ethical or fundamental principles (in the sense of the present report) underpinning the work of the federal Parliament nor rules of conduct applicable to MPs. Proposals to introduce such standards were made in the past, coinciding with major scandals, but were not finalised.[7] More recently, the establishment of a Federal Ethics Committee (modelled on the Constitutional Court) to deal with these issues for all MPs, members of government and other political or institutional decision-makers at federal level (such as the head of a minister's private office or the director or manager of a public-sector establishment) was proposed in October 2011. The Law establishing a Federal Ethics Committee was in the end passed by Parliament on 19 December 2013. This committee will be put in place in the course of 2014, with responsibility inter alia for a) drawing up a general, federal code containing

[5] 36 and 62 respectively, with effect from the next legislature

[6] Law of 4 July 1989 on limiting and monitoring expenditure on elections to the federal Houses of Parliament and the open financing and accounting of political parties: this law provides in particular that donors shall be identified for donations of € 125 and over, that donations from a single individual cannot exceed € 500, that accounts are to be submitted to the supervisory authorities (the Minister of Finance and the President of each chamber) and that fines are incurred for failure to comply with the regulations.

[7] Only the Flemish parliament has so far adopted a code of conduct, dated 22 October 1997; however, as was mentioned during the on-site visit, its scope is limited and it is primarily aimed at remedying certain problems linked to the holding of weekly surgeries (promises, patronage and so on), without addressing other issues linked to lobbying, conflicts of interest, etc.

rules governing conduct, ethics and conflicts of interest (which will have to be approved by Parliament) and any guidelines the Committee deems appropriate in such matters (Article 5); this code shall not apply to MPs, which is the reason why both assemblies have to adopt their own rules; and b) making general proposals or giving (confidential) opinions to the various categories of officials addressed in the above law on tangible situations involving such questions: concerning MPs, individual (confidential) opinions can be requested from the Committee by the MPs, and opinions or advice on general matters concerning MPs are to be given at the request of one third of the members of the Chamber or Senate, at the request of the government, and by the Committee on its own initiative (Article 4).

26. Thus, the Senate and the Chamber have each adopted a code of deontology on 17 and 19 December 2013 respectively, in the form of an annex to the rules of procedure[8]. The content, which is reportedly nearly the same for both assemblies, comprises in the case of the Chamber 20 articles dealing in particular with: a) general rules on good conduct (e.g. integrity, honesty, need to be disinterested, article 2); b) giving priority to the common good rather than to private interests (article 4); c) rules on conflicts of interest (article 5); d) rules on benefits and gifts (article 6); e) prohibition to share non-public information (articles 8 and 9); f) limits to the intervention in favour of individuals, including in connection with jobs and in the absence of solicitations (articles 10 to 16); g) rules on the public's access to MPs (article 17). The subsequent articles establish a periodic assessment by the Chamber of the matters concerning the implementation of the Code, and they provide for the entry into force in May 2014, in respect of the new Chamber to be designated by the general elections. The GET has had no opportunity to discuss these changes which occurred after the on-site visit. In any event, it welcomes this development which remedies a significant shortcoming, since the current rules in this area have been rare and of little practical benefit.[9] Article 1 (of the Chamber's Code) provides for the mandatory nature of these rules and their inclusion in the rules of procedure certainly confers some authority and visibility to these. The rules, for instance of the Chamber, were also amended to make it clear that each member is required to abide to the content of the Code, even if the question of possible enforcement measures (sanctions) has not yet been addressed (see paragraphs 61 et seq.).

Conflicts of interest

27. Apart from the rules on incompatibilities and the declaration of activities required of MPs, which are discussed below, the new Codes of deontology mentioned in the previous paragraph also require from MPs that they shall a) refrain from generating such situations; b) declare orally a situation before any written or oral intervention and before participating in a vote in plenary or in a committee in any matter connected with such an interest. MPs responsible for Parliament's internal management (the quaestors) seem to be covered by certain precautionary measures relating to conflicts of interest as a result of the specific rules on public procurement.[10] The explanatory report makes a reference to Committee of Ministers Recommendation N°R(2000)10 on codes of conduct for public

[8] See for instance the page of the chamber on the adoption process

[9] For example, Article 2 of the Law of 1931 on incompatibilities provides "Ministers, former ministers and Ministers of state and **members or former members of Parliament** shall be prohibited from mentioning these titles in documents or publications relating to for-profit corporations." The GET was informed that the sole aim of this provision is to avoid the public considering that an elected representative has used his or her title for financial reasons, but it in no way governs their participation in such corporations ("revolving doors", employment in exchange for services rendered, and so on).

[10] According to the Belgian authorities, possible conflicts of interest in awarding public procurement contracts are covered by the relevant statutory prohibitions. For instance, Article 8 of the Law of 15 June 2006 on public procurement contracts and certain contracts for the delivery of works, supplies and services prohibits "any civil servant, public official or other person with any kind of links to a contract-awarding authority from interfering in any way, whether directly or indirectly, with the award and execution of a public contract where he or she may be exposed, either in person or through an intermediary, to a conflict of interest involving a bidder or contractor." The Belgian authorities consider that, in light of the wording ("any other person") this also covers MPs.

officials and recalls that the concept of personal interest (which is used in the Belgian codes) refers to any sort of advantage for oneself or one's family, friends or close relatives, or persons and organisations with whom there is or there has been a business or political relationship. It also clarifies other issues. As indicated above, the future general federal Code of conduct will also deal with conflicts of interest involving a series of other public functions, which could also be carried out by MPs. In fact, this question of the necessary harmonisation might be relevant also in respect of other matters addressed in the Codes. However, it is still too early to say how the Federal Code will deal with the subjects concerned and its interrelations with the parliamentary Codes. The GET welcomes these developments and invites Belgium to ensure in future the consistency of these various rules. Links with the criminal law provisions (in particular Article 245 of the Criminal Code – see paragraphs 62 and 67) will also have to be ensured.

Prohibition or restriction of certain activities

Gifts, donations and other benefits

28. The rules have significantly evolved between the time of the on-site visit and the finalisation of the present report. Until recently, the Belgian authorities indicated that donations are governed by the above-mentioned Law of 4 July 1989 on political financing. During the on-site discussions, mention was made of the provisions of Articles 16bis and 16 ter, in particular (see also paragraphs 34 et seq. of the third evaluation round report).[11] Chamber members and senators (as "political office holders") are required to prepare, in the same way as political parties and their components, an annual list of all donations which exceed € 125 and their sources (only donations by natural persons are permitted). The total annual amount of donations from a given person to the same MP cannot exceed € 500 and the total annual amount of donations made by a given donor to different MPs, political parties and their components is limited to € 2 000 but donations by foreign natural persons are not regulated. Deputies and senators must file this list, before 30 June of the following year, with the Commission on Party Political Election Expenditure and Accounts. They incur a fine of between € 26 and € 100 000 (to be multiplied by 6) for accepting a donation in violation of Article 16bis and for failure to file the list or filing it after expiry of the time-limit. With the amendments of January 2014, there are now express penalties for filing erroneous or inaccurate information (Articles 13, 14 and 22 of the law of 6 January 2014 amending the law of 1989 – *Moniteur belge* of 31 January 2014). These lists are still not made public, however. Following the on-site discussions, the GET had reached the conclusion that despite their merit, the rules were insufficient and in any event, not well understood and known (and thus little effective). Various MPs met by the GET considered that the rules only deal with financial benefits, which is incorrect since they cover donations in whatever form and their possible equivalent value. During the discussions, it was acknowledged that various forms of benefits in practice are a grey area (in particular in connection with hospitality) and a occasionally a source of controversies at national and local level. Not to mention the fact that donations from foreign natural persons are not addressed, as indicated above. Secondly, there is a lack of transparency since the lists of donations and donors communicated to each assembly remain confidential and do not allow for some kind of social control nor the voters to know if private interests support their MPs (in January 2014, some improvements have nonetheless taken place with regard to *sponsoring*). Thirdly, the legislation suffers from a lack of effectiveness in the way that some of the MPs met on site considered that the 1989 legislation is applicable in their respect only in connection with election campaigns. This means that in practice, at least part of them apply no rules at all between two elections. The GET however notes that the law of 1989 is clear in this respect: it applies on-goingly and requires from the MPs to submit lists of donations annually, which was confirmed by the competent parliamentary services.

[11] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)8_Belgium_Two_EN.pdf

29. It would appear that a different approach was taken with the introduction of Codes of deontology by the Chamber and the Senate in December 2013 since "*leaving aside their parliamentary allowance, members cannot accept any financial or in-kind benefit of any sort, in return for acts performed in connection with the performance of their mandate, including any gift which has a more than symbolic value"* (Article 6). The new rules seem to contradict the legislation of 1989 by introducing a prohibition on any financial or material benefit except gifts which have a symbolic value. These rules thus fill some gaps by addressing gifts but at the same time, they raise some questions including in the light of the explanatory report[12] since: a) the legislation of 1989 remains applicable in that it "allows election candidates to receive certain donations in view of elections" (quotation from the report) and b) Article 6 deals only with advantages in return for certain services. However, the first point seems to consecrate a certain *contra legem* practice with regard to the 1989 legislation, as indicated earlier. As to the second point, this seems redundant with the criminal law provisions on bribery, leaving *a contrario* the door open to all forms of non-counterpart benefits, which is not exactly in line with what internal rules on gits and other benefits ideally should be aiming at. It also creates a complex situation which might be difficult for MPs to manage in future, whereas the current situation calls on the contrary for greater clarity and consistency.

30. The GET appreciates the efforts made by the parliament in order to regulate gifts, donations and other benefits. However, it is easy to see that the above situation therefore poses a problem of management of the risk of corruption not only with regard to gifts, offers of hospitality and other benefits likely to arise in the course of MPs' regular relations with persons pursuing private interests, but also in terms of the effectiveness of the political financing regulations. In the final analysis, while the GET is conscious of the importance of the mutual supervision exercised between MPs in Belgium, that cannot however be a genuine substitute for consistent regulations that have been properly drawn up and are accepted, understood and applied by all concerned, which would also foster objective integrity (as perceived by the public) and would not be limited to the sole benefits given in return for services. Such a solution would ideally make it possible to establish the principle that gifts and other benefits are prohibited, while tolerating those that make it possible to cultivate relations with Belgian society subject to specific conditions (acceptable value, due caution exercised by the parliamentarian concerned, requirement that gifts must not be made for a contingent consideration, rules on declaration and public disclosure of acceptable gifts, transfer of certain gifts to Parliament, and so on). This would of course require consistency with the legislation of 1989[13], and that the latter is sufficiently well known to be effective. In view of the above considerations, **GRECO recommends to ensure that consistent and effective regulations are in place for MPs i) in respect of gifts, donations and other benefits accepted by MPs, providing in particular for their public disclosure , as well as of donors' identities, and ii) regulating the question of foreign donors.**

Incompatibilities

31. The Constitution and Articles 1 to 1*quater* of the Law of 6 August 1931 lay down incompatibilities and prohibitions applicable in particular to Chamber members and senators. The following, i.a., are incompatible with the duties of a Chamber member or senator a) any second parliamentary mandate in the other House of the Federal Parliament or in a Community or Regional Parliament (except in the case of the 21

[12] See document 53 3160/001 available at the link mentioned in footnote 8

[13] For instance by taking the necessary measures to clarify once and for all in which circumstances it applies to direct donations to MPs (on-going applicability as it is the case today, or only in electoral periods). It would probably be necessary to examine whether there is a need to keep the possibility for individual MPs to receive direct support since it is their party / list of candidates which is normally meant to collect such support through a financial representative. In any event, there is a need to generalise the applicability of party financing rules to the financing of election campaigns / election candidates – See also the Third Evaluation Report on this question.

senators appointed by and from among the Community Parliaments) (Articles 49 and 119 of the Constitution) ; b) any civil service post or other position of state employee (except a teaching post, based on a strict reading of the rules); c) any judicial office (judge or prosecutor) or office within the Conseil d'Etat, the Court of Cassation or the Court of Audit; moreover, MPs are in general prohibited from "pleading or dealing with any litigation on behalf of the state or serving as the state's adviser or consultant in such cases, other than on a no-fees basis"; d) the role of legal counsel for a federal public administration; e) active military service.

32. Article 1*quater* of the Law deals in fairly complex terms – as noted by the GET – with the issue of the compatibility of a mandate in the Federal Parliament with the performance of duties in a public body. MPs must under no circumstances sit on the Board of Directors of autonomous State public undertakings (postal services, railway), but they can hold a "remunerated executive office" (and only one) in a) a public or private body in the capacity of representative of the state, a community, a region, a province or a municipality (if the office in question entails exercising more authority than that vested in a mere member of the general meeting of shareholders or the Board of Directors), regardless of the remuneration involved, or b) a public or private body in the capacity of representative of the state, a community, a region, a province or a municipality, on condition that the taxable gross monthly remuneration does not exceed a certain amount (€ 672,37 as at 01/01/2014). Multiple office-holding is permitted in other cases: unremunerated positions, positions deriving from their mandate, positions within advisory bodies or in bodies without legal personality. The Belgian authorities also indicate in their replies that there are specific laws banning MPs from holding certain offices in public interest entities.

33. Lastly, limits have been set on cumulative remuneration, since the Law of 6 August 1931 provides that the total amount of incomes, salaries or directors' fees received for mandates, offices or duties of a political nature, exercised in addition to the parliamentary mandate, must not exceed the equivalent of half of the parliamentary allowance (Article 1*quinquies*). In practice, the remuneration relating to duties other than their parliamentary mandate is reduced.

34. The GET welcomes the efforts made by the Belgian legislators to deal with incompatibilities and limit the holding of multiple offices. Nevertheless, MPs sometimes hold a significant number of positions[14] including many in the public or quasi-public sector. The complex rules aimed at limiting office-holding in public entities are regularly a subject of debate as to the implications of certain concepts and/or the opportunity of introducing clearer limits. Lastly, while the legislation prohibits the exercise of any judicial office, this does not encompass the administrative courts, although at the same time express incompatibility rules exist with regard to the Conseil d'Etat in the law of 1931. The Belgian authorities underline that the individual regulations dealing with the functioning of administrative court-like institutions also provide for incompatibilities but for the time being it remains difficult to determine whether this is the general rule given that the number and diversity of such institutions make it difficult to list them, as pointed out in paragraph 80 of the present report. The GET can but encourage Belgium to ensure the consistency and clarity of the rules on incompatibilities applicable to MPs.

Accessory activities, financial interests, contracts with public authorities

35. Professional and other responsibilities exercised by MPs come within the scope of the rules referred to in paragraph 31 and subsequent paragraphs regarding incompatibilities and limits on the holding of multiple offices in public or quasi-public entities. Otherwise, no specific prohibitions or restrictions apply. An MP can, for instance, begin to exercise all kinds of activities after taking office, including consulting activities

[14] Source: information from the website cumuleo.be

which may lead him or her to conduct business relations with third parties seeking to influence the work of Parliament. The situation in Belgium accordingly involves certain weaknesses, and the improvements recommended in paragraph 41 should in principle limit the risks relating to certain accessory activities. Similarly, the mechanism for disclosing offices held, professional activities and assets, described in paragraphs 42 et seq., should be made more transparent if GRECO's recommendations are acted upon. The introduction of a mechanism for dealing with ad hoc or specific conflicts of interest, as of the next Parliament to be elected in May 2014, as provided for under Article 5 of the parliamentary Codes of deontology (see paragraph 27) would also permit better containment of risks linked to financial interests or a contractual relationship with public authorities.

Restrictions applicable after the end of a mandate

36. Article 5 of the above-mentioned law of 1931 provides for a restriction on "revolving doors" since, in connection with cases of incompatibility, it also provides that "Members of Parliament can be appointed to such salaried positions by the state only after at least one year has expired since the end of their mandate. The positions of minister, member of the Constitutional Court, diplomatic agent or governor or clerk of a province are excepted." The GET notes that there is accordingly no rule to prevent the risks of corruption linked to a parliamentarian's being offered employment within the management of a company or a federation/association representing private interests as a way of thanking that parliamentarian for action or measures taken. The GET notes that there have occasionally been disputes regarding such cases (also those involving heads of ministerial private offices), in particular because the new employer can take advantage of the former MP's contacts and knowledge of decision-making processes, for example where a former parliamentarian is hired by a pharmaceuticals or renewable energy sector federation or company. The recommendations made in this report on relations with third parties and the declaration of job offers (see paragraphs 41 et seq.) should in principle offer sufficient safeguards in this respect. Otherwise, consideration might be given to regulating offers of employment after the end of a mandate, for instance by introducing a waiting period during which an entity would be unable to recruit a (former) elected representative.

Misuse of public resources

37. According to the information provided by Belgium there are no prohibitions or specific restrictions but the GET noted that the general rules are applicable in case an MP would be involved in such a case: the Criminal Code (CC) provides for the liability of public agents and officers (including MPs) in case of forgery of documents (Articles 194 and 195 CC), embezzlement of public or private property (Article 240 CC), *concussion* (receiving illegitimate payments – Article 243).

Misuse of confidential information

38. The rules of procedure of both chambers include preventive provisions and political and financial sanctions in respect of breaches of secrecy where applicable (in particular this concerns the work of committees of inquiry, the committee for impeaching ministers, the committee dealing with requests to waive immunity and the police services supervisory committee); see also paragraph 61 and subsequent paragraphs concerning the applicable sanctions. Apart from these provisions, Parliament did not wish its members to be exposed to criminal law penalties for misuse of information since that would be incompatible with their freedom of speech as guaranteed by the Constitution (Article 58). The paragraphs below recommend improvements concerning relations with third parties which should help to improve the situation in these matters.

Contacts with third parties

39. The on-site discussions confirmed that there is no rule governing contact with third parties likely to wish to influence the work of Parliament, including lobbyists. The GET took note with interest of the improvements introduced after the visit by the parliamentary Codes of deontology, which shall become effective as of May 2014, in such areas as the prohibition of interventions in favour of third persons (Articles 10 to 16). The GET had no opportunity to discuss these changes and their implications but it would appear that they target essentially interventions in favour of citizens in the context of administrative decisions, judicial proceedings, decisions concerning a job etc. i.e. matters not really related to parliamentary work. Direct, ongoing contact with the public and with voters via regular surgeries is a significant component of Belgian political life, bringing with it democratic advantages but also certain risks of vote-catching and patronage, which were brought to the attention of the GET and were also mentioned by the Belgian section of Transparency International in its report on the National Integrity System published in May 2012.[15] These kinds of issues are thus caught by the Codes of deontology, and the GET is pleased to see this. The Chamber of Representatives moreover makes its members' private and/or professional addresses and telephone numbers available on line. Some of the persons with whom the GET had discussions suggested that Parliament is less influenced by third parties than the Government, which is behind the bulk of proposed legislation. During the discussions it came to light that, within Parliament, lobbying sometimes takes the form of hearings, a procedure which some people consider to be over-used, and the preparation of documents (or merely amendments) by outside third parties. The GET moreover notes that the lack of rules governing accessory activities – including consulting activities – can generate risks of undue influence from inside Parliament itself (see also paragraph 35). Otherwise, lobbying is reportedly not visibly carried out within Parliament but mainly takes place and is prepared externally.

40. In the light of the information provided to it from both inside and outside Parliament, the GET considers that contacts with third parties susceptible of influencing parliamentary work are an area characterised by opacity which may generate risks for parliamentary integrity, and which at least triggers sometimes fierce controversies. This was evident, for example, from the circumstances in which controversial amendments concerning transactions relating to financial penalties in criminal cases were tabled in April 2011[16] (also referred to as "criminal transactions", see also paragraph 66). In the first case it was alleged, in particular, that a senior parliamentary official who had been contacted secretly and indirectly by the foreign government concerned was simultaneously one of the legal advisers of the businessmen being prosecuted in

[15] Factors conducive to corruption in Belgium are cited, making reference to the work of various academics: tolerance of unethical behaviour combined with a widespread culture of patronage prevailing between the political class and voters, the traditionally central role played by members of the political and party elites (in appointments to state positions and in decision-making, where they often operate within a vacuum).

[16] The amendment tabled by an MP in the Chamber of Representatives was presented as a means of overcoming the excess caseload in the courts and dealing more rapidly with cases of excessively long proceedings or cases in which prosecution could become time-barred. However, the legislative procedure was apparently not respected: filing with a committee incompetent in such matters, failure to hold a substantive debate or to hear experts, despite the public criticisms voiced by certain academics and demands from members of Parliament, adoption under urgent procedure with postponement of the necessary corrections to the new mechanism until the passing of a future law, and so on. According to certain testimonies and analyses, this amendment was unduly influenced by a foreign government, which contacted certain senior members of the Belgian Parliament at the request of business partners (charged with serious offences in Belgium) originating from a third country, with whom that government was negotiating helicopter sales. The persons charged in this case were therefore able to benefit immediately from the changed mechanism before the summer of 2011 (in exchange for payment of a penalty of several million euros all the criminal charges were dropped). According to other sources the amendments were initially introduced at the request of the national diamond industry lobby, which had already caused controversy some years previously when an attempt was made to reform the rules of criminal law on the seizure/confiscation of the instruments and proceeds of an offence. Here too, in a case of fraud in the diamond trade, where several million euros were at stake, a penalty had been agreed under the new rules of the amended legislation. At the end of 2011 the arrangements were in the end modified so as to introduce safeguards.

Belgium, which also affords an illustration of other themes raised in this report (ad hoc conflicts of interest, the rules on accessory activities). In the second case the public was apprised of the existence of a club for the protection of the interests of the diamond industry, which was set up in 2010 within the parliamentarians' association (the Maison des Parlementaires) and which a number of MPs were encouraged to join. Other recent one-off controversies of lesser importance concerned a tobacco lobby, which reportedly invited MPs to attend events with "VIP" status, or an alternative power sources lobby, allegedly behind what was regarded as the excessive proliferation of wind farms in certain regions of Belgium. If the MPs' association, which serves as the postal address for Chamber members and senators, was indeed mentioned during the discussions as a possible venue for lobbying activities, there is however no information on the activities generally pursued there, the various clubs that meet there and their activities, the frequency and purpose of such meetings, and so on. In press reports that were handed over to the GET mention is sometimes made of the fact that, due to the presence of the European institutions, Belgium has a heavy concentration of organisations and firms specialising in lobbying activities, not to mention the various associations representing business sector interests (some people cite the figure of 15 000 specialist bodies, generating over one billion euros in fees). This lobbying activity, which is often in the hands of Belgian bodies or managers, therefore apparently also exists in various forms vis-à-vis Belgium's legislative institutions and is sometimes behind employment offers made to elected representatives.

41. For these reasons and to remedy the lack of transparency, the GET considers that it is clearly desirable to regulate MPs' relations with third parties (for example by introducing a declaration requirement), and also to place contacts with persons or groups defending specific or sectorial interests on an institutional footing, for example by making registration of lobbyists compulsory, requiring MPs to disclose their contacts with third parties outside committee meetings and in relation with draft legislation, introducing rules of conduct for the third parties concerned and for MPs, and so on. This would make for greater transparency and limit the risks of undue influence. In passing, it would perhaps also permit Belgium to draw a dividing line with trading in influence and to qualify the latter as a criminal offence, in accordance with the Council of Europe Criminal Law Convention on Corruption (see paragraphs 61 et seq. and the section on sanctions below). **GRECO recommends that rules should be introduced for Members of Parliament on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process.**

Declaration of assets, income, liabilities and interests

42. A law of 2 May 1995 already imposed an obligation in principle for the members of both chambers of the federal parliament (and of the community and regional parliaments) to declare their mandates and their assets. Not until much later, with the law of 26 June 2004 which also made some changes[17] to the operative provisions, were the necessary implementing measures introduced: procedures for presenting and lodging declarations of mandates and assets, review procedures, etc. The apparatus as a whole finally came into force on 1 January 2005. The declaratory obligations are now as follows:

a) declaration of assets (Article 3 of the 1995 law): Chamber members and senators taking up or relinquishing office (or any other new mandate held concurrently) must lodge by 1 April of the following year a statement of their assets indicating the position at 31 December of the year in question. The statement comprises "all credits (such as bank accounts, shares and bonds), all real estate and all

[17] Law of 2 May 1995 on the obligation to lodge a list of mandates, offices and professions and a declaration of assets (*M.B.* 26 July 1995); Law of 26 June 2004 enforcing and supplementing the law of 2 May 1995 on the obligation to lodge a list of mandates, offices and professions and a declaration of assets (*M.B.* 30 June 2004).

moveable property of value (e.g. antiques and works of art)"; it is specified that this also concerns assets held in joint, community or undivided ownership;

b) declaration of mandates, managerial functions or professions (Article 2 of the law of 1995): Chamber members and senators routinely declare each year by 1 April all functions performed during the previous year both in the public sector and on behalf of any natural or legal person, and any body or de facto association established in Belgium or abroad. The declaration specifies, for each function, whether or not it is remunerated (the concept of remuneration is understood with reference to regular income but also attendance allowances or fees in the case of responsibilities in certain types of corporations or public entities).

43. No obligation to update declarations of assets is prescribed, even if they vary significantly for example as a result of a change in marital status; the Belgian authorities indicate that the drafting history of the provisions confirms this. Nor does the apparatus cover a) the amounts of income and indemnities derived from activities or from other sources, for example returns on assets or business investments, etc.); b) activities remunerated on an ad hoc basis such as consulting work; c) commercial contracts with the state authorities; d) offers of activities.

44. The declaratory information is made public as follows: a) the declaration of assets, submitted to the Court of Audit (Cour des Comptes, CC) and lodged directly in a sealed envelope by those concerned, is not public. The CC safeguards the strict confidentiality of the documents, which it has to keep in sealed envelopes until their return (5 years from the end of the last mandate or office held) or destruction in the event of death (1 month after the date of death). All depositories or holders of the declaration are sworn to professional secrecy (in accordance with Article 458 of the Criminal Code). Only an investigating judge may consult this declaration in the context of a criminal investigation; b) the declaration of mandates, managerial functions or professions is also transmitted to the CC which ensures its publication in the *Moniteur belge* each year not later than 15 August, at the same time as the lists of office holders who have not sent in their list of mandates and/or declaration of assets in due time. A bill is in hand to arrange for the lists to be transmitted in electronic format so as to facilitate the work for the CC and avoid risks of data input errors.

45. The GET notes that the guiding texts or documents (vade-mecum) would benefit from a clearer, more systematic listing of the items constituting assets: as they are designated at present, an elected representative might easily overlook in good faith the need to declare life insurance contracts, stock options or precious stones and metals kept in a rented safe with a bank, for example. Moreover, the rules in no way require the value of assets to be declared, not even approximately. Nor do they specify whether (or not) the terms of ownership matter, for example in one's own name or through corporate bodies or legal entities, or whether the declaration concerns assets held both in Belgium and abroad. It emerged from the on-site discussions that the rules are not interpreted and applied in a consistent manner: according to some of the elected representatives and parliamentary officials with whom the GET met, the declaration only concerns assets (or credits) held directly and located in Belgium, whilst others consider that the declaration in principle concerns all assets irrespective of location and terms of ownership. The contacts at the Court of Audit confirmed the rules' inexactness and stressed that the CC could not interpret them too broadly without inviting criticism. Nor are liabilities (notably debts, mortgages and loans to be repaid) explicitly referred to in the rules and their inclusion is plainly left to the discretion of the declarants, but the GET was informed that the CC encourages the inclusion of these elements to limit misunderstandings if a declaration is consulted by a court. It is odd that this argument of the CC has not led to a stricter declaratory system which would have made it possible clearly to include not only liabilities but also income and the various kinds of assets. The same goes for the fact that asset declarations need not be updated before the mandate ends, i.e. they are not

updated periodically or at least in the event of a significant variation in wealth. Finally, regarding the content of the assets declaration, the law of 1995 makes reference to the property of the elected representative alone (except in case of undivided estates, joint ownership or community of assets); information on the income and property of spouses and offspring might also be useful for apprehending a declarant's real wealth and financing capabilities. In the final analysis the GET considers that, as things stand, the assets declaration system is of very qualified usefulness for the purposes of limiting the risks of a parliamentarian's unlawful enrichment while in office and allowing effective oversight (institutional and/or by the public) in this matter.

46. In the light of the considerations set out above and in the preceding paragraph, **GRECO recommends i) that the system of declarations clearly includes income, the various assets and an estimate of their value – whatever their form (including those held directly or indirectly, in Belgium or abroad) as well as liabilities, and that there is a duty to update the information in the course of a mandate ; ii) that consideration be given to extending the system so as to include information on the spouse and dependent family members (it being understood that this information would not necessarily be made public).**

47. Regarding the publicity of this information, the GET regrets that declarations of assets are not made public, again limiting their preventive impact where integrity is concerned and the possibilities for social control through transparency. Regarding the declarations of MPs' mandates and remunerated functions, while the public nature of the information is to be commended, it is by no means easy to access. It is to be hoped that the acquisition and transmission of data in electronic format will make it possible to publish this information via new information technologies (on the website of the parliament or Court of Audit for example). For the time being, the GET notes that it is through a citizen's initiative that an unofficial website – www.cumuleo.be – aims to make the information more readily accessible and comparable. It contains the chronology of the situation of office holders subject to the law and the public information disclosed (mandates, functions, professions). The site also identifies defaulting office holders (MPs and other office-bearers subject to the duty of declaration). **GRECO recommends that the various declarations, including those on assets, as supplemented in particular by information on income, should be subject to public disclosure and made more easily accessible through an official internet website.**

Supervision and implementation

48. Concerning declarations of mandates (law of 6 August 1931), and the rules' practical application, the president of the parliamentary chamber concerned invites all members to lodge a declaration of concurrent mandates at the start of their term of office. The relevant services of the assemblies inform the presidency of members who have not responded to the invitation or whose declaration discloses a situation that may be against the law. Having regard to this information, the members are issued with reminders of the rules in force and a request for clarifications; generally members subsequently put their situation in order.

49. The laws of 1995 and 2004 require the clerks of the chambers of parliament (as "institutional informants") to transmit annually to the Court of Audit (CC) the personal data of the persons subject to the requirement and the nature and duration of their mandate.

50. Concerning the declaratory obligation as such (laws of 1995 and 2004): the Clerks remind every year the members of their assembly about the declaratory obligations stemming from the above legislation. Every year on 30 April, where necessary, the CC sends a letter of reminder with acknowledgement of receipt to persons whom it considers subject to the requirement but who have not sent in the list of mandates and/or a

declaration of assets. If, after examination of the situation of the person concerned, the CC continues to regard him or her as subject to the requirement, that person may appeal to a special monitoring committee in the relevant house of parliament. In the Chamber of Representatives, the Committee on Internal Affairs, General Affairs and the Civil Service has been designated as the monitoring committee. The committee makes a final ruling, without any appeal against its decision being possible. The procedure is organised in such a way that the committee's decision is delivered before the date of publication of the lists of mandates in the *Moniteur belge*. The publication thus reflects the committee's decision.

51. Concerning the content of declarations (laws of 1995 and 2004): the CC firstly collates this information with the lists of public office-holders which are communicated by the "institutional informants". For other appointments (private sector), the CC has no other source of information enabling it to verify the lists. However, the law does not prevent the CC and, upon publication of the list in the *Moniteur belge*, third parties, from obtaining this information and noting divergences, errors or omissions in the lists. The legislator in fact foresaw that the CC might be informed of the existence of undeclared mandates, offices and appointments either by its own staff or by third parties. The sources publishing mandates are many: *Moniteur belge*, the National Bank of Belgium, annual reports, websites of companies and institutions, etc. If the CC finds the list is incomplete or incorrect, it informs the person required to make a declaration and also states the ways in which it deems the list incomplete or inaccurate. If, after considering the views of the declarant, the CC still considers that the declaration lodged is incomplete or inaccurate, the declarant can appeal to the above-mentioned monitoring committee. The same procedural rules apply.

52. The public too has the possibility of verifying whether all those concerned have submitted a list of mandates and a declaration of assets and whether the published lists are accurate, and may inform the CC of its observations (but not the parliamentary monitoring committee). The CC examines the information and if necessary notifies the person concerned that a rectification will be published unless he/she objects on valid grounds. Those concerned may apply to the competent monitoring committee for a pronouncement either that their declaration is complete and accurate or that they are not subject to the requirement. At the end of the procedure, the CC will see to the publication of the correction, if appropriate, in the *Moniteur belge*.

53. The Belgian authorities consider the prosecution service to be informed automatically through the publication in the *Moniteur belge* and to be able to acquaint itself with the lists of mandates and defaulting office-bearers in order to bring proceedings for failure to declare assets or submit a list of mandates, or for forgery and use of falsified documents (see paragraph 61 et seq. on sanctions). The Belgian authorities explained that the CC in principle brings any crime or offence of which it is aware to the attention of the prosecution service (in accordance with Article 29 of the Code of Criminal Investigations which places all civil servants under a general obligation to report such cases forthwith to the prosecution authorities) and that in practice this would apply to cases other than failures to declare published by the CC in the Moniteur.

54. Regarding the object of the verifications (laws of 1995 and 2004): given the lack of indications as to income, and the confidentiality of the information on assets, the mechanism essentially consists in verifying compliance with the incompatibilities and the restrictions on multiple holding of offices.

55. In practice, the CC has in the past been consulted by the prosecution service to: a) verify whether a defaulting office-bearer had not conformed after publication of the irregularity in the *Moniteur belge* (late regularisation does not give rise to corrective publication in the *Moniteur belge*); b) possibly counter the arguments raised by the office-bearer in the course of the police investigation. After this stage, the CC is not

associated with prosecutions, nor is it officially informed of the outcome of proceedings (court summonses and judgments delivered by the Criminal Court and where relevant the Court of Appeal).

56. The GET welcomes the existence of this control mechanism. It should be seen as a first step towards transparency and prevention of corruption affecting elected representatives. Its reinforcement is necessary for several reasons, however. First of all, the object of the verifications is limited in scope as it relates neither to assets nor to the ceilings imposed by the rules against multiple office holding whereas an effective control mechanism normally implies that this kind of data is taken into account as significant patrimonial variations possibly deriving from illegitimate sources of income would otherwise remain undetected. Following the same logic, since income – and debts too, in principle – need not be declared, the control does not make it possible to discern any anomalies linked with variations in wealth, which would nevertheless seem to be the primary aim of a declaration made on assuming and leaving office. The control is also of limited effectiveness. Where declarations of mandates and professions are concerned, it is plain that the mechanism relies on interaction between the CC, the prosecution service, the public and Parliament. Since the publication of the implementing instruments in 2004, it has involved quite a cumbersome apparatus already reflecting some reluctance to enforce the consequences of an inaccurate/incomplete declaration, since multiple corrections can be made after publication at several successive stages regarding the same declaration. The powers of the CC appear limited; for instance it can cross-check the information given by an elected representative with that originating from institutional informants on other functions and responsibilities discharged in the public sector, but it does not have explicit prerogatives nor sufficient resources to carry out verifications that would take account of other remunerated activities for which there is no institutional informant (particularly all private or voluntary sector activities).

57. Moreover, interaction between authorities is not formalised: the GET has noted that the system is impaired by the fact that it is the prosecution service that has sole discretion to institute proceedings in the event of non-declaration or manifestly problematic declarations ("defaulting office-bearers" published in the official gazette). The law of 1995 does not expressly assign a duty of vigilance/action in such matters to the prosecution service, nor make it the duty of the houses of parliament to refer cases to the prosecuting authorities. Nor is provision made for referrals by the CC, and the on-site interviews did not make it possible to establish with certainty whether a department was at present specifically responsible for monitoring publications in the official gazette and drawing the appropriate inferences. It was reported that an agreement in principle was reached a few years ago, and that the Brussels general prosecutor's office was designated on that occasion, but several sources expressed doubts as to whether the arrangement was still current. Conflicting information was also supplied to the GET on interaction between the CC and the prosecution service in practice, concerning the existence or not of notifications sent to the latter and their number. Neither does the CC receive any feedback from the prosecution service or the courts on the state of procedures or of late regularisations, so nobody was able to provide the GET with an overview of the status of the judicial proceedings taken to date and indicate whether there were any final rulings against declarants. The CC does not seek information of its own motion, as that would be detrimental to its impartiality. This lack of general information also prevents Belgium from determining the effectiveness of its arrangements. According to the information in the GET's possession, in practice the CC and the prosecution service seem to prefer issuing successive reminders and accepting late regularisations rather than drawing the legal consequences of the legislation - even after publication in the official gazette of the names of defaulting office-bearers (see also the following paragraphs on sanctions). The machinery has nevertheless existed for nine years now, and today is no longer at an early stage in its implementation.

58. When it comes to establishing how reliable the declared information is, the machinery for declarations of mandates and functions seems to work reasonably well in that the declarations are made with a certain visible seriousness. As rectifications can be made at different stages to information already published, the prosecution service has to make checks on the lists of defaulting office-bearers and subsequent corrections. And, since it too can decide to drop proceedings in case of late regularisations carried out – which cannot lead to corrective publications – the information in the official gazette, as well as that released under the citizens' initiative, is not completely reliable. An interested citizen must therefore contact the relevant authorities or the declarants concerned. When it comes to ascertaining whether an MP has been convicted of failure to lodge a declaration, in the experience of a contact of the GET the courts are reluctant to disclose this information (and also judicial decisions even where anonymised). The GET also notes that anomalies can still be found on the basis of the information released on line and consolidated/updated by the citizens' initiative (undeclared functions, omission of remuneration). Institutional representatives moreover consider that concealment of responsibilities in a commercial activity is probably the most frequent shortcoming but this naturally escapes the oversight of the CC. Citizens' or public oversight remains limited since, according to the on-site discussions, only two or three cases (subsequently substantiated) of reporting of inaccurate/incomplete declarations have been recorded since the inception of the mechanism. The review of declarations should thus clearly be extended and improved if it is to fulfil its primary objective and help safeguard integrity in the legislature as a branch of state power. The status of the CC seems to pose a particular problem if it is to perform a more active role, and consideration could be given – failing a reinforcement of the role and status of the CC which is a collateral body of the Chamber of Representatives – to a transfer of its jurisdiction to another body possessing adequate means of supervision and communication. That would relieve the prosecution service of the task of monitoring the published information, which is in all likelihood insurmountable given the present context of shortage of resources. The GET notes that at regional level, the review sometimes clearly goes further than at federal level and involves work by a vetting unit to verify the information subject to declaration (income ceilings and benefits in kind, functions performed).[18]

59. Finally, with regard to the other existing control mechanisms, the GET notes that their efficiency/effectiveness also seems to be limited at present. For example, according to the sources of information indicated in paragraph 63, the internal disciplinary process does not apply in practice where obligations of confidentiality are infringed. Where donations are concerned, the foregoing discussion on this subject (cf. paragraphs 28 et seq.) shows that the mechanism needs improving if only to have the regulations accepted and observed by all members of the federal parliament, since there seem to be disagreements about the scope of the rules. The Third Round evaluation report also drew attention to the inadequate oversight exercised by the parliamentary committees competent regarding declarations relating to political funding and the need for improved regulation of the electoral funding aspects. In addition, the changes made in December 2013 with the introduction of parliamentary codes of conduct and the adoption of the Law on the creation of the Federal Ethics Committee, raise certain questions. It remains to be specified whether compliance with the parliamentary codes is subject to supervision. It would appear that the above Committee will not be able on its own initiative to deal with concrete cases – besides answering confidentially specific requests from individual MPs. In principle, it is therefore the assemblies' own task to ensure compliance with the parliamentary Codes but Article 18 of the Chamber's Code only refers to periodic summaries of the most frequent problems; this will not be done by the chambers but by the parliamentary (political) groups in respect of their own members. This raises several questions concerning the impartiality of the mechanism and its ability to point to serious problems since this might impact negatively on the reputation of the group. Moreover, the Federal Committee will have to rely on these summaries due to a

[18] For example in Wallonia (http://declaration-mandats.wallonie.be/), excepting declarations of assets.

certain, barely disguised defiance of the Codes toward this body (need to avoid "bias" and to "better focus its control mission", which are the words used in the above Article 18). In the GET's view, a less restrictive margin of action of the future Committee, and clear possibilities of action in respect of non-complying MPs (by the assembly concerned and/or the Committee) would be preferable.

60. It is plainly apparent that a revision of the various control mechanisms both within and outside parliament, involving an extension of the scope notably to deal with asset declarations (see paragraph 56), their simplification and strengthening, is desirable. This might prompt a strong commitment by the parliament, under an integrity policy, which could be publicly proclaimed. This signal would help secure acceptance of the rules by everyone up the line, and this would then help limit evasiveness down the line when the disciplinary or review mechanisms are applied. It might also put the external bodies (such as the Court of Audit at present and the prosecution service) in an easier position to enforce the rules, as they would no longer attract criticism for bias, exceeding their authority or overkill. In the light of the considerations set out in the various paragraphs above, **GRECO recommends that i) compliance with the current and yet to be adopted rules on the integrity of parliamentarians in the Codes of deontology and other pertinent rules (such as those on donations), be subject to effective supervision by the parliamentary assemblies themselves rather than only by the parliamentary political groups, and that at the same time the ability to act ex officio be granted to the future Federal Ethics Committee also in individual cases; ii) declarations of mandates and of assets be subjected to effective verification by strengthening the role of and interaction between the Court of Audit and the prosecutorial authorities, or by designating as the need may be another institution equipped with adequate means for these purposes.**

Sanctions

61. The measures reported by Belgium for deterring and punishing breaches of the obligations set out above are as follows:

Incompatibilities	Swearing-in as a parliamentarian terminates incompatible employment or office.
Breach of the duty of restraint	The rules prescribe, depending on the house, political sanctions (exclusion from the confidential proceedings concerned, possibly from all proceedings), or moral sanctions (warning, reprimand), and even pecuniary penalties (withholding of emoluments).
Donations, gifts	Only under the legislation on political funding (article 16bis of the law of 1989): for instance, a parliamentarian who accepts over € 500 in donations from the same individual, and a donor who provides illegal support (case of legal person for instance) is punishable by a fine of € 156-600 000; the same penalty applies where the list of donations is submitted late or not at all; erroneous or inaccurate information has been explicitly punishable since amending legislation was adopted on 6 January 2014.
No concurrent office-holding	No sanction as such: where the threshold set by Article 1*quinquies* of the law of 6 August 1931 is exceeded, the amount of the parliamentary allowance is reduced, except in the event of a parliamentary mandate concurrent with holding office as a burgomaster, alderman or president of a Public Social Welfare Centre, in which case the salary for such office is reduced at source.
Declarations of assets and mandates	Anyone who fails to lodge a list of mandates or a declaration of assets is liable to a fine of €600-6 000 (according to Article 6 § 2 of the law of 2 May 1995). Under Article 6 § 1 of the law of 2 May 1995, the penalties for forgery and use of falsified documents committed by civil servants or public officers (Article 194 of the Criminal Code) are applicable: ten to fifteen years' imprisonment and incidental penalties (Article 31 of the Criminal Code).

62. The GET also noted that Article 245 of the Criminal Code, making it an offence for a person holding public office to acquire interests unlawfully, which carries a prison sentence and/or a fine and/or exclusion from office - (see also paragraph 27), might be applicable given its broad wording and having regard to the activities of MPs.[19]

[19] Article 245 PC: "*Anyone holding public office who, whether directly or through the agency of persons or through simulated acts, has acquired or received any interest whatsoever in the acts, adjudications, enterprises or boards whose full or partial administration or surveillance was vested in him or her at the time of the act, or*

63. One or two violations have been observed to date as regards the rules on secrecy of deliberations and proceedings[20], which have not led to the application of sanctions, as was also confirmed during the on-site visit. Nor was the GET informed of sanctions ordered to date for breaches of the regulations on gifts.

64. Some tens of defaulting office-bearers (who had failed to submit the list of mandates and/or the declaration of assets) were sentenced at first instance to a fine of € 2 750 or. There is no exact information on the total number of prosecutions instituted, convictions, decisions at appeal or final convictions, as the CC is only incidentally informed of the outcome of proceedings when the prosecution service requests further information. According to information derived from the questionnaire, it would seem that all the convictions have been appealed and that all these appeals were pending at the time of the visit. Since the mechanism came into force, investigating judges have consulted declarations of assets on four occasions but only in connection with mandates or acts not involving a parliamentarian. There too, the CC is not informed what action may have been taken. To the extent that it is for the prosecution service to determine whether to bring a prosecution, it may decide to refrain from doing so after the late submission of declarations by the persons concerned (after they have been identified as having defaulted in the *Moniteur belge*), who have thus put their situation in order.

65. Within the ambit of this report, in addition to the above measures there are criminal offences such as active and passive bribery of public officials (a concept which embraces MPs), together with trading in influence, which are established by Articles 246-249 of the Criminal Code and were studied in the Third Round Evaluation report (theme I), paragraph 9 for the letter of the defined offences and paragraphs 92 et seq. for the analysis). As GRECO has already pointed out, the offence of trading in influence is not consistent with the Criminal Law Convention on Corruption, and Belgium has entered a reservation on this subject. The following limitations in respect of MPs in particular can be noted: the offence defined in Article 247 para. 4 CP[21] does not cover trading in influence a) where the person rewarded for his/her influence is not personally a public official; b) where the influence concerns legislative acts (whereas sale/purchase of influence by a parliamentarian in person is deemed to be covered), according to an interpretation by the Conseil d'Etat. The evaluation report (para. 105 et seq.) also cast doubt to some extent on the effectiveness of prosecutions and sanctions, particularly with regard to cases in which personalities in politics or the economy are prosecuted.

66. Removal from office and disqualification for election (for a period ranging from 5 years to permanently) are prescribed by Articles 31-33 of the Criminal Code as criminal sanctions in the event of being convicted of an offence or a crime. These penalties are automatic or optional, according to the circumstances, and depend on the severity of the principal penalty imposed; in certain cases they are applicable irrespective of the penalty. Failure to make a declaration (donations, mandates, assets) does not lead to the application of such measures. In the absence of any conviction of an MP to date for corruption offences or other similar serious acts, no sanction of this kind has been ordered (a parliamentarian once resigned after having been deprived of his political rights following a conviction for acts committed when he was a minister).

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who, while being mandated to order payment or to settle a transaction, has acquired any interest whatsoever in it, shall be punished by one to five years' imprisonment and a fine of 100 [euros] to 50 000 [euros] or by one of these penalties, and may in addition be sentenced to forfeiture of the right to fulfil public functions, posts or offices, in accordance with Article 33.
The foregoing provision shall not be applicable to a person who, owing to the circumstances, could not advance his private interests by means of his position, and who has acted openly."

[20] Transparency International Belgium, Evaluation of the "National Integrity System", page 70.

[21] Article 247 para 4 PC: "Where the purpose of bribery is to make the person holding public office wield a real or presumed influence which he possesses by virtue of his office, in order to induce a public authority or administration to perform or refrain from an act, the penalty shall be imprisonment for six months to one year and a fine of 100 francs to 10 000 francs. (…)".

67. The GET considers that, as things stand, Belgium could better draw the consequences (in law and in practice) of breaches of the preventive rules considered in this section of the report. Stricter consequences should be foreseen in the event of unauthorised multiple office-holding. The discussions did not make it possible to determine whether the offence of unlawful acquisition of interests (Article 245 CP) applied to MPs in their legislative or internal administrative role, even for those of them called upon in this capacity to assume functions of management or supervision in public or semi-public bodies ("positions deriving from their mandate"). As to the declarations of mandates and offices and of assets, it is possible in principle to impose very heavy penalties in the event of inaccurate declarations (ten to fifteen years in prison) but, given their severity and in the light of current practice, it is unlikely that they will ever be enforced, nor will the possible secondary effects of such a conviction viz. removal from office and disqualification for election. The sub-state level[22] seems more amenable to such measures affecting an elected representative's mandate, and the federal level could also take steps to ensure that removal from office and electoral disqualification are more readily applicable consequences. Finally, it is clear that the new rules on integrity which may be introduced pursuant to this report or as a result of the Codes of deontology, will also need to carry adequate sanctions designed to ensure their effectiveness. The public/the voters, who are entitled to receive this information, will also need to be able to acquaint themselves with these measures. For the time being, in the absence of official data, interested private individuals must turn to the courts or the prosecution service, and here they seem to meet with refusals. A revision of the sanctions might facilitate a clarification of the applicable rules, for example as regards the offence of unlawful acquisition of interests appearing in the Criminal Code. **GRECO recommends that infringements of the main present and future rules in respect of integrity of parliamentarians carry adequate sanctions and that the public be informed about their application.**

Immunities

68. Belgium has no exemption from jurisdiction or a procedure for dealing with reprehensible acts committed by MPs. On the other hand, there is a system of immunities which distinguishes, as in other countries, immunity and freedom from liability. The GET considers that **immunity** is chiefly what should be discussed in the present report. It exists solely in respect of criminal proceedings and (excepting offences detected in the act of their commission) for the duration of the session of Parliament. In practice, having regard to the way sessions are managed, immunity is continuously applicable throughout the legislative term until the mandate ends. In the event of re-election, it is therefore upon the dissolution of the assembly concerned that proceedings may be freely brought against a parliamentarian. The extent to which a parliamentarian is protected by immunity depends on the nature of the measures concerned: a) for certain sanctions, the prior permission of the assembly is required,[23] b) for others,[24] permission must be given by the first president of the Court of Appeal, c) for still others, the parliamentarian is treated like any other citizen if he/she so agrees.[25] The procedural

[22] For example in Wallonia, as mentioned above in footnote 16.

[23] A parliamentarian cannot – without the consent of the assembly to which he or she belongs: be arrested; be brought before a court or a tribunal; be cited directly before a court or tribunal.

[24] The coercive measures requiring the intervention of a judge can only be ordered by the first president of the court of appeal at the request of the competent (investigating) judge. The consent of the assembly is not required, however. This concerns more specifically: a) a warrant to be brought in for questioning or confrontation (where a parliamentarian objects to questioning or confrontation); b) a search warrant (where a parliamentarian does not consent to the search); c) seizure performed in the context of such a search; d) tracking of telephone calls without the permission of the person concerned and phone tapping; e) body search. In case of search or seizure of assets, the President or a member appointed by him/her shall be present.

[25] Where certain acts of information and investigation are concerned, MPs are *on an equal footing with ordinary citizens.* Specifically, this applies to: a) questioning; b) confrontation with witnesses; c) search, subject however to the consent of the parliamentarian concerned; d) seizure subject to the consent of the

rules relating to waiver of immunity are a matter for each legislative chamber and are not the same.[26]

69. The GET received confirmation on site that the internal disciplinary measures prescribed by each chamber's rules of procedure are not affected by the system of immunities. Conversely, for all the criminal penalties previously mentioned (fines, corruption-related offences), immunity remains applicable. The GET obtained information on the criteria for waiving immunity in both assemblies,[27] and obtained a succinct overview of the practice followed by the two chambers regarding waiver of immunity.[28] This showed that in two cases involving bribery or similar offences, the Chamber declined to lift the inviolability of the members concerned, who were also local elected officials. First, the Chamber was surprised by the agenda of the procedure and the fact that the requests came at a moment close to the communal elections of 15 October 2012 whereas the investigation had been under way for several years in both cases. Secondly, the Chamber considered that the alleged acts had a "trivial" character (not serious enough). The Chamber thus considered "trivial" the use of a municipal employee for an election campaign by a parliamentarian also holding a mandate as a local representative, or a stay abroad which the prosecuting authorities regarded as a possible undue advantage for the award of a public procurement contract, again concerning a parliamentarian who was also a local representative. Some of the people with whom the GET spoke referred to the ambiguousness of the criterion, which has never been defined, and the construction sometimes placed on the "trivial" character of the acts is to say the least surprising[29] and clearly in contradiction with a parliamentary integrity policy. This criterion is potentially prejudicial to any criminal sanction that may be sought for breaches of the standards of integrity, particularly if they are less serious than

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parliamentarian concerned; e) tracking of telephone calls subject to the consent of the parliamentarian concerned; f) indictment or charging.

[26] The request to waive immunity should come from the chief prosecutor of the court of appeal having jurisdiction and is made to the president of the assembly. It must be accompanied by a file containing the acts charged, any complaints, testimonies or admissions and documentary evidence. The president informs the assembly of the request to waive immunity (without mentioning the name of the person concerned or the acts ascribed to him or her). The request is then referred to the prosecutions committee in the Chamber or the justice committee in the Senate. It is customary that committee members, the parliamentarian concerned and his/her lawyers be able to consult the file. The prosecutions committee meets in camera and the members of the Chamber not belonging to it cannot attend its meetings. In the Senate justice committee, closed session applies and prevails even in respect of substitutes, except where it has been announced before the meeting that they are standing in for a member unable to attend. The discussions also take place in the absence of the member concerned. The committee decides by simple majority, but tradition dictates that it tries to reach a consensus. In its report, the committee makes a recommendation to the plenary assembly.
The Chamber and the Senate nevertheless have different procedures for identifying the MPs concerned. The names of representatives implicated are given in full in the reports of the prosecutions committee and, except where cases are declared inadmissible, in the verbatim record of the plenary assembly. Unlike the Chamber, the Senate does not disclose the names of its members in respect of whom a waiver of immunity has been requested.
In principle, the debate in plenary sitting is public. The Chamber may nevertheless decide to convene as a secret committee at the request of ten of its members or of its president. Voting in plenary sitting on requests to waive parliamentary immunity or on suspension of proceedings already instituted is conducted by simple majority and by sitting and standing, unless at least eight deputies or five senators ask for a vote by roll call. The interruption of proceedings, at the request of the member concerned, requires a vote with a two thirds majority of votes cast (article 59 paragraph 5 of the Constitution).

[27] At the level of the Chamber of Representatives, "The upholding of parliamentary immunity presupposes: a) either that the reported facts support prima facie the conclusion that the action is founded on fanciful, improper, proscribed, arbitrary or trivial contentions; b) or that the acts charged are the unforeseen outcome of a political action; c) or that it is a case of an offence whose political motives are obvious.
While it is possible in principle to authorise proceedings on the basis of this assessment, at all events it is still expedient to consider their impact on the discharge of the mandate."
At the level of the Senate: The request to waive immunity must meet the following criteria: a) not interfere with parliamentary business; b) not concern manifestly incorrect facts; c) not seek to do injury for political motives; see also for a list of the criteria Senate decision of 2008 for example.

[28] Senate: 2 requests since 1997, waiver granted in both cases; Chamber: much larger number, including 3 cases in 2013 at the time of the visit: refusal to waive immunity in several cases, but proportion unknown.

[29] Seems to concur with certain analyses made by researchers and civil society regarding Belgium's tolerance for unlawful behaviour, cf. the Transparency International report on the integrity of national institutions, referred to in paragraph 39 and footnote 11.

misappropriation of staff resources or manipulation of public procurement contracts. The Senate criteria appear to be far more consistent with the general position of GRECO and Guiding Principle 6 for the Fight against Corruption. **GRECO recommends that the appropriate measures be taken i) in order that parliamentary inviolability is invoked in practice only for acts having an obvious connection with parliamentary activity and ii) in order that the criteria for waiving immunity do not constitute an obstacle to the prosecution of corruption-related acts by parliamentarians.**

Advice, training and awareness-raising

70. The chambers of parliament deliver general information. For example, in the Chamber of Representatives at the start of each parliamentary term the MPs receive an administrative vade-mecum containing mainly practical information. Under the keywords "List of mandates and declaration of assets" and "Multiple mandates and financial ceiling" a succinct explanation of the applicable rules can be found. In addition, each year the Clerks impress upon members their obligations deriving from the law of 2 May 1995.

71. In all letters and opinions addressed to MPs (vade-mecum, declarations of concurrent mandates, annual reminders, etc.) the contact details of the relevant departments of the parliamentary administration are given, together with contact details for the Court of Audit and the address of its website. A page of the Court website is devoted to information on the processes for declaring mandates/ activities and assets, and each year the court website publishes an updated version of a vade-mecum for a) MPs; b) persons in certain public institutions designated for the purposes of transmitting information to the court. These documents have been prepared by the court itself.

72. In reply to the question how the general public are informed of the various applicable rules and of the conduct expected of MPs, the Belgian authorities indicated that a) they can find out for themselves by consulting the parliament's websites and reading the press; b) the lists of mandates and names of persons who have not lodged a declaration of assets are published in the *Moniteur belge*, which allows very extensive public oversight.

73. The GET has also noted that the future Federal Ethics Committee may provide individual and confidential advice to MPs, at their request, on any question of deontology, ethics or conflict of interest. The GET appreciates these various efforts. At present, MPs reactions to the information documents such as the vade-mecums vary: for example, some MPs told the GET that they had never read the documents or considered them of little use. The rules on integrity currently in force, which are discussed in the present report suffer sometimes from a lack of effectiveness due to insufficient understanding or awareness. Moreover, they are called upon to evolve with the Codes of ethics/deontology, and the changes expected by the present report for instance concerning the declaratory system and contacts with third parties. This calls for increased awareness raising efforts. Consequently, **GRECO recommends that at the level of the two houses of parliament regular specialised training courses be given on questions of integrity for all parliamentarians.**

Current reforms

74. As was indicated at the start of this chapter on MPs, in the context of the sixth state reform the Senate is due to undergo major changes in its role and its manner of appointment. The Belgian authorities also make reference to the fact that the review of political financing regulations, which was in progress at the time of the visit, was completed in January 2014 (law of 6 January 2014, published in the *Moniteur belge* of 31 January 2014).

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

75. Firstly, the GET would point out that in Belgium, as in other member countries of GRECO, the word "magistrat" in French covers the functions of judge and public prosecutor. The persons who perform these functions form part of a single body and are subject to rules which are broadly the same throughout Belgium. In order to retain the usual layout of these Fourth Round reports, this report deals separately with judges (this chapter) and prosecutors (Chapter V). Nonetheless, since most of the information in this chapter relates to the status of "magistrats", it also applies to prosecutors, so it is not repeated in Chapter V.

Overview of the judicial system

76. In Belgium, the organisation of courts and tribunals is an exclusively federal responsibility. No court or body capable of rendering judgment may be established without a law and the Constitution prohibits extraordinary courts or commissions under any name (Article 146 of the Constitution). The rules on the organisation of the judicial system are contained in the Judicial Code (CJ). Belgium has five major judicial areas, each within the jurisdiction of a Court of Appeal, of which there are five: Brussels, Liege, Mons, Ghent and Antwerp. These areas are divided into judicial districts, which each have a Court of First Instance. There are 27 judicial districts in the country. In addition, the judicial districts have 21 Labour Tribunals and 23 Commercial Courts. The reform of the judicial map which shall enter into force on 1 April 2014 reduces the number of districts to 12, the number of Labour and Commercial courts to 9 and the number of police courts to 15. The current court hearing places will remain, though. In the future district system, therefore, there shall be one Court of First Instance with several divisions. The districts are divided, in turn, into 187 judicial cantons, each with a Civil Magistrate's Court (*justice de paix*). Each of the ten provinces, as well as the Brussels-Capital administrative district, has an Assize Court. The Assize Court is not a permanent court. It is convened whenever an accused person is committed for trial before it.

77. The following table shows the hierarchy of courts in Belgium:

<table>
<tr><td colspan="3">Court of Cassation</td></tr>
<tr><td>Courts of Appeal</td><td>Labour Courts</td><td>Assize Courts</td></tr>
<tr><td>Courts of First Instance</td><td>Labour Tribunals</td><td>Commercial Courts</td></tr>
<tr><td colspan="2">Civil Magistrates</td><td>Police Courts</td></tr>
</table>

78. The ordinary courts comprise the Court of First Instance, the Labour Tribunal, the Commercial Court, the Civil Magistrate's Court, the Police Court, the Courts of Appeal, the Labour Courts and the Court of Cassation. The Court of First Instance, the Labour Tribunal, the Commercial Court, the Civil Magistrate's Court and the Police Court are all first instance courts. The Courts of Appeal and the Labour Courts make up the courts of second instance. All Courts of First Instance have three divisions: the civil division, the criminal division and the (family and) youth division, while those of Brussels, Ghent, Mons and Liège also have a division supervising the enforcement of penalties. In 2004, military courts were done away with in peacetime. There are also two other special courts, which perform a review function, namely the *Conseil d'Etat* and the Constitutional Court:

- the Conseil d'Etat is a superior administrative review court, which oversees the country's administrative services. It considers applications from members of the public who believe that an administrative body has broken the law. As both a

consultative and a judicial body, combining legislative, executive and judicial powers, the Conseil d'Etat advises the government and the parliament on legislative and regulatory matters and rules on appeals against federal measures or decisions of administrative courts. The Conseil currently has 44 members, namely a first president, a president, 14 presidents of divisions and 28 judges, as well as a support service (*auditorat*) comprising a head (*auditeur général*), a deputy head, 14 heads of division and 64 other members made up of first junior officers (*premiers auditeurs*), junior officers (*auditeurs)* and deputy junior officers (*auditeurs adjoints*). Members sit in the General Assembly of the *Conseil d'Etat* and in one of the chambers of the administrative litigation division or the legislation division;

- the Constitutional Court ensures that laws, decrees and ordinances are in conformity with the Constitution. It also oversees the proper division of powers between the federated entities and the federal state. It can set aside and suspend laws, decrees and ordinances. It was designed to be a special court. Because of its specific tasks, it is independent both from the legislature and from the executive and the judiciary. It took over, in 2007, from the former Court of Arbitration, established in 1980, at a time when Belgium was gradually being transformed into a federal state. It comprises twelve judges, six belonging to the French language group and six to the Dutch language group. At least one of the judges is required to have an adequate knowledge of German. Each language group includes three judges with at least five years' experience as a member of a parliamentary assembly, and three judges with professional experience in the legal field (as a professor of law in a Belgian university, a "magistrat" at the Court of Cassation or the Conseil d'Etat or a legal assistant at the Constitutional Court).

79. The description of courts and tribunals above is based on the information submitted by the Belgian authorities. However, the GET did receive confirmation during its visit that in reality Belgian law makes a fundamental distinction between courts and tribunals which deal with "judicial" affairs in the strictest sense and courts and tribunals responsible for administrative affairs. The latter make up a separate group including the Conseil d'Etat and the Court of Audit (though the latter is of marginal importance for the purposes of this report), and also a large number of authorities responsible for deciding disputes between individuals and public bodies or between two public bodies. Article 161 of the Constitution authorises the establishment, by means of a statutory text, of any administrative court or tribunal in addition to the Conseil d'Etat and wide use has been made of this possibility. However, compiling a list of all these bodies is a difficult task because of the disparate nature of the rules governing them, which are most often established on an ad hoc basis, and the fact that at the same time a distinction has to be made between cases where the body is simply a collegiate administrative appeal body (run internally or as an independent administrative authority) and those where it is an authority that can be equated to a proper court or tribunal. The Conseil d'Etat attempts to circumvent this difficulty by examining the composition and procedural safeguards of these bodies so as to determine in which cases it must rule by simply setting aside decisions and those in which it must rule on points of law (the texts establishing these bodies are not always explicit about this issue). Some legal writers have attempted to establish general criteria, which would make it possible to draw up a list of such courts and tribunals, but there does not seem yet to be a full and "official" list or institutional framework. In the past, attempts have been made to set up administrative courts of first instance and a more uniform institutional system of administrative justice but, while these plans have sometimes reached the legislative stage, none have ever come to fruition.

80. Given the multiplication of administrative judicial authorities over the last fifteen years, their number may now be approaching one hundred and, after the on-site visit, the GET acquired an incomplete list of these authorities, based on the criterion of

whether the Conseil d'Etat rules on points of law in their regard (even on the basis of this criterion, however, the list is not exhaustive).[30] Various texts govern these institutions and their members, resulting in highly diverse rules on selection or appointment procedures and the basic status of members (unfamiliar even to the members of the Conseil d'Etat) and, in many cases, no guarantees of independence or impartiality. The Constitutional Court has also recognised that members are not necessarily appointed for life. On this subject, the GET notes that a large variety of people are appointed to serve as judges on these administrative bodies, sometimes for a fixed term or sometimes for life. They include serving judges (or substitute judges) from other courts, government officials, lawyers and other persons appointed by the executive on the proposal of administrative authorities, assemblies of members, presidents of the institution concerned or private or public-law corporate bodies. There are also major disparities in the relevant rights and obligations, supervisory procedures and disciplinary rules if there are any at all. Some examples looked into by the GET suggest that rules to protect integrity such as those governing professional conduct, conflicts of interest, gifts and other advantages are non-existent, even where members of the *Conseil d'Etat* are concerned. At all events there is no reliable overview in Belgium of the situation of administrative courts and tribunals and the rights and obligations of their members. The logical consequence of the way in which administrative justice is organised is that there is no general supervisory and disciplinary mechanism providing sufficient guarantees of

[30] A. At federal level:
- the Aliens Appeals Board (Law of 15 December 1980 on the entry, residence, settlement and removal of aliens)
- the Commission for Financial Support for the Victims of Intentional Acts of Violence and Persons coming to their Assistance (Law of 1 August 1985 on tax and other measures)
- the Appeals Sections of the Medical Assessment and Supervision Department of the INAMI (National Institute for Health and Invalidity Insurance) (the Co-ordinated Law of 14 July 1994 on health insurance and allowances)
- the War Pensions Appeals Boards (the Co-ordinated Laws of 5 October 1948 on war pensions)
- the Court Fees Board (Framework Law (II) of 27 December 2006)
- the Company Registration Board (Law of 26 June 2002 on the establishment of the Company Registration Board)

B. At regional level

Flemish Region and Flemish Community
- the Planning Permission Appeals Board (Decree of 18 May 1999 on regional planning, as amended by the Decree of 27 March 1999 adjusting and supplementing regional planning, planning permission and maintenance policy; the Flemish Regional Planning Code, established by the Flemish Government Order of 15 May 2009 co-ordinating the decrees on regional planning policy)
- the Board for the Settlement of Disputes on Decisions concerning Academic Progress (Decree of 19 March 2004 on the status of students, participation in higher education, the incorporation of some departments of higher education in social promotion into higher institutes and support for the reorganisation of higher education in Flanders)
- the Environmental Protection Board (Decree of 5 April 1995 containing general provisions on environmental policy)
- the Electoral Disputes Board (Decree of 8 July 2011 on the organisation of local and provincial elections, amending the Municipal Decree of 15 July 2005, the Provincial Decree of 9 December 2005 and the Decree of 19 December 2008 on the organisation of public social welfare centres), it being understood that the *Conseil d'Etat* has full powers of judicial review concerning appeals on electoral issues (Article 16 of the Co-ordinated Laws on the *Conseil d'Etat*).

Walloon Region and French Community
- the Appeals Section of the Walloon Housing Association, with responsibility for social housing (Walloon Housing Code, Article 171bis)
- the Study Grants Appeals Board (Co-ordinated Decree of 7 November 1983 on study grants in the French Community)
- the Appeals Board of the Walloon Agency for the Integration of People with Disabilities (AWIPH) (Article 281 of the Walloon Social Welfare and Health Code)
- provincial boards: the tasks assigned to these political bodies include the hearing of complaints about municipal electoral procedures and in such cases they rule as administrative courts (Walloon Code of Local Democracy and Decentralisation, Articles L4146-4 to L4146-17). Appeals against their decisions lodged with the *Conseil d'Etat* are not, however, appeals on points of law but actions for full judicial review (Article 16 of the Co-ordinated Laws on the *Conseil d'Etat*).

Brussels-Capital Region
- the Jurisdictional Board (*Collège juridictionnel*) of the Brussels-Capital Region (Special Law of 12 January 1989 on Brussels institutions)

impartiality and neutrality as there is for the ordinary courts. Setting up administrative courts with broad powers and a unified body of administrative judges would facilitate the construction of a coherent, uniform judicial system offering guarantees of independence, impartiality and integrity, although the GET cannot recommend such a reform as this would go well beyond the subject matter of this report. However, it considers that the members of the administrative courts are also exposed to threats to their integrity, in particular because of the sometimes major potential repercussions of disputes between private individuals and public bodies. It is important that appropriate measures are introduced to deal with their situation and it is clear that, in so doing, Belgium will have to draw up a list of the bodies concerned. **GRECO recommends that to the widest possible extent, the judges concerned at federal and regional level be subject to appropriate safeguards and rules as regards their independence, impartiality, integrity (professional conduct, conflicts of interest, gifts, etc.), supervision and the applicable sanctions.**

The principle of independence

81. Belgium applies the principle that judges and prosecutors form a single professional group ("magistrats"). Article 151, paragraph 1 of the Constitution establishes the principle that judges are independent while also highlighting the distinctive situation of prosecutors.[31] Belgium also has investigating judges.[32] These are judges like any other, who are designated specifically to this function (by the Crown on a proposal by the competent general assembly, among the candidates proposed by the Head of the court or tribunal) and therefore enjoy the same guarantees of independence. The independence of judges implies that they receive orders from no one, not even heads of court.

82. The GET emphasises that this also implies that judges must be appointed and asked to serve in conditions which guarantee independence. As stated previously, this is not necessarily the case for members of the administrative courts. There are also other categories of staff which raise questions in this respect, particularly professionals who are called on to serve as substitutes. In practice, these are most often lawyers, solicitors or university teachers and use can be made of such professionals in much greater proportions than could be assumed by some of the persons the GET interviewed, who referred only to the situations described in Article 87 of the Judicial Code, whereas various other circumstances can give rise to the use of "substitute judges" or "substitute magistrats" – see paragraphs 84 et seq. below. Because of limited budgets in the judiciary (but also perhaps because this is an easy option), more and more use has been made of such back-up "magistrats", who sometimes account for half of the staff in court. They are now used in most courts and tribunals. They are very poorly paid (to the extent that they are regarded as volunteers) and perform functions (such as drawing up judgments) which, in practice, often go beyond what is provided for in the legislation. This has sometimes given rise to appeals against their decisions and their use poses many problems, which the High Council of Justice (CSJ) highlighted in two opinions issued in 2006 (on which no action was taken) and in 2011. The CSJ has criticised the excessive use of staff recruited without any proficiency test, the token wages paid despite the large amount of work such staff do and the amount of time they spend on it

[31] "Judges are independent in the exercise of their judicial functions. Prosecutors are independent in conducting individual investigations and prosecutions, without prejudice to the right of the competent minister to order prosecutions and issue binding directives on criminal policy, including policy on investigations and prosecutions."

[32] Investigating judges are first instance court judges specially appointed to run investigations at the request of the crown prosecutor or a victim filing a civil suit and to take the measures required to bring cases before the courts. They collect evidence for the prosecution and the defence and, for this purpose, they call on the services of the police and may order binding investigating measures such as searches and seizures, questioning, monitoring of communications and DNA analysis. Once they have finished their investigation, they forward their findings to the crown prosecutor, who will then decide to ask the committals division to commit the suspect for trial before the criminal court if there is sufficient evidence of his or her guilt or otherwise to request that the case be dismissed.

(both in courts and in the prosecution service), the lack of any insurance covering employment injuries and the extended periods of employment for persons who are supposed to be acting as temporary replacements (even though the terms of office of substitute judges are not of any fixed duration). It is currently being claimed that the reform of the justice system and the geographical reorganisation and increased mobility this will bring from April 2014 onwards should solve these problems by making better use of human resources.

83. The GET is not convinced of this given the number of substitutes used to today and the objections of a large part of the profession who – not unreasonably – regard the new mobility policy as a threat to their security of tenure. There is good reason to think that this may cause problems when it comes to implementing this policy. Furthermore, our on-site discussions revealed various other problems (some of which had also been observed by the CSJ itself), including the following: substitute judges also serve as assistants in prosecutor's offices and as they are often lawyers, this can create confusion in the minds of the public as to the difference between functions, there is a tendency for some substitutes to establish their own case-law, lawyers sometimes plead cases in courts where they also serve as substitute judges, commercial judges call only on lawyers who are also substitute judges in their courts to manage receivership or liquidation cases, there is a risk of collusion with regard to judicial settlements in bankruptcy cases or the billing of fees, some substitute judges show little regard for questions of integrity and there is a risk of collusion between persons linked by marital or other ties. The GET considers that these issues undermine the image and the integrity of the system and stem from something more than inadequate resources or the need for a geographical reorganisation of the judicial system. Steps should be taken to avoid the use of substitute judges as much as possible, and if the practice persists, to make it subject to appropriate conditions of appointment and employment and to effective supervision and sanctions. The Belgian authorities indicate that the judicial reform entering into force on 1 April 2014, is supporting the greater use of career judges since the designation of substitute judges will require that any decision to call for the latter be motivated; the modalities of their designation have also been specified. According to the authorities, this first step in the reform will be subject to an assessment before a more far reaching reform can be carried out. The GET welcomes that the importance of this issue has now been acknowledged but in its opinion, a more ambitious reform is rapidly needed, as indicated above. Consequently, **GRECO recommends reforming the conditions for the appointment of substitute judges in accordance with Article 87 of the Judicial Code (and possibly of substitute "magistrats" in accordance with Article 156bis of the Judicial Code) to perform the functions of judge or prosecutor.**

Recruitment, career and conditions of service

Recruitment

84. Belgium employs both professional and lay "magistrats". There are three recruitment paths: (1) initial selection with a view to entry into the profession of "magistrat" (judge or prosecutor); this follows calls for applications by the High Council of Justice, which then examines the applications and holds selection interviews, which may be combined with tests or examinations; in principle, the procedure equates to an entry competition; legal qualifications are required and candidates must have at least one year's experience and have completed a period of practical training at the Bar or in other legal functions; selected candidates are then appointed as judicial trainees and attend theoretical courses and carry out practical tasks within the justice departments until a post becomes vacant to which they can be appointed; (2) selection on the basis of appropriate professional experience enabling the candidate to be exempted from judicial training and appointed directly to a career post; (3) persons with longer experience

(lawyers, solicitors, university law teachers) may become substitute judges and provide back-up services.

85. All vacant posts of judge and head of court are published in the "*Moniteur belge*" (the official gazette). Anyone who is already a "magistrat" or has passed an examination which provides access to the national legal service and satisfies all the legal conditions for appointment may apply for a vacant post of "magistrat". After publication of a vacancy in the official gazette, candidates have one month to apply by recommended letter to the federal ministry of justice (SPF Justice). The procedure is described in more detail in the insert below.

86. Judges in the courts, tribunals and Courts of Appeal are appointed by the Crown on the basis of a duly motivated request by the High Council of Justice (CSJ), whose functions in this respect are governed by Article 151 of the Constitution and Articles 259bis-1 to 259bis-22 of the Judicial Code (CJ). The CSJ was set up in 2000 following the so-called Dutroux case and in a context of controversy surrounding interference in the activities of the courts. It has 44 members, who sit for a four-year term and are divided into two 22-member language sections (French-speaking and Dutch-speaking) comprising 11 judges or prosecutors and 11 laypersons. Of these 11 laypersons, four must be lawyers and three professors at a university or a graduate school. The CSJ therefore applies a system of dual parity, applying both to language and professional background (22 "magistrats" and 22 laypersons). The 22 "magistrats" are elected by secret direct ballot from the ranks of serving career "magistrats". The 22 laypersons are appointed by the Senate by a two-thirds majority of the votes cast.[33] As a result, the CSJ is independent from the executive. It is governed by rules intended to ensure its integrity and impartiality.[34]

87. Investigating judges, Youth Court judges, judges at the Court for the Application of Sentences, attachments judges and youth appeal judges are appointed specifically to their posts and their duties can only be performed by persons who have attended special training courses. They are appointed by the Crown at the instigation of the general assembly of the court concerned. Where necessary, judges who have attended such training courses may be appointed by order of the President of the Court of First Instance to perform these functions temporarily.

88. Heads of court (presidents of courts and tribunals) must be appointed from among career "magistrats". They are appointed to these management functions for five years by

[33] Articles 259*bis1* and *259bis2* of the Judicial Code.

[34] The law provides that, when serious circumstances so warrant, a member's term of office may be discontinued by the CSJ, by a two-thirds majority of the votes cast in each section. Such decisions are not subject to appeal.
Terms of office may not be terminated until the member's views have been heard on the reasons given. Before this hearing, the CSJ must prepare a file containing all the evidence relating to the reasons given. The person concerned must be summoned to appear at least five days before the hearing by a registered letter stating at least what the serious reasons are, the fact that it is planned to discontinue the member's term of office, the place, day and time of the hearing, the right of the person concerned to appoint somebody of their choice to assist them, the place where the case file can be consulted and the time given in which to do this and the right to call witnesses. An official report of the hearing must be produced.
The law also provides that it is prohibited for members of the CSJ to take part in deliberations or a decision on matters in which they themselves or their family or relatives by marriage up to the fourth degree or persons with which they form a de facto household have a personal and direct interest or in which they are involved or have been involved in the performance of their functions.
Where, in the course of its work, the CSJ considers that one of its members who is a member of the judiciary, a judge or prosecutor, a member of a court registry or the secretariat of a prosecutor's office, a member of the staff of the court registries or secretariats of the prosecutor's offices or the author of an opinion, as described in Articles 259ter, paragraph 1, and 259quater, paragraph 1, fails in the execution of his or her duties or refuses to co-operate with it, the CSJ must, where appropriate, notify the relevant disciplinary authorities of the situation and ask them to examine whether disciplinary proceedings should be initiated. It must also inform the Minister of Justice. Where the CSJ reaches a similar finding with regard to its other members, it must also inform the President of the Senate. The disciplinary authorities must provide the CSJ with information together with reasons for any action they take.

the Crown on a reasoned request by the High Council of Justice. The terms of office of all of these heads apart from the last are renewable once. Deputy heads of courts (Vice-Presidents and similar functions) are appointed by the general assemblies of the court or the tribunal concerned on a reasoned request by the head of court. Heads of sections, Vice-Presidents of Courts of First Instance, Labour Tribunals and Commercial Courts, presidents of sections of the appeal courts and Labour Courts and presidents of sections of the Court of Cassation are designated for a three-year renewable term while the President of the Court of Cassation is appointed for a five-year non-renewable term. Deputy Heads of sections are appointed for a renewable three-year term but their mandate is not converted into an indefinite term after nine years. Appointments are made to courts in which posts are vacant and are decided on by the general assemblies of the courts concerned. The post of head of division can be attributed to a candidate from outside the court or tribunal. A choice is made between two candidates who are presented, giving reasons, by the head of court (provided that a sufficient number of candidates have applied).

89. Lay judges are appointed in one of the following manners:

- through a special process of appointment (*échevinage*) of persons with relevant professional experience to hear social and commercial cases (they sit on a trial bench of 3 judges including one career judge); such members are appointed by the Crown for a five-year term, on a proposal of the minister(s) responsible for the matter, following their presentation by the various organisations representing theirs peers; candidate commercial court judges can also apply by themselves;
- as temporary reinforcements: substitute judges, in practice professionals such as serving lawyers, provisionally replace judges at Courts of First Instance, Labour Tribunals or Commercial Courts or prosecutors when they are prevented from attending or in the event of temporary staff shortages (Article 87 CJ; the GET notes that the same applies to other courts, particularly appeal courts (Article 102 CJ), Civil Magistrates' Courts and Police Courts (Article 64 CJ). Added to this is the category of substitute "magistrats", who are in fact former (retired) judges or prosecutors and may be asked by the first president of the court or the president of the tribunal to reinforce staff (Article 156bis CJ). Substitute judges other than substitute "magistrats" of Article 156bis CJ are recruited through vacancy notices, published several times a year by the CSJ, which takes its decisions according to candidates' ages, qualifications and professional experience. No provision is made for examinations or interviews. Appointments are made by the Crown for an indefinite period, which ends at the age of 67 at the latest.

90. There are no specific criteria for verifying the integrity of candidates applying for long-term or short-term vacancies. The law provides that all candidates for a post of "magistrat" must exhibit conduct corresponding to the requirements of the post and enjoy full civil and political rights.[35] In its interviews with candidates, the CSJ does, however, ask whether they have been the subject of judicial or disciplinary proceedings. In the GET's opinion, Belgium could consider asking candidates to produce a copy of their criminal records or even conducting character background checks.

91. With regard to the administrative courts, the GET was only able to discuss the situation of members of the Conseil d'Etat in any detail during its visit. They number 50, not including the junior officers in the support services (the *auditorat),* and are appointed for life by the Crown. When a vacancy arises, the General Assembly of the Conseil d'Etat presents parliament with a list of three names (chosen from among the members of the *auditorat* or outside persons, generally lawyers or academics). It is subsequently for Parliament to make its choice and present it to the Crown. No examinations are held and recruits are generally co-opted.

[35] Article 287*quinquies* of the Judicial Code.

Career and conditions of service

92. Professional judges are appointed for an indefinite period and remain in post until they retire (in principle, their careers end at 67 but they may request early retirement from the age of 60 onwards). Judges' pay is prescribed by law (Articles 355 et seq. CJ). At the time of the visit, pay at the beginning of a judge's career was €38 793.06 (gross, per year). At career end, pay for a member of the Court of Cassation was €56 451.95. There are no additional benefits apart from the coverage of some expenses.[36]

93. Judges can be promoted in various ways: (a) judges who wish to exercise another function (whether in another court or at a higher level) must follow the standard appointment procedure, as described above. Provided that they meet the appointment conditions, they may apply for any vacancy published in the official gazette; (b) designations as heads of court or deputy heads of court (the first of which are a matter for the CSJ – see paragraph 88 above) are made to the courts in which the post is vacant and are decided as far as deputy heads are concerned by the general assemblies of the courts concerned. As to mobility (transfers, rotation, etc.), currently there is no provision in the legislation on mobility for judges, except for complementary judges (professional judges designated by the Crown to carry out their functions within one or several tribunals within the jurisdiction of a given Court of Appeal); this category of mobile judges is abolished with effect on 1 April 2014. Once they are appointed, the judges other than complementary judges perform their function in a particular court but they may be delegated by the first President to carry out functions temporarily in another court, depending on organisational needs. There is a system for the regular appraisal of personal and professional skills. In principle, judges are appraised every three years by their head of court (for example, the president of the Court of First Instance appraises the various judges in his or her court) and two members designated by the general assembly. The Constitutional Court, however, has found that the appraisal of heads themselves is unconstitutional insofar as sitting "magistrats" are concerned.

94. The GET noted that apart from initial recruitment, appointments to positions of responsibility were still regarded – despite the abandonment fifteen years ago of the system of *proporz* (appointments shared out proportionally according to the relative strength of political parties) – as the result above all of an ability to cultivate networks of contacts, particularly because of the composition of the CSJ. There are of course job descriptions and on the occasion of appointments, the profile of individual candidates needs to correspond to these. But merit would not appear to be sufficiently taken into account – a problem which is compounded by the lack of a system of appraisal for the renewal of heads among the sitting judges. One of the main questions raised during our interviews was the relatively small gap between career-beginning and career-end wages and the extent to which this motivated judges to take on managerial responsibilities. Some of the GET's interlocutors pointed out that, in practice, the quality of management within the court system varies significantly in practice. This may help to account for the fact that there would seem to be major disparities in Belgium in the quality and volume of work done by different comparable courts or tribunals, in the usage made of substitute "magistrats" and the risks for the integrity which can derive therefrom. A rehabilitation and reinforcement of the function of manager would be desirable, combined in particular with the application at the least of objective merit-related criteria when appointing or re-

[36] Article 382 of the Judicial Code provides: "The Minister of Justice shall provide the First Presidents and Presidents of courts and tribunals, Civil Magistrates, judges at Police Courts, principal prosecutors, the Federal Prosecutor, Crown prosecutors and Crown counsel in the Labour Courts with an allowance, whose amount it shall determine, to cover the minor expenses of their services. Minor expenses shall be taken to include the purchase of registers, subscriptions to legal journals and reports, publications on law and other subjects and basic materials for the service, bookbinding costs, costs for the printing of documents such as service regulations, circulars and reprimands; expenses arising from personal attendance at formal public occasions and funeral processions; and purchases of office supplies and other minor, day-to-day objects needed by the department or office."

appointing heads and deputy heads of courts and tribunals. The objections inherent to the unconstitutionality of appraisals for sitting judges should not block any evolution towards a more "merit-based" system, and it could well be that these objections are not pertinent anymore given the need to improve management. The GET points out that the good management of the courts and therefore the role of managers in such areas as the management of deadlines and workload etc., are also important preconditions for the adequate processing of sensitive and complex files such as those involving corruption cases. The requirement for management to attend specific training courses could form a worthwhile part of these conditions as this kind of obligation to specialise is already applied to certain other posts (that of investigating judge, for example). It might also be advisable to review the upper part of judges' pay scales. **GRECO recommends that the requisite measures be taken to reinforce and increase the effectiveness of those performing managerial functions at the head of courts and public prosecution services.**

Case management and court procedure

Assignment of cases on the list

95. Cases are assigned within courts and tribunals according to a general case assignment regulation which establishes for each court or tribunal the number of chambers and divisions, their respective jurisdiction, the dates and hours for the hearings etc. The rules on the transfer or removal of cases are set out in Articles 648 et seq. CJ. Requests for judges to be removed from a case may be made: (a) if they are related to one of the parties by blood or by marriage; (b) on grounds of reasonable suspicion of bias; (c) on grounds of public safety; (d) if the court fails (for more than six months) to give its verdict on a case on which it has begun deliberations. In the first two cases, the request may be made by one of the parties to the proceedings. In the third case, only the Principal Crown Prosecutor to the Court of Cassation may make the request. In the fourth case, the request may be made by the principal prosecutor or by one of the parties to the proceedings. Transfers or removals are ordered by the Court of Cassation. It is also possible to ask for the recusal of a judge where there is a risk of a conflict of interest or arbitrary action on the part of the judge. Where judges do not stand down of their own accord, requests are examined by a higher court within a very short time.

96. The GET's on-site discussions confirmed that, beyond the distribution of work based on the above-mentioned case assignment regulation, there are no standard criteria or practices with regard to the assignment of cases between judges such as to ensure a degree of objectivity and randomness in their assignment, in contrast with the situation that prevails in the public prosecution service (see Part V). The Belgian authorities indicated at a later stage that the new law on the management of the courts provides for the creation of steering committees, composed of the Head of the court, the Chief Secretary / clerk and the heads of sections. These collegial bodies, which will become effective on 1 April 2014, will have competence to amend the case assignment regulations, to deal with the distribution of case files between court sections and the composition of the latter. Thus, these matters will no longer be the exclusive responsibility of the Heads of courts or the Minister. The impact of these changes remains to be specified, since their implementation still requires the adoption of a royal decree. The GET considers that this development has the potential to improve the situation observed on site. **GRECO recommends to carry out in due course an assessment of the arrangements for assigning cases between judges.**

Reasonable time

97. When an ordinary court judge fails for more than six months to give a verdict on a case on which he or she has deliberated, the Principal Crown Prosecutor at the Court of

Appeal or one of the parties to the proceedings may ask for the judge to be taken off the case (Articles 648 and 652 CJ). In principle, decisions must be given within three months of the start of deliberations (the final hearings), otherwise the judge must notify the head of court and, where possible, explain the reasons for the delay. The GET also notes that the mechanisms described in the section on "supervision" below also cover various aspects relating to the proper running of the courts. The length of proceedings in Belgium is a subject of debate in the context of the lack of funding for the judicial system and the management of courts. Recommendations for a means of assessing this aspect are made below (see paragraph 124 on the CSJ).

Transparency

98. Under Article 148 of the Constitution, court hearings are public unless such public access endangers morals or the peace, and if this is the case, the Court must declare so in a judgment. According to a discussion that the GET had with a member of civil society whose role it is to look into judicial decisions, it is difficult for the public to gain access to such decisions because the courts refuse to transmit them. At the same time, according to the same person, the courts do not always give the dates of public hearings (or provide them sufficiently far in advance). The GET was unable to confirm whether these were isolated incidents or not, but the relevant authorities (CSJ, Ministry of Justice and others) would do well to look into the matter.

Ethical principles and rules of conduct

99. The parliament has specified a number of obligations in the form of legal rules. These include: a) independence and impartiality (Article 151 of the Constitution); b) the requirement to give reasons (Article 149 of the Constitution); c) respect for the law, embodied in the oath sworn by judges on taking office: "I swear loyalty to the Crown and obedience to the Constitution and laws of the Belgian people" (decree of 20 July 1831); d) speedy administration of justice (see above on the subject of reasonable time).

100. With regard to compendia of rules of professional conduct, a Handbook for "magistrats" – Principles, values and qualities was introduced in June 2012 following a joint initiative by the High Council of Justice and the Judicial Advisory Council[37]. The principles, comments and recommendations set out in this compendium are intended to provide "magistrats" with guidelines. They are designed to offer them support and guidance and to provide them with a framework permitting a clearer understanding of the rules of conduct by which the judiciary is governed. This compendium is also aimed at representatives of the legislative and executive branches, judicial assistants and members of the public, to familiarise them with the complexity of the judicial function. The Belgian authorities say that all Belgian "magistrats" have received a copy of this handbook.

[37] The High Council of Justice has 44 members appointed for a 4-year term of office.
- 22 magistrats" (judges and prosecutors)
- 22 non-magistrats (8 lawyers, 6 university or other higher education teachers and 8 members of civil society)
- 22 Dutch-speakers
- 22 French-speakers

The High Council of Justice works to improve the functioning of the Belgian justice system by playing a key role in the selection and appointment of judges and prosecutors, by exercising external oversight over its functioning, inter alia through audits, special investigations and the handling of complaints, and by issuing opinions. It is independent of Parliament, the government and the judiciary.
On its own initiative or at the request of the Minister for Justice or the chambers of parliament, the High Council of Justice, established under the Law of 8 March 1999, gives opinions to and consults with those bodies on all matters related to the status, rights and working conditions of judges and prosecutors.
The Advisory Council consists of 44 elected members divided equally into a French-speaking and a Dutch-speaking section. Its composition is designed to ensure that the different branches of the judiciary are represented. Each section has 4 members representing the higher courts, 6 representing the prosecution service, 8 representing first-instance, labour and commercial courts, and 4 representing civil magistrate's and police courts. Fair representation of women and men is a statutory requirement. The last elections to the Advisory Council were held in February 2014.

101. It was confirmed to the GET on site that this handbook is intended only for members of the judicial courts (with an explicit reference to substitute judges), that there is no equivalent handbook for the administrative courts and that the *Conseil d'Etat* has not produced one for its members. These shortcomings are addressed in the recommendation on paragraphs 79 and 80. The GET notes that this handbook runs to some 20 pages and deals appropriately with various important aspects in terms of preventing corruption: managing relations with persons potentially linked with the parties to proceedings, objective impartiality, non-interference of political views or personal interests, ban on soliciting intervention on one's own behalf or receiving any form of benefit or gift for oneself or others, etc. A certain improvement in conduct has apparently been observed in some cases. That being said, the issue of rules of conduct for the judicial courts raises certain questions.

102. First, while it would seem to be correct that this compendium has been published on line but also widely disseminated par personnel mail, this apparently applies only to career judges, meaning that it has not been received by the lay judges of the labour and commercial courts or by the substitute judges of the various courts. Yet this is a key issue for judges who have other occupations or who in principle are less familiar than career judges with questions of professional ethics.

103. Secondly, the commercial courts adopted a text of their own at around the same time in 2012 (Handbook on professional ethics for commercial court judges) which, in actual fact, is a single-author publication requiring payment rather than a collective work, which raises issues as to its legitimacy and practical impact (the National Disciplinary Board was apparently not involved). It is also difficult for members of the public to have access to this kind of document, which can affect their knowledge of the conduct expected of commercial court judges. It would seem that another document has also been produced specifically for the commercial courts of the Dutch-speaking region. Although it might legitimately be thought that these other documents possibly provide a clearer understanding of certain specific features or risks associated with commercial justice, this detracts from the overall coherence and credibility of the efforts undertaken in this field, as pointed out by some of the people with whom the GET had discussions.

104. Thirdly, some of those interviewed voiced doubts as to the value and impact of the June 2012 document and some practitioners regret that it was not presented more clearly as a text with which "magistrats" must undertake to comply, because it does not take the form of regulations. The GET considers that it would always be possible to introduce a reference to the applicability of disciplinary procedures in the event of a failure to comply (for example, Article 404 CJ, which establishes a duty of compliance with the general obligations of judicial office – see the section on sanctions below). The GET also regrets that there is no form of personal undertaking on the part of the addressees (for example, signature attesting that the person has taken due note of the ethical principles and undertakes to comply with them). There are several arguments in favour of this, such as, for example, the fact that the handbook serves to fill numerous gaps (for example, the lack of any clear rules on gifts and other advantages) and constitutes an important new development in the absence of any familiar case-law on disciplinary matters. Furthermore, the GET was also informed about specific problems connected with professional conduct, particularly among non-professional judges (associate judges, substitute or supplementary judges, not-yet-tenured judges). In the GET's opinion, further measures need to be taken to ensure that the system does not rely solely on the goodwill of practitioners. In the light of the comments made in the above paragraphs, **GRECO recommends that the compendia of rules of conduct (applying to judges and prosecutors) be combined into a single text and that all necessary further measures be taken to ensure that these rules are clearly binding on all judicial court judges and prosecutors, whether professional or not.**

Conflicts of interest, recusal or withdrawal

105. Conflicts of interest are not defined and regulated in Belgian law in such a way as to establish a general system for declaring and dealing with them. Such conflicts are dealt with on a case-by-case basis as they arise, insofar as some constitute grounds for recusal (see below), for example if the judge or his/her spouse has a personal interest in the dispute (one of the 12 cases expressly provided for by law). Where the administrative courts are concerned, while on site the GET was only able to discuss in detail the situation of members of the Conseil d'Etat (CE). Here again, there is no general system for dealing with conflicts of interest except for the rule that a member of the CE cannot hear a contentious case if he or she has already been called upon to advise the government on the same matter in the context of the CE's advisory/legislative function. This shortcoming is addressed in the recommendation on paragraphs 79 and 80.

106. The rules on recusal are set out in Articles 828-842 CJ and the grounds for recusal are listed in Article 828 CJ. Article 828 CJ lists 12 grounds, including: legitimate suspicion; if the judge or his/her spouse has a personal interest in the dispute; if the judge or his/her spouse is related by blood or marriage to any of the parties, etc.; if there are (or have been) any proceedings between the judge and one of the parties; if the judge has given advice, made submissions or written on the case; if he/she has previously heard the case as judge or arbitrator (with some exceptions); if there is mortal enmity between the judge and one of the parties; if there have been, on the judge's part, any attacks, insults or threats, verbally or in writing, since the commencement of proceedings or in the six months preceding the application for recusal.[38] Article 829 CJ extends the above provisions clearly to social and commercial court judges. Social and commercial court judges may also be recused if they have been bound to one of the parties by an employment contract or if they have been members of the staff or an administrative or management body of a legal entity to which one of the parties was bound by a contract of employment (Article 829, para. 2 CJ).

107. Any judge who knows of any ground for recusing him/herself is obliged to withdraw on his/her own initiative (Article 831 CJ). Articles 833 CJ *et seq.* deal with the recusal of judges on the initiative of a party. The application for recusal must be filed with the registry and signed by a lawyer who has been registered with the Bar for more than 10 years (which forces younger lawyers to find a colleague able to sign the application). The judge in question either confirms or contests the application. In the latter case, the application is referred to the competent crown prosecutor and a final ruling is given within 8 days by the Court of First Instance, the Court of Appeal, the Labour Court or the Court of Cassation, as the case may be, based on the submissions of the prosecution service (after the parties concerned have been summoned and heard).

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

108. These matters are dealt with in Articles 292 *et seq.* CJ, under which judicial office is in principle incompatible with any other public professional activity (as an elected official or employee in the political or administrative sphere, as a notary, etc.), any business activity (including participation in the management, administration or supervision of industrial or commercial undertakings), or any activity as a lawyer. Exemptions may be granted. Exceptions are allowed in some cases, such as duties as a

[38] The best-known example of a recusal is the famous "spaghetti ruling", the name given to the order by which the Court of Cassation removed an investigating judge from the Dutroux case. The lawyers acting for Marc Dutroux had challenged the judge in question on grounds of legitimate suspicion because on 21 September 1996 he had participated, together with the crown prosecutor, in a spaghetti dinner in support of the families of Dutroux's victims.

professor, lecturer or assistant in an educational institution. These provisions are sometimes extended to certain categories of personnel (law clerks at the Court of Cassation, high-level judicial staff, etc.). Other exceptions are allowed, particularly as regards substitute judges and substitute members of the Court of Appeal, who may practise as a lawyer or notary concurrently with their judicial duties. Members of higher courts, prosecutor's offices and registries are also prohibited from defending and advising parties. More generally, no one may be both judge and party in judicial proceedings. Neither may these categories engage in paid arbitration work. It is also prohibited to hold more than one judicial office except in the cases provided for by law (for example, some judges may be appointed concurrently to several courts - Article 100 CJ). The CJ also provides that any decision given by a judge who has previously heard the case when performing another judicial function shall be null and void (Article 292, para. 2 CJ). Relationships by blood or marriage constitute a further ground of incompatibility (Articles 301 – 304 CJ): for example, persons living together as spouses or in the same household and persons between whom there is a relationship by blood or marriage up to the fourth degree may not, except by Crown dispensation, simultaneously form part of the same court in the capacity of judges, supplementary judges, substitute judges, social or commercial judges, public prosecutors, law clerks at the Court of Cassation, level A judicial staff, registrars and secretaries. Similarly, under Article 304 CJ, a judge or prosecutor must stand down, on pain of disciplinary action, if he or she is the spouse of or related by blood or marriage, in a direct line or collaterally up to the second degree, to the lawyer or representative of one of the parties (except as otherwise provided in Article 830 CJ).

109. Where the administrative courts are concerned, while on site the GET was only able to discuss in detail the situation of the members of the *Conseil d'Etat* (CE), who, under the co-ordinated laws on the CE, are not allowed to hold any other office. Exceptions are made for seconded staff.

110. The GET took note of the various controversies concerning judges, prosecutors and members of the CE on secondment, in particular to ministries, because the question of how to manage relations from a professional ethics standpoint during the time spent working for the executive has apparently not yet been settled. There have apparently been proposals for restricting secondments to justice departments and the GET can only encourage Belgium to put them into practice.

Gifts

111. Principle 3.2. of the professional ethics handbook for "magistrats" requires them to refrain from accepting gifts or other advantages for themselves or for family members in the performance of their duties. The GET was unable to tell from its discussions to what extent this rule is understood as applying also to certain forms of hospitality or invitations, which have sometimes been the subject of public controversy (for example, when "magistrats" were invited to what was perceived by the public as a lavish reception at the time of the diamonds affair, which was concluded by a financial transaction). To begin with, the Belgian authorities must ensure that the handbook in question is recognised and accepted by all, and applied (see paragraph 104).

Post-employment restrictions

112. There are no restrictions applying to the kind of posts which may be held after leaving office (for example, in the form of a prohibition on engaging in certain kinds of employment or working for certain employers, waiting periods, an obligation to make a declaration/obtain approval, etc.). These are potential shortcomings which Belgium might wish to remedy, even if, for the time being, the priority is to remedy the problem of the lack of a clear separation between the functions of judges other than career judges (see paragraphs 82 and 83).

Third-party contacts, confidential information

113. Judges are bound by the general requirement of professional secrecy under the Criminal Code (Article 458). They must treat information received in the exercise of their functions as confidential. Professional secrecy does not preclude consultation with fellow judges, but caution is required. Misuse of confidential information can be prosecuted under the same provision.

114. The discussions held on site confirmed that, despite the lack of a specific reference in the above-mentioned article to judicial functions, there was no doubt in the minds of the persons met that this provision applies to this sector too. The GET also notes that the professional ethics handbook for "magistrats" (which also applies to commercial and social court judges and to substitute "magistrats") regulates relations with third parties both in the context of official duties and outside that context (private and social life) and prohibits, for example, the soliciting of unlawful intervention to secure an advantage in career or other terms. Chapter 4 is devoted entirely to the duty of discretion.

Declaration of assets, income, liabilities, interests and accessory activities

115. There is no declaration system regarding these matters (apart from the above-mentioned rules on recusal and incompatibility of functions).

Supervision and enforcement measures

Supervision

116. Where the administrative courts are concerned, the question of their supervision remains unsettled and this shortcoming is addressed in the recommendation on paragraphs 79 and 80. Regarding the judicial courts, the situation can be summarised as follows on the basis of the information gathered by the GET. Firstly, it is the head of the body concerned (court president, for example) who is responsible for the proper functioning of the services coming under his or her responsibility. Secondly, the CJ (Articles 398 *et seq.)* establishes a system of general supervision with a "pyramid" structure: the Court of Cassation has a right of supervision over the Courts of Appeal and the Labour Courts, the Courts of Appeal over the Courts of First Instance and Commercial Courts of their district, the Labour Courts over the labour tribunals of their district, and the Courts of First Instance over the Civil Magistrate's and Police Courts of their district. Thirdly, the prosecution service exercises various forms of horizontal supervision (Article 399 CJ): the prosecutor-general at the Court of Appeal is responsible for maintaining general order in the courts, and prosecutors-general, crown prosecutors and labour prosecutors are responsible for ensuring efficient working (proper procedures and law enforcement) and maintaining discipline in the courts. For this purpose they are under the authority of the Minister for Justice.

117. In line with this approach, a detailed disciplinary apparatus is provided for in Articles 409 *et seq.* CJ. For example, the First President of the Court of Cassation is the disciplinary authority responsible for initiating any proceedings against the First Presidents of the Courts of Appeal (the general assembly of the Court of Cassation has the same power in respect of him/her). The presidents of the Courts of Appeal have, in turn, the same power in respect of the members of their courts and the presidents of the Courts of First Instance and Commercial Courts, the latter having the same power in respect of the members of their courts and Civil Magistrate's Courts, and so forth.

118. The disciplinary authority responsible for initiating disciplinary proceedings may receive complaints from any interested party concerning a failure to comply with

obligations, in particular those of Article 404 CJ (general duties of office). To be admissible, complaints must be submitted in writing, must be signed and dated, and must state the complainant's identity. At the same time, both the High Council of Justice and persons with responsibility for assessing the performance of "magistrats" may bring to the attention of the head of court any breaches of duty for which a judge or prosecutor may be liable.

119. The defendant must always be given a hearing. The authority may either impose no penalty or impose a minor or major penalty to the extent that his or her competences allow. The decision giving reasons is served on the defendant and, in the event of a major penalty, the head of court by registered letter within one month of the delivery of the decision by the competent disciplinary body. The decision mentions the right to lodge an appeal with an administrative court, the time-limit for doing so and the procedure to be observed.

120. In principle, minor penalties (warnings, for example) are imposed directly by the head of court, who has the authority both to initiate disciplinary proceedings and, subject to the rules on multiple office-holding, hear the case. Major penalties (withholding of salary or dismissal, for example) are imposed by the higher courts, i.e., depending on the circumstances, the first chamber of the Court of Cassation, the Court of Appeal or the Labour Court. Article 420 CJ provides that the first chamber of the Court of Cassation and the first chambers of the Court of Appeal and the Labour Court may only impose the penalty of dismissal or removal from office if there is a two-thirds majority in favour.

121. The possibility of a major penalty requires the involvement of the National Disciplinary Board (CND), which is "responsible for investigating acts liable to a major disciplinary penalty and for giving a non-binding opinion on the penalty to be imposed" (Article 409 CJ and, regarding the subsequent stages in the proceedings, Articles 410 – 427 CJ). The CND is divided into Dutch-speaking and French-speaking sections. It gives a non-binding opinion on the classification of the offence of which the judge or prosecutor is accused and on the penalty which might be imposed on him/her. The procedure includes a hearing of the defendant, who may be assisted or represented by counsel. The hearing is held in camera unless a specific request to the contrary is made by the defendant. The CND consists of 7 members, including 3 "magistrats" elected by their peers at the general assemblies of the courts. The other members are usually lawyers and university professors. The CND is not accountable to any other body.

122. The disciplinary rules relating to "magistrats" were extensively amended by the new legislation of 15 July 2013. The reform will come into force on 1 September 2014. In future, major disciplinary penalties other than dismissal will be a power of the disciplinary tribunal composed of "magistrats" and an appeal will lie to the disciplinary appeal tribunal, also composed of "magistrats". In the GET's opinion, the reform increasing the powers of the CND and putting an end to its non-binding opinions is to be welcomed.

123. It should be added that, because management of the justice system is highly decentralised in Belgium (and, in any event, separate from the executive), the High Council of Justice has played, since its establishment in 2000, not only a central role in the recruitment and promotion of "magistrats", but also an advisory role on improvement of the justice system (it regularly commissions surveys or makes proposals on problems related to the use of substitute judges, for example), an auditing role (particularly with regard to the functioning of specific courts) and an investigative role (when serious malfunctions are alleged). The CSJ has 44 members supported by a 44-member secretariat. Although it is fully independent of the executive, controversy has arisen over its alleged excessive subordination to Parliament – which appoints half its members (those who are not "magistrats") – and hence to political parties. As already mentioned in the first part of this report, political parties play a central role in Belgian institutions. The GET did not reach a firm conclusion regarding the ideal composition of the CSJ and

the appointment of its members, but it has previously recommended a review of the conditions governing the appointment of "magistrats" to supervisory positions.

124. Something which, in the GET's opinion, clearly raises a problem, however, is the fact that, despite the central role played by the CSJ in evaluating the functioning of the justice system, there are no periodic general reports on this subject containing a systematic analysis of the workload of the courts and the prosecution service, the time taken to process cases, the number of cases per judge or prosecutor, operating methods, etc. In a country which, according to a good many of the people with whom the GET had talks, is marked by significant disparities between regions and between courts in terms of how they work and how they respond to the current challenges, including allegations that the justice system and the police are incapable of addressing large-scale crime because they lack the resources (and claims that this might make it easier to neglect sensitive cases), periodic general reports would definitely be useful. They would enhance the ability of the CSJ to make proposals, including to Parliament, which adopts the budget. At the same time, the GET heard a good many reports of dubious fee billing practices, services provided on behalf of the courts (especially Commercial Courts) and major risks to the integrity of court registries, which would warrant more frequent audits and special investigations. The GET welcomes the fact that the CSJ has the power and resources to conduct audits, investigations and research work. In its 13 years of activity, however, only 10 audits and 6 special investigations have been carried out. Further efforts should be made in this area. In the light of the foregoing, **GRECO recommends that the High Council of Justice introduce periodic general reports on the functioning of the courts and the prosecution service and, at the same time, expand its audit and investigation activities.**

Sanctions

125. Where the judicial courts are concerned, the disciplinary measures are enumerated in Article 405 CJ. Various sanctions are applicable depending on the seriousness of the offence: a) minor disciplinary penalties: warning, reprimand; b) major disciplinary penalties: salary deduction, suspension, withdrawal of mandates (special responsibilities), dismissal without loss of pension rights, dismissal with loss of pension rights. The reform coming into force in 2014 will not bring any fundamental changes.

126. As regards the rules of conduct set out in the handbook, this document is intended to provide guidance for "magistrats" and the Belgian authorities say that it cannot be used as a basis for disciplinary proceedings[39]. They also state that Article 404 CJ contains a general rule of conduct which, in itself, serves to cover all offences not explicitly provided for and could in principle apply: "Those who fail to comply with the duties of their office or who, through their conduct, violate the dignity associated with it may be the subject of the disciplinary sanctions detailed in this chapter. The disciplinary sanctions provided for in this chapter may also be imposed on those who neglect the duties of their office and thereby impair the proper functioning of the justice system and undermine confidence in it".[40]

127. As far as incompatibilities are concerned, the violation of a rule of incompatibility may be invoked for the first time before the Court of Cassation because it is a matter of public policy. A ground for recusal, however, must be invoked from the start of the

[39] This compendium of principles is neither a disciplinary code nor a compendium for the use of the disciplinary authorities. The principles were established in order to provide positive guidance for judges and prosecutors who wonder what conduct to adopt in a given situation. They therefore go beyond a purely negative approach confined to enumerating a series of prohibitions. These guidelines are inspired by the text approved in 2010 by the European Network of Councils for the Judiciary (ENCJ) and other compendia of rules of conduct from various countries.

[40] The second sentence was introduced by a law of 7 July 2002 in response to the findings of the parliamentary commission on the case of Dutroux, Nihoul and others. It is symptomatic of the importance attached to devising new rules of conduct for judges and prosecutors in their relations with litigants.

proceedings, before the trial judge. It is conceivable that a case of incompatibility might also constitute a ground for recusal. In that eventuality, the rules of incompatibility apply.

128. Apart from that, as there is no system for declaring assets, income, liabilities and interests, the question of enforcement in this matter does not apply. The Belgian authorities point out, moreover, that violation of the rules prohibiting or restricting certain activities, and the commission of offences in general, may give rise to criminal and disciplinary proceedings under ordinary procedures. The rules apply equally to career and non-career "magistrats", it being understood that the applicability of certain sanctions differs, for instance those which impact on the remuneration or the career.

129. As regards the administrative courts, there is no overview of the situation and no information showing that provision is made for sanctions applying to all these courts. The general recommendation made in paragraphs 79 and 80 is intended to remedy that.

130. The GET notes that, in practice, more concrete identification of prohibited forms of conduct is based to a large extent on the examination of disciplinary "case-law". In principle, the Ministry of Justice must be informed of all disciplinary proceedings that are initiated, and it has been required since 2005 to keep an anonymous database containing all disciplinary decisions handed down (Articles 405ter and 427 CJ). According to the Belgian authorities, the database ensures some degree of availability of this case-law. It can be consulted by all "magistrats", law clerks at the Court of Cassation, law clerks and lawyers in the prosecution service, staff of the documentation and text concordance department of the Court of Cassation, registrars, secretaries and staff members of court registries and prosecutor's offices, disciplinary authorities, members of the National Disciplinary Board and members of the High Council of Justice. On written request, the lawyer or representative of a person against whom disciplinary proceedings have been brought may also have access to it if so authorised by the Minister.

131. The GET has certain reservations about the system in place. Firstly, having been able to examine the content of the information collected by the Ministry, it finds that it is often difficult to extract precedents from it because the conduct at issue is often not specified (for example, reference is made to a failure to comply with the general duties of office rather than to specific facts). Serious doubts also remain regarding the exhaustiveness of the information collected by the Ministry (see below the paragraphs on statistics). The members of the National Disciplinary Board themselves lack an overview and regret that final decisions are not communicated to them. One of its senior members admitted in fact that he had never consulted the Ministry's data, which is surprising. Clearly, therefore, an effort at consultation is needed on the part of the Ministry, disciplinary bodies and the courts in order to compile relevant information. Secondly, given the importance of this case-law for providing judges, prosecutors and members of the public with knowledge about the conduct expected of "magistrats", it would clearly be preferable to ensure the broadest possible access to that knowledge (not access to the database, but to a summary of the types of conduct for which penalties have been imposed to date), without the Minister's approval being required in certain cases.[41] As things stand, increased transparency would dispel the notion that "magistrats" enjoy impunity and give the public greater confidence in the justice system, from which they expect more openness (see paragraphs 12 *et seq.).* Access to the case-law would enable the parties to judicial proceedings and their lawyers to refuse any inappropriate behaviour and report it if necessary. In their latest information, the Belgian authorities refer to the suppression of the database under the reforms of July 2013, which shall enter into force in September 2014, a fact which not mentioned during the on-site visit.

[41] It is hard to see why the lawyer or other person defending a judge or prosecutor against whom disciplinary proceedings have been brought has to seek the Minister's permission when the person he/she is defending normally has access to this information as a judge or prosecutor. However, this does not apply to the members of courts and public prosecutor's offices who are not "magistrats" (for example, non-professional judges).

This database would be replaced in future by an annual activity report of the disciplinary courts concerned. There will be a possibility to include in general case-law databases the decisions rendered by these courts in disciplinary matters. In the GET's view, this evolution only exacerbates the issue of keeping and making available to those interested adequate and reliable data on the various disciplinary measures imposed, minor ones. The preoccupations of the GET mentioned above become even more pertinent. **GRECO recommends that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning judges and prosecutors, including possible publication of the relevant case-law, while respecting the anonymity of the persons concerned.**

Enforcement and immunities

132. Where criminal proceedings are concerned, Articles 479 to 503 CIC lay down a special procedure ("privilege of jurisdiction") for "magistrats" and some civil servants who have committed an offence. These provisions do not establish a full procedure for the trial of "magistrats", but depart in some significant respects from the ordinary procedure (some aspects of which remain applicable).[42] Hence, it is the civil division, normally presided over by the First President of the Court of Appeal, which has sole jurisdiction to try offences committed by civil servants and "magistrats" who enjoy privilege of jurisdiction. There is no possibility of appeal. These rules apply only to the more serious offences (not summary offences). They are applicable mainly in connection with criminal sanctions for violation of professional secrecy, or of course in cases of bribery or trading in influence. The latter offences have not changed fundamentally since GRECO's Third Round Evaluation Report of May 2009. As stated in that report, bribery involving categories such as "magistrats" constitutes an aggravating circumstance. The GET has no particular comments to make.

Statistics

133. The Belgian authorities said that information of this kind requires in-depth research because there are no statistics on this subject. However, it was confirmed to the GET during its visit that, under the new Article 427 of the Judicial Code, the Ministry of Justice has been required to keep a database since 2005. This database is not yet fully operational and accessible on-line (the data are stored on computer files but made available in hard copy). Furthermore, although the CJ is clear on this point, the GET received differing opinions regarding the requirement to provide the Ministry with certain items of information, in particular those concerning minor penalties (warnings and reprimands). The information available to the Ministry for the period from February 2005 up to the date of the visit shows 181 disciplinary cases involving members of the different categories of courts (civil, criminal, commercial, social etc.) and different categories of personnel (professional judges, substitute judges, prosecutors). The penalties imposed are as follows: a) warnings: 25 cases (e.g. for alcohol consumption, traffic offences, unjustified absence, failure to comply with the duties of office); b) reprimand: 20 cases (false invoices and forgery of documents, alcohol consumption, insufficient output, failure to comply with duties, etc.); c) suspension from office: 12 cases (reasons not specified), d) salary deduction: 5 cases (negligence, misuse of documents and violation of secrecy, lateness, misuse of power; e) automatic dismissal: 2 cases.

134. The representatives of the National Disciplinary Board told the GET that the CND had issued 89 opinions recommending major penalties. Some of these opinions would seem to have been disregarded, although the GET was unable to draw more precise conclusions.

[42] The aim was to avoid undue lenience or severity, which might be feared if a first-instance judge, for example, was tried by his/her own court or had to appear before his/her colleagues or the judges of his/her place of residence.

135. The discussions held on site also brought out some recent cases of bribery and lack of integrity in Belgium. For the time being these do not seem to have been included in the Ministry's classification. The GET considers that if this database contained full information on disciplinary matters, with cases of violation of integrity clearly identified, it would facilitate the task of surveying disciplinary practices. It would be a useful tool for ensuring uniform treatment across the country of violations of the duties of "magistrats" and other members of courts, including in connection with the themes covered by this report (see paragraph 131 above).

Advice, training and awareness

136. The Judicial Training Institute (IFJ), established in 2009 and independent of the Ministry of Justice, is responsible for the initial and in-service training of members of the judiciary. The content of the 2-day "Professional ethics" course organised each year by the IFJ as part of initial training (common to "magistrats") is as follows: a) national and international principles and legal provisions relating to professional ethics; b) requirements of independence and impartiality; c) duties of office: delivering justice; e) grounds for withdrawal (incompatibilities – recusal) ; f) failure to comply with the duties of office; g) violation of the dignity of office; h) neglect of the duties of office and impairing the proper functioning of the justice system or undermining confidence in it; j) grounds for recusal; k) outline of relevant case-law. Training is compulsory for all "magistrats" starting their careers and for judicial trainees. In-service training enables practitioners to improve their skills and those who want to change duties to obtain the necessary qualifications. Judges can obtain advice, including as regards the themes covered by this report and the conduct they are expected to adopt, from the head of court and from the trainers who contribute to the training course on professional ethics. The June 2012 Handbook for magistrats – Principles, values and qualities is publicly available on-line (in particular on the websites of the CSJ and the Judicial Advisory Council). According to the information obtained by the GET, efforts to provide training/awareness-raising about professional ethics as part of in-service training are still insufficient. "Magistrats" called on to perform supervisory duties have no obligation to attend management training either. Generally, the in-service training provided by the IFJ is not aimed at members of the administrative courts. The GET considers that there is scope here for developing additional activities.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

137. The organisation and functioning of the prosecution service are mainly governed by the Judicial Code and the rules concerning prosecutors' careers, rights and duties are more or less the same as those applying to judges given that judges and public prosecutors form a single professional group called "magistrats". This section makes many references to Chapter IV and is therefore relatively short.

138. As in many other countries studied by GRECO, opinions on the role of the prosecution service differ owing to its hybrid status. Some claim that public prosecutors are organisationally answerable to the executive authority. There are major provisions underpinning this point of view. For example, under Article 153 of the Constitution "The Crown appoints and dismisses officers of the public ministries working within courts and tribunals." Similarly, Articles 143, 143bis and 143ter of the Judicial Code (CJ) refer to the exercise of the prosecution service's powers under the authority and supervision of the Minister of Justice. Others claim that they belong to the judiciary. Several arguments support this view: the prosecution service is mentioned in the Constitution under the heading "Judicial Power"; the wording of Article 151, paragraph 1 of the Constitution, stipulating that "The prosecution service is independent in the conduct of inquiries and prosecutions in individual cases, subject only to the right of the competent minister to order that a prosecution be brought and to issue binding criminal policy guidelines, including guidelines on investigation and prosecution policy"; Article 154 of the Constitution, stipulating that "Remuneration of members of the judiciary order is established by law", which means that the status of the prosecution service is established by law and not by the executive authority; finally, the way that Articles 137 and 138 of the CJ have evolved shows that the principle that the prosecution service represents the executive authority in the courts has not been maintained, since it represents not the executive but society at large.

139. Nevertheless prosecutors act in a fully independent manner when they take part in the activities of the judicial branch, i.e. when they make submissions or issue an opinion. The prosecution service enjoys different kinds of autonomy: its organisational link to the executive authority makes it independent of the judiciary while its collaboration with the latter grants it a certain independence vis-à-vis the executive. This relative independence, which prevents the blocking or suspension of a prosecution, but makes it possible to order that a prosecution be brought or to issue general policy instructions concerning the way the work is conducted, is established in the Constitution:

Article 151 of the Constitution

The prosecution service is independent in the conduct of inquiries and prosecutions in individual cases, subject only to the right of the competent minister to order that a prosecution be brought and to issue binding criminal policy guidelines, including guidelines on investigation and prosecution policy.

140. The prosecution service comprises the following bodies:

- At the Court of Cassation, the prosecuting authorities (*le parquet de cassation)* comprise the Prosecutor General, a Senior Advocate General and Advocates General (Article 142 CJ).
- The Board of Prosecutors General (*le collège des procureurs généraux*) comprises the prosecutors general attached to the Courts of Appeal, assisted by deputy prosecutors general. It is placed under the authority of the Ministry of Justice (Article 143bis CJ).

- The federal prosecution service (*le parquet federal)* comprises the Federal Prosecutor, who runs the service, and twenty-four federal judges (Article 144bis CJ).
- The Prosecutor General's Office (*le parquet general*) is headed by the Prosecutor General attached to the Court of Appeal and the Labour Court. The main role of the Prosecutors General is that fulfilled through the Board of Prosecutors General, in other words the framing, implementation and co-ordination of prosecution policy and crime policy, without prejudice to the prerogatives of the prosecution in civil law cases. The Prosecutor General attached to the Court of Appeal is assisted by a Senior Advocate General, Advocates General and Deputy Prosecutors General. The Prosecutors General perform their duties under the authority of the Ministry of Justice.
- The Board of Crown Prosecutors and the Board of Prosecutors of the Labour Courts: the Crown Prosecutors together form a board. The Federal Prosecutor is entitled to attend meetings of this board. The Board of Crown Prosecutors is essentially an advisory body responsible for giving opinions – either on its own initiative or at the request of the Board of Prosecutors General – on the harmonisation and uniform application of laws and regulations, and on any question relating to the role of the prosecution service (Article 152bis CJ).
- The prosecutor's offices in the first-instance courts: there is a Crown Prosecutor at the headquarters of each judicial district (Article 150, sub-para. 1, CJ). He or she performs the duties of the prosecution service at the District Court, the Court of First Instance, the Commercial Court and the relevant District Police Courts. Crown Prosecutors no longer act under the guidance of the Prosecutor General. They perform their duties without prejudice to the prerogatives of the Prosecutor General and the Federal Prosecutor and under the authority of the Prosecutor General. The Crown Prosecutor is assisted by Senior Deputy Prosecutors, Deputy Prosecutors and until 1st April 2014 Supplementary Deputy Prosecutors. They are also assisted by legal experts from the prosecution service. There is no prosecution service attached to Civil Magistrate's Courts. The prosecutors at the Court of First Instance perform their duties under the guidance and supervision of the Crown Prosecutor. Although the "magistrats" of the prosecution service, who owe obedience to the Crown Prosecutor, cannot refuse to initiate and conduct proceedings, they have full freedom of speech during hearings, in keeping with the saying "*La plume est serve et la parole est libre"* (the pen is servile whereas speech is free).
- Prosecutors at the Labour Courts (*l'auditorat du travail)* are assisted by Senior Deputy Prosecutors, Deputy Prosecutors and until 1st April 2014 Supplementary Deputy Prosecutors (Article 153 CJ).

141. The law provides for a hierarchical system establishing the authority of the Prosecutor General over the Crown Prosecutor, the Advocates General and the Deputy Prosecutors General of the Courts of Appeal and the authority of the Crown Prosecutor over the Senior Deputy Prosecutors and Deputy Prosecutors. It is in theory an authoritarian model which has, in practice, been replaced by a model of consultation between members of the prosecution service, the courts and the tribunals.

142. The Ministry of Justice has no power to arrogate to itself, in whole or in part, the exercise of the responsibilities allocated to the prosecution service. The very strict hierarchical relationship between the Prosecutor General's Office and the prosecutor's offices at the first-instance courts has been replaced by a system of closer co-operation based on interaction, complementarity and on-going consultation (in particular through the "Board of Prosecutors General", which is regularly consulted and itself issues general circulars). The integrated handling of individual cases provided for in Article 138, sub-paragraph 3, of the CJ, applies only to complex cases, jointly identified by the Prosecutor General and the Crown Prosecutor. A Crown Prosecutor specialising in environmental matters can therefore deal with one of his/her cases when it is examined by the Court of

Appeal. Similarly, a Prosecutor General specialising in taxation can contribute his/her expertise from the level of the Court of First Instance onwards.

143. The GET noted that the members of the Belgian prosecution service lay great store by their operational independence. They pointed out that such independence was enshrined in the Constitution. It was also pointed out that the Belgian prosecution service is independent in the manner of conducting a prosecution, even if it is obliged to implement the general guidelines of the Ministry of Justice, which can only give it positive orders. The GET did not note any particular controversies regarding the application of these guidelines.

Recruitment, career and conditions of service

144. Given that "magistrats" form a single professional group, prosecutors are recruited in the same way as judges (see Chapter IV). Within the Belgian prosecution service, a distinction has to be made between the professional "magistrats" and trainees, who do not have the status of "magistrat" but the status of judicial police officers and have the same powers and responsibilities after a few months' service as are enjoyed by professional "magistrats". The decisions they take and approve therefore have the same value. The Belgian prosecution service also has legal experts who assist the "magistrats" as legal associates but do not hold a position of responsibility.

145. Prosecutors are appointed for an indefinite period and remain in office until they retire (as a rule, they reach the end of their career at the age of 67 but may request early retirement from the age of 60). Prosecutors may also perform specific duties for what is in principle a fixed period, after which they return to the duties to which they were previously appointed.

146. With the exception of the Prosecutor General attached to the Court of Cassation, whose term is not renewable, head prosecutors are appointed for five years renewable once. They are assisted by the Advocates General in the Courts of Appeal or the Senior Deputy Prosecutors in the Courts of First Instance. These deputies are appointed for a twice-renewable three-year term of office. At the end of this nine-year period, prosecutors are appointed as Advocate General (Courts of Appeal) or Senior Deputy Prosecutor (Courts of First Instance) on a permanent basis. Junior officers (the *auditeurs)* and division prosecutors will form a new category of support staff designated for a three-year term, renewable on the basis of a positive appraisal. These functions will not become an indefinite function after nine years. The head prosecutor (Prosecutor General or Crown Prosecutor) presents his or her deputies to the Minister of Justice for appointment. The deputies undergo assessments every three years before their term-of-office can be extended (twice). Advocates General or Senior Deputy Prosecutors whose term-of-office is not extended return to the duties of Deputy Prosecutor General (at a Court of Appeal) or Deputy Prosecutor (at a Court of First Instance). With regard to the procedure applied by the High Council of Justice (CSJ) in terms of appointment, see the corresponding part of Chapter IV concerning the appointment of judges (appointment by the crown following a motivated proposal by the CSJ).

147. The CSJ (in particular its boards of appointment for the appointment of French-speaking and Dutch-speaking members of the judiciary) and the Crown are responsible for renewing the terms of office of head prosecutors, as stipulated in Article 58bis, 2, of the Judicial Code. For deputies the term of office is renewed by the jurisdiction in which they are working.

148. The promotion of prosecutors: when a post of Prosecutor General or Crown Prosecutor falls vacant, it is published in the official gazette ("*Moniteur belge*"). Candidatures are then addressed to the Minister of Justice, who submits them to the CSJ. Candidates must submit a management plan for the office which they hope to obtain. All

candidates are interviewed by the CSJ, which issues a reasoned opinion recommending a specific candidate to the Minister of Justice, along with an opinion giving the reasons for which the other candidatures were rejected. The Minister of Justice subsequently submits the proposal of the candidate nominated by the CSJ for approval by royal decree. Such approval is purely formal, as the decision is in practice taken by the Minister of Justice, who, over the past 10 years, has always appointed the candidates proposed by the CSJ.

149. The relevant legislation does not currently provide for the mobility of prosecutors. The CJ nevertheless foresees some delegation possibilities by the General Prosecutor and in some cases by the Minister of Justice. The comments made in paragraphs 82 and 83 concerning mobility following the reform of the "judicial map" are applicable mutatis mutandis to the prosecutor's office.

150. Dismissal of prosecutors: the relevant disciplinary measures, procedures and competent authorities are listed and described in Articles 405 et seq. CJ (see Chapter IV on judges). Under Article 153 of the Constitution, the Crown not only appoints but also dismisses members of the prosecution service working within the courts and tribunals. To this end, the head prosecutor sends a disciplinary file to the National Disciplinary Board for opinion and investigation. Where a severe penalty (suspension etc.) is required the National Disciplinary Board refers the matter to the competent authority. If it considers that the prosecutor in question should be dismissed, the competent authority transmits the file to the Minister of Justice. As in the case of judges, it is the head prosecutor who decides on minor disciplinary penalties (a warning or a reprimand).

151. From September 2014 onwards, as in the case of judges, decisions on major disciplinary sanctions other than dismissals will be decided by a disciplinary tribunal made up of "magistrats", with an appeal against the decision lying to a disciplinary court of appeal (also made up of "magistrats"). This tribunal shall be responsible to submit motivated proposals to the Crown.

152. As indicated in Chapter IV with regard to judges, there are no special criteria for verifying the integrity of "magistrats" when they are selected and the GET suggests that steps could be taken to remedy this shortcoming.

153. Salary levels: the annual gross salary (i) of prosecutors at the start of their career is €38 793 (deputy prosecutors) and ii) of Prosecutors General is € 69 696.16 euros (Articles 355 et seq. CJ). As in the case of judges, the Minister of Justice awards the Prosecutors General, (the Federal Prosecutor), the Crown Prosecutors and Labour Court Prosecutors an additional allowance to cover minor expenses (subscriptions to legal journals and collections of legal documents, the acquisition of books, office supplies, etc.).

154. The salary, and more generally speaking the work of prosecutors, does not depend on the regular appraisals which are carried out by an Appraisal Board in each Court of Appeal with regard to the prosecutors working there. Crown Prosecutors and Prosecutors General are appraised by an Appraisal Board located in Brussels.

155. The improvements suggested by the GET in Chapter IV concerning the rules governing recourse to substitute judges, who may also be called on to work for the prosecution service (and who sometimes may have performed the same tasks), also apply here. The fact that substitute judges are more often than not (practising) lawyers and that, despite the title of "substitute judges", they also serve as prosecutors, leads to confusion in the minds of the public, which is harmful to the image of the judicial institutions. The GET has also proposed that court heads and their deputies be given a greater managerial role and that their salary scales be revised accordingly; these measures also concern the prosecution service.

Case management and procedure

156. Belgium's system is based on the principle of discretionary prosecution.

Allocation of work

157. The head prosecutor assigns cases to the prosecutors while endeavouring to ensure that the work is fairly distributed and taking account of their specialisations. It goes without saying that specialisations are more clear-cut in larger jurisdictions. Cases are also assigned to prosecutors according to a duty roster with the result that cases are assigned on a random basis, with the exception of cases requiring specialist or technical expertise (economic and financial affairs, terrorism, organised crime, etc.). Cases are therefore assigned as they arrive to the prosecutors on duty, and the head prosecutor only intervenes with a view to striking a balance in the workload or assigning special cases to prosecutors specialising in that particular field.

158. It is at all times possible to remove a prosecutor from a case in accordance with the principle that the prosecution service is one and indivisible and that the prosecutors are interchangeable. There are no provisions whereby a party can request that a prosecutor be withdrawn from a case (although it is possible to challenge a prosecutor in the same was as can happen with judges).

Reasonable time

159. In the event of a problem or of negligence on the part of a member of the prosecution service, the head prosecutor may re-assign the case to another prosecutor. The head prosecutor is normally responsible for ensuring that proceedings are conducted within a reasonable time.

Ethical principles and rules of conduct

160. The Handbook for "magistrats" – Principles, values, qualities, adopted in 2012 and referred to in Chapter IV on judges also concerns prosecutors. The handbook contains some provisions or principles concerning prosecutors in particular, but the various general obligations are the same as for judges whether in matters of general probity or with regard to specific points. In Chapter IV the GET recommended that measures be taken to ensure that these rules are clearly binding on all court judges and members of the prosecution service.

Conflicts of interest

161. As in the case of judges, there are no regulations governing conflicts of interest other than the rules concerning removal from a case, which stipulate that prosecutors may be withdrawn from a case if they, or their spouse, have a personal interest in the case under examination (see below).

Recusal or withdrawal

162. The rules applicable to recusal are the same as those applicable to judges. Article 832 CJ stipulates that "The grounds for the recusal of judges are applicable to the prosecution service, unless it is acting as the main party". See the corresponding paragraphs in Chapter IV where the relevant grounds, as provided for in Article 828 (and Articles 829-842) CJ, are listed.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

163. The aforementioned rules relating to judges (Articles 292 – 304 CJ), concerning the ban on concurrent office-holding and the question of blood relations or relations through marriage, are applicable to prosecutors.

Gifts, financial interests, post-employment restrictions, third-party contacts and confidential information

164. The situation is the same as that already described in respect of judges.

165. Specific points concerning prosecutors only: it should be pointed out that prosecutors are bound not only by professional secrecy (Article 458 of the Criminal Code) but also by secrecy of investigations (Articles 28 quinquies and 57 of the Code of Criminal Investigation).

166. The GET took note of the problems and – legitimate – controversies to which the question of transactions relating to financial penalties gave rise. The arrangements provide for the termination of proceedings on payment of a sum of money, on the basis of an agreement reached at the initiative of either the accused or the prosecution service. Following some amendments on 14 April and 11 July 2011, the ceiling of the penalty allowing the prosecution service to propose the termination of proceedings in exchange for an amount of money was considerably increased and a transaction is now also possible as long as a final court verdict has not been rendered including in Cassation, provided the person who has allegedly committed the offence is willing to pay a compensation for the damage s/he has caused. Within the prosecution services, a circular was adopted on 30 May 2012 to establish certain limits and safeguards concerning the use of financial transactions. After the reform itself underwent unsuccessfully a constitutional challenge, appeals have been lodged against this circular (including with the *Conseil d'Etat*), but it still appears to be in force. In addition to infringing the independence of an investigating judge or trial court judge when the proceedings have already been initiated, there is also the question of the risk of pressure on the prosecuting authorities, depending on the stage of the proceedings and the insistence with which the party being prosecuted proposes such a transaction. The GET encourages Belgium to remain vigilant in this respect.

Declaration of assets, income, liabilities and interests

167. As indicated in Chapter IV, there are no provisions requiring judges or prosecutors to make such a declaration.

Supervision and enforcement measures

168. The situation is identical to that of judges: a) where criminal procedure is concerned, Articles 479 et seq of the Code of Criminal Investigation are applicable to prosecutors; b) where other procedures are concerned, Articles 398 – 427quater CJ are applicable to prosecutors.

169. The Minister of Justice has disciplinary authority over the Prosecutor General attached to the Court of Cassation (Article 410 CJ). This situation has not given rise to any particular problems in the recent past.

170. As in the case of judges, there is no recent information concerning the supervision or discipline of prosecutors in respect of the past three years and in Chapter IV the GET proposed a number of improvements concerning the role of the CSJ in appraising the

functioning of the judicial system, including the prosecution service, and its auditing and inspection role.

Execution and immunities

171. As already stated, "magistrats" enjoy a form of procedural privilege but do not have immunity.

Disciplinary penalties

172. The applicable disciplinary penalties are the same as those applicable to judges. See the corresponding paragraph in Chapter IV with regard to the information collected by the Minister of Justice to date (since 2005) concerning disciplinary procedures and the efforts that need to be made to make case-law in this area available to the public so that people on trial know how "magistrats" may be expected to conduct themselves.

173. There are no statistics, in respect of the past three years, relating to cases concerning the above mechanisms.

Advice, training and awareness

174. The initial and in-house training activities mentioned in Chapter IV also concern prosecutors. Nor is any mention made here either of special measures to inform the public of the aforementioned rules and of the conduct to be expected of prosecutors other than the possibility of consulting the above-mentioned handbook ("Guide pour les magistrats - Principes, valeurs et qualités) online.

VI. RECOMMENDATIONS AND FOLLOW-UP

175. In view of the findings of the present report, GRECO addresses the following recommendations to Belgium:

Regarding members of parliament

i. **to ensure that consistent and effective regulations are in place for MPs i) in respect of gifts, donations and other benefits accepted by MPs, providing in particular for their public disclosure , as well as of donors' identities, and ii) regulating the question of foreign donors** (paragraph 30);

ii. **that rules should be introduced for Members of Parliament on how to engage in relations with lobbyists and other third parties seeking to influence the parliamentary process** (paragraph 41);

iii. **i) that the system of declarations clearly includes income, the various assets and an estimate of their value – whatever their form (including those held directly or indirectly, in Belgium or abroad) as well as liabilities, and that there is a duty to update the information in the course of a mandate ; ii) that consideration be given to extending the system so as to include information on the spouse and dependent family members (it being understood that this information would not necessarily be made public)** (paragraph 46);

iv. **that the various declarations, including those on assets, as supplemented in particular by information on income, should be subject to public disclosure and made more easily accessible through an official internet website** (paragraph 47);

v. **that i) compliance with the current and yet to be adopted rules on the integrity of parliamentarians in the Codes of deontology and other pertinent rules (such as those on donations), be subject to effective supervision by the parliamentary assemblies themselves rather than only by the parliamentary political groups, and that at the same time the ability to act ex officio be granted to the future Federal Ethics Committee also in individual cases; ii) declarations of mandates and of assets be subjected to effective verification by strengthening the role of and interaction between the Court of Audit and the prosecutorial authorities, or by designating as the need may be another institution equipped with adequate means for these purposes** (paragraph 60);

vi. **that infringements of the main present and future rules in respect of integrity of parliamentarians carry adequate sanctions and that the public be informed about their application** (paragraph 67);

vii. **that the appropriate measures be taken i) in order that parliamentary inviolability is invoked in practice only for acts having an obvious connection with parliamentary activity and ii) in order that the criteria for waiving immunity do not constitute an obstacle to the prosecution of corruption-related acts by parliamentarians** (paragraph 69);

viii. **that at the level of the two houses of parliament regular specialised training courses be given on questions of integrity for all parliamentarians** (paragraph 73);

Regarding judges and prosecutors

ix. **that to the widest possible extent, the judges concerned at federal and regional level be subject to appropriate safeguards and rules as regards their independence, impartiality, integrity (professional conduct, conflicts of interest, gifts, etc.), supervision and the applicable sanctions** (paragraph 80);

x. **reforming the conditions for the appointment of substitute judges in accordance with Article 87 of the Judicial Code (and possibly of substitute "magistrats" in accordance with Article 156bis of the Judicial Code) to perform the functions of judge or prosecutor** (paragraph 83);

xi. **that the requisite measures be taken to reinforce and increase the effectiveness of those performing managerial functions at the head of courts and public prosecution services** (paragraph 94);

xii. **to carry out in due course an assessment of the arrangements for assigning cases between judges** (paragraph 96);

xiii. **that the compendia of rules of conduct (applying to judges and prosecutors) be combined into a single text and that all necessary further measures be taken to ensure that these rules are clearly binding on all judicial court judges and prosecutors, whether professional or not** (paragraph 104);

xiv. **that the High Council of Justice introduce periodic general reports on the functioning of the courts and the prosecution service and, at the same time, expand its audit and investigation activities** (paragraph 124);

xv. **that measures be taken to ensure that reliable and sufficiently detailed information and data are kept on disciplinary proceedings concerning judges and prosecutors, including possible publication of the relevant case-law, while respecting the anonymity of the persons concerned** (paragraph 130).

176. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Belgium to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2015. These measures will be assessed by GRECO through its specific compliance procedure.

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

About GRECO

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

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

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