



ASSOCIATION OF
JUDGES OF IRELAND


Dr Donal de Buitléir,
Chairperson,
Review Panel (Room 4.2),
Department of Public Expenditure and Reform,
Government Buildings,
Upper Merrion St.,
Dublin 2.

19 July, 2022

Re Review of Senior Public Service Recruitment and Pay Processes

Dear Dr. de Buitléir,

1. I am writing to you in my capacity as President of the Association of Judges of Ireland (the “AJI”). The AJI is a representative body that represents the interests of its members, comprising the vast majority of Irish judges, at all court levels
2. The AJI has recently become aware of the establishment and terms of reference of the Independent Review Panel to review Senior Public Service Recruitment and Pay processes.

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3. I note from those terms of reference that one of the functions of the Independent Review Panel is to review the process for determining pay and related terms and conditions for Senior Public service appointments. As part of that review, the Independent Review Panel is to consider the pay determination processes applying for (*inter alia*) the Judiciary (Appendix 2).
 4. In carrying out that aspect of its functions, it is of critical importance that the Independent Review Panel should have careful regard to the independence of the Judiciary. Judicial independence is a core constitutional value: Article 35 of Bunreacht na hÉireann. It is also recognised as a fundamental component of the rule of law within the EU and the Council of Europe, emphasized in many recent decisions both of the Court of Justice of the European Union and the European Court of Human Rights.
 5. The Group of States Against Corruption (GRECO) was established by the Council of Europe in 1999 to monitor member States' compliance with its anti-corruption standards. Ireland joined GRECO in 1999 and since that time has been subject to periodic evaluation by that body.
 6. In November 2014 GRECO published an Evaluation Report in relation to Ireland as a part of its Fourth Evaluation Round. One of the recommendations made by GRECO in that Report was that an appropriate structure should be established by the Government which could examine questions concerning constitutional safeguards of the judiciary in connection with employment conditions. Paragraph 138 of the Report stated:

“To sum up, while the GET [Greco Evaluation Team] is fully aware that all public officials in Ireland have experienced pay cuts as a result of the financial crisis, it would appear that the judges have been particularly affected not only in financial terms, but also in respect of their future constitutional guarantees. These measures go beyond the mere financial aspects as they have a principal impact on judicial independence. The GET understood that the lack of a judicial council or other forms of associations on behalf of judges, made them particularly fragile during the government campaign for the need to reduce judicial salaries and benefits. This further highlights the need to establish a judicial council as an important link between the judiciary and the executive branch, as recommended at paragraph 124. However, the upcoming situation would also merit further measures aiming at returning to a situation of long-term stability within the judiciary reinforcing the respect for, and integrity of, an independent judiciary justifiably proud of its history and similarly able for the future. GRECO recommends that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives with a view to maintaining the high levels of judicial integrity and professional quality in the future.” (emphasis added)

That recommendation was then formally made in Part VI of the Evaluation Report at viii.

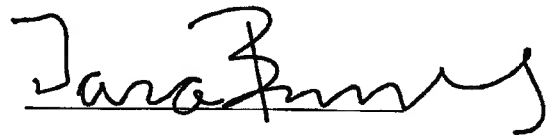
7. In subsequent Compliance Reports dating from 2017, 2018 and 2020 and, most recently, in a Report published just this month, GRECO has noted that this recommendation has not been implemented. In its 2017 Report, GRECO rejected the suggestion that the establishment of the Public Service Pay Commission would address the concern raised in its recommendation. GRECO could not see how a Commission addressing pay levels across the public service, even if it included pay levels within the judiciary, would be “*a mechanism for questions concerning constitutional safeguards of the judiciary, at least not on its own*” (2017 Report, para 45). In its 2018 Report, GRECO reiterated that view and urged “*the authorities to re-consider this matter in close co-operation with the judicial authorities*” (2018 Report, para 42). In its 2020 Report, GRECO referred to the Judicial Council Act 2019, noting that the authorities had reported that examination of judicial employment conditions is not provided for under the Act. GRECO noted that the Irish authorities maintained the position that judicial pay is dealt with within the parameters of the current public service pay policy and that there was “*no provision to provide separate structural or institutional pay determination arrangements for the judiciary.*” (2020 Report, para 37). That position did not satisfy GRECO which again concluded that recommendation viii had not been implemented (2020 Report, at para 39). Finally, GRECO’s 2022 Report notes various points of information provided by the authorities, including the establishment of the Judicial Council and the creation of the Judicial Planning Working Group before concluding once again that recommendation viii remains unimplemented.
8. GRECO’s recommendation is concerned with the determination of judicial “*employment conditions.*” That is broader in scope than the remit of the Independent

Review Panel. However, the “*pay and related terms and conditions*” of the judiciary are a fundamental element of their employment conditions and it is essential that any mechanism that the Panel may recommend for the determination of those pay and related terms and conditions should respect and uphold the independence of the judiciary and be consistent with GRECO’s recommendation.

9. As well as the issue of judicial pay, there are many other related issues which are of concern to the members of the AJI but which, in the absence of any appropriate mechanism, it has been difficult to progress. These include judicial pensions (and, in particular, the severe and disproportionate impact of measures such as the Chargeable Excess Tax (CET) provisions), Class K PRSI (a 4% contribution levied on judges for which no benefits whatever are provided) and travel and subsistence payments for District and Circuit Court judges.
10. As has been identified by GRECO, the independence of the judiciary, a fundamental feature of our Constitutional architecture and a critical element in a functioning democratic state, is jeopardised by the failure to have an appropriate structure in place to address issues of this kind. It is a serious matter that a recommendation made by GRECO almost 8 years ago has not yet been implemented.
11. In the AJI’s view, the imperative of protecting both the reality *and* public perception of judicial independence, which is reflected and given effect to in GRECO recommendation viii, requires that structurally and/or institutionally separate pay determination arrangements be put in place in respect of the judiciary.

12. Accordingly, the AJI respectfully requests the Independent Review Panel to recommend to the Government that such arrangements be put in place, in a form that respects and upholds the independence of the judiciary and is consistent with GRECO recommendation viii.
13. I enclose copies of the various GRECO Reports referred to above. The AJI will, of course, be happy to provide any further information or assistance it can to the Independent Review Panel.

Yours Sincerely,



Ms. Justice Tara Burns,

High Court,

President of the AJI,

Chambers 7,

Criminal Courts of Justice,

Parkgate St.,

Dublin 8.

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cc: Mr. Paul Gallagher S.C., The Attorney General, Office of the Attorney General,
Merrion St., Dublin 2.



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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FOURTH EVALUATION ROUND

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

SECOND COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 90th Plenary Meeting
(Strasbourg, 21-25 March 2022)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Ireland](#) was adopted by GRECO at its 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. The [Compliance Report](#) was adopted by GRECO at its 75th plenary meeting (20-24 March 2017) and made public on 29 June 2017. GRECO concluded that Ireland had only implemented satisfactorily or dealt with in a satisfactory manner three of the 11 recommendations and three partly and considered the compliance level as "globally unsatisfactory" and decided to apply its "non-compliance procedure".
3. The [Interim Compliance Report](#) was adopted at the 80th plenary meeting of GRECO (18-22 June 2018) and made public on 5 July 2018. Some minor improvements were recognised, but the level of compliance remained "globally unsatisfactory".
4. In the [Second Interim Compliance Report](#), adopted by GRECO at its 85th plenary meeting (25 September 2020) and published on 18 November 2020, GRECO concluded that five of the 11 recommendations had been implemented satisfactorily or dealt with in a satisfactory manner. Consequently, the level of compliance with the recommendations at that stage was no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure, and GRECO discontinued its "non-compliance procedure" under Rule 32. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO asked the Head of the Delegation of Ireland to provide a report on the measures taken to implement the pending recommendations. That report, submitted on 1 October 2021, and further information provided subsequently, form the basis of the current report.
5. [This Second Compliance Report](#) assesses progress in implementing the outstanding recommendations since the Second *Interim* Compliance Report (recommendations i, iii, vii, viii, ix and x) and provides an overall appraisal of the level of Ireland's compliance with these recommendations.
6. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÖÖT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. They were assisted by GRECO's Secretariat in drawing up this Second Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
8. **GRECO** recalls that this recommendation was not implemented in the Second *Interim* Compliance Report. GRECO noted that, with the lapsing of the Public Sector Standards Bill and the formation of a new Irish government in June 2020, the work to reform and review Ireland's ethics statutory framework had to be restarted.

9. The authorities now indicate that the review of the statutory framework, covering the existing ethics legislative framework, recommendations of relevant tribunals of inquiry, recommendations made by the Standards in Public Office Commission, current EU/international best practice, and the views submitted in the course of a public consultation is scheduled to be completed in the second quarter of 2022, and on that basis, the proposals for legislative reform will be brought to the Government in the course of 2022. The proposed bill will be subsequently introduced before the Oireachtas (Irish Parliament).
10. GRECO takes note of the intention of the Irish Government to reform the existing ethics statutory framework. That said, the completion of this initiative appears to be delayed, as according to the previous *interim* compliance report, this review was expected to be completed in the first quarter of 2021. The relevant Bill, based on the review findings, is not even in preparation yet. Overall, no tangible progress has been demonstrated in relation to the implementation of this recommendation. GRECO encourages the authorities to step up their efforts in order to meet the requirements of this recommendation with no further delay. At present, the situation appears to be similar to the one at the time of the adoption of the Second *Interim* Compliance Report.
11. GRECO concludes that recommendation i remains not implemented.

Recommendation iii.

12. *GRECO recommended that the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.*
13. It is recalled that this recommendation was not implemented in the Second *Interim* Compliance Report. Following the lapse of the Public Sector Standards Bill (see paragraph 8 above), the review of the existing ethics statutory framework had to start from scratch.
14. The authorities now report that this recommendation will be addressed in the framework of the reform and consolidation of the ethics in public office legislation (paragraph 9 above). The review of the of the statutory framework, expected to be completed in the second quarter of 2022, also envisages to reflect the international best practice in this respect and to enhance asset declaration obligations on members of parliament by including information on assets, liabilities and interests of close or connected persons.
15. GRECO takes note of the information provided by the authorities and observes that no tangible steps have been taken so far towards the implementation of this recommendation. Consequently, GRECO concludes that recommendation iii remains not implemented.

Corruption prevention in respect of judges

Recommendation vii.

16. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*

17. GRECO recalls that this recommendation was not implemented in the *Second Interim Compliance Report*, as the Judicial Appointments Bill had lapsed, and thus no modifications had been made to the process for selecting, recruiting, promoting and transferring of judges. GRECO took note of the new Government's intention to elaborate proposals and engage with stakeholders on judicial appointments, but this was insufficient to assert any tangible progress.
18. The authorities now inform that in December 2020 the Government approved the General Scheme of the Judicial Appointments Commission Bill, which is expected to be published in March 2022. Under the new Bill, the Judicial Appointments Commission (JAC) is to replace the Judicial Appointments Advisory Board (JAAB). It is planned that the JAC will be headed by the Chief Justice and include a further two judge nominees of the Judicial Council (one practising solicitor and one practising barrister), one court President, the Attorney General, as well as four lay members¹, thus providing for an equal number of lay persons and judges on the JAC, each member having one vote. According to the Bill, the Minister is to receive five unranked recommendations for each vacancy; eight recommendations for two vacancies; and eleven recommendations for three vacancies. The Bill requires that the Government first has regard to a person who has been recommended, without establishing a legal obligation on the Government to appoint that candidate. Finally, the Bill also stipulates that all persons wishing to be considered for appointment to judicial office, including serving judges, should apply to the JAC.
19. GRECO takes note of the information provided by the authorities. It notes that the envisaged composition of the JAC, which is to replace the JAAB according to the Bill, would have an equal number of representatives of the judiciary and lay persons. Although this goes in the right direction compared to previous proposals, according to which lay members were to be in a majority, GRECO maintains its position, expressed in previous reports, that the JAAB, consisting of a majority of judges, has a suitable composition in conformity with the requirement enshrined in the Council of Europe Committee of Ministers' Recommendation CM/REC(2010)12², which provides that, in situations where final judicial appointments are taken by the executive, an independent authority, drawn in substantial part from the judiciary, should be authorised to make recommendations or opinions prior to such appointments. Further, GRECO remains concerned that under the proposed Bill, the Government, before its decision on appointment, would still receive a non-prioritised list of candidates, without any ranking among the candidates put forward, which could lead to politicised decisions. In this regard, GRECO reiterates the importance of a merit-based selection procedure leading to a targeted shortlist of only the very best candidates, ranked in order of priority. It is hoped that these concerns are duly addressed in the Judicial Appointments Commission Bill, currently in preparation.
20. In view of the foregoing and the fact that the Judicial Appointments Commission Bill is at a very early stage, GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

21. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*

¹ One nominated by the Irish Human Rights and Equality Commission, and the other three be recruited by the Public Appointments Service for appointment by the Minister for Justice

² [Recommendation CM/Rec\(2010\)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities.](#)

22. GRECO recalls that this recommendation was not implemented in the Second *Interim Compliance Report*. Following the revocation of the constitutional protection against the reduction of the judges' salaries, allowing a series of cuts in their pay and pension as part of the response to the financial crisis, no mechanism had been put in place for examining questions concerning constitutional safeguards of the judiciary. In addition, GRECO stressed the importance of establishing a judicial council, or other forms of associations on behalf of judges, as an important link between the judiciary and the executive branch.
23. The authorities now refer to the functions of the Judicial Council pursuant to Section 7 of the Judicial Council Act 2019, which include promoting and maintaining "excellence in the exercise by judges of their judicial functions and high standards of conduct among judges having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts". In addition, the authorities indicate that restoration of certain deductions of pay of public servants, including the judiciary, is envisaged under a statutory roadmap under the Public Service Pay and Pensions Act of 2017.
24. Further, reference is made to the Judicial Planning Working Group, set up in April 2021, which aims to "make recommendations on relevant issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice." The Group is chaired by the former Secretary General of the Department of Education and Skills, and comprises representatives of the Department of Justice, Department of Public Expenditure and Reform, the Prime Minister's Office (An Taoiseach), the Courts Service and the Office of the Attorney General. Two judicial observers were added to the Group in October 2021. The Group is expected to provide its activity report within 12 months of its establishment.
25. GRECO takes note of the information provided by the authorities. It recalls that this recommendation was issued at a time when there was no judicial council in Ireland or other forms of associations on behalf of judges, which made them fragile vis-à-vis government administrative policies and plans concerning the judiciary, salaries etc. The overall situation has changed in this respect with the establishment of the Judicial Council. That said, the Judicial Council Act of 2019 does not provide for a framework allowing the examination of judicial employment conditions, but aims to promote judicial excellence, to maintain high standards of judges including their independence, impartiality and integrity and propriety. To this comes the Judicial Planning Working Group³ established in 2021, which is yet to report on the outcome of its activities.
26. GRECO concludes that recommendation viii remains not implemented.

³ According to its terms of reference, the Working Group is tasked to consider the number and type of judges required to ensure efficient administration of justice; the impact of population growth on judicial resource requirements; the extent to which efficiencies in case management and working practices could help in meeting additional service demands and/or improving services and access to justice; to evaluate the estimated impact of the Covid-19 pandemic on court caseload in the short, medium, and long term and strategies for reducing waiting times to significantly improve on pre-Covid levels; to examine experiences of other jurisdictions and obtain information on judicial practices and case management systems; to consider the costs associated with recruiting additional judges, including salaries, allowances, judicial support staff and chambers; to review forthcoming and proposed policy and legislative reforms that may impact on the requirement for judge numbers including; to make recommendations for developing judicial skills in areas such as white collar crime; to make recommendations on issues such as judicial workload, barriers to entry, efficiency gains, and speed of access to justice; and to consider the implications of Brexit on the courts in regard to judicial resources and potential increased workload.

Recommendation ix.

27. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*
28. It is recalled that this recommendation was not implemented in the Second *Interim Compliance Report*. While the setting up of a Judicial Conduct Committee at the Judicial Council and the commencement of work on developing codes had been welcomed, this process was only at the very initial stage.
29. The authorities now report that at its meeting on 4 February 2022, the Judicial Council unanimously adopted Guidelines for the Judiciary on Conduct and Ethics, which are to enter into effect from June 2022 so as to allow time for putting in place the necessary resources and modalities for their practical implementation. These Guidelines aim at promoting core principles of judicial independence, impartiality, integrity, equality, propriety, competence and diligence. They reflect the standards to be applied by judges when managing the ethical and conduct issues and raise awareness among the public of the role of the judiciary and professional standards. The guidelines are also said to enable complaints regarding alleged breaches by judges, who will be accountable for misconduct to the Judicial Conduct Committee. The authorities indicate that, according to legislation, the system should be operational by 28 June 2022.
30. GRECO notes with satisfaction that the new Guidelines for the Judiciary on Conduct and Ethics have been adopted and they are associated with a complaints mechanism, which could lead to actions in case of misconduct. However, the Guidelines have yet to enter into force, and the modalities are currently being put in place to enable their application in practice. Until the completion of these remaining steps, GRECO cannot consider this recommendation as implemented more than partly.
31. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

32. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
33. GRECO recalls that this recommendation was not implemented in the Second *Interim Compliance Report*. GRECO had welcomed the establishment of the Judicial Studies Committee at the Judicial Council and the steps taken towards the elaboration of a training programme; however, the process had not been finalised at the time and information about the actual training conducted and resources allocated to it had not been made available.
34. The authorities now report that, following the recruitment of a High Court Judge with a considerable legal education experience to chair the Judicial Studies Committee, an induction training programme has been put in place. All judges appointed since July 2020 are said to have received induction training, along with some 30 other judges. In-service training has also commenced. However, the authorities indicate that owing to the backlog of cases in the courts and the limited number of judges available, the attendance of in-service training so far proves difficult for many of the serving judges.

35. GRECO notes with satisfaction that induction and in-service training of judges has been initiated as a permanent structure and that an experienced judge has been appointed to the Judicial Studies Committee, in charge of the training. That said, the training has been put in place only recently and the level of attendance appears rather low; as such it is slightly premature to assess it as “institutionalised”. GRECO encourages the authorities to consider further efforts to ensure that the training is attended by many more judges, whether it is for induction or in-service training.

36. GRECO concludes that recommendation x has been partly implemented.

III. CONCLUSIONS

37. In view of the foregoing, GRECO concludes that Ireland has now implemented satisfactorily or dealt with in a satisfactory manner five of the eleven recommendations contained in the Fourth Round Evaluation Report. Of the remaining recommendations, two have been partly implemented and four remain not implemented.

38. More specifically, recommendations ii, iv, v, vi and xi have been implemented satisfactorily or dealt with in a satisfactory manner, recommendations ix and x have been partly implemented and recommendations i, iii, vii and viii remain not implemented.

39. As regards members of parliament, while the Government’s commitment to implement the recommendations and continue with reforms of the existing ethics statutory framework is noted, no tangible progress has been made since the adoption of the previous compliance report. The authorities are encouraged to step up their efforts to introduce a new ethics statutory framework as required by the outstanding recommendations.

40. As far as judges are concerned, the envisaged replacement of the Judicial Appointments Advisory Board (JAAB) by a Judicial Appointments Commission (JAC), as per the Judicial Appointments Commission Bill, remains questionable, as the composition of the JAAB, which includes a majority of judges, is considered more suitable for judicial appointments than the JAC, which would have an equal number of representatives of the judiciary and lay persons. The fact that under the proposed Bill, the Government would still receive a non-prioritised list of unranked candidates is also a concern, as the risk of politicised decisions remains. Induction and in-service training for judges has been institutionalised to some extent, and the guidelines on conduct and ethics have been adopted. Lastly, while the establishment of the Judicial Council has been an important development, more should be done to ensure constitutional safeguards of the judiciary.

41. In view of the fact that further progress is required to implement outstanding recommendations, GRECO, in accordance with Rule 31 revised, paragraph 9 of its Rules of Procedure, asks the Head of delegation of Ireland to submit additional information on the implementation of pending recommendations, namely recommendations i, iii, vii, viii ix and x by 31 March 2023 at the latest.

42. Finally, GRECO invites the Irish authorities to authorise, as soon as possible, the publication of the report and to make it public.



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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FOURTH EVALUATION ROUND

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

SECOND INTERIM COMPLIANCE REPORT IRELAND

Adopted by GRECO at its 85th Plenary Meeting
(Strasbourg, 21-25 September 2020)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Ireland](#) was adopted by GRECO at its 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014, following authorisation by Ireland. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. In the [Compliance Report](#), adopted by GRECO at its 75th plenary meeting (20-24 March 2017) and made public on 29 June 2017, it was concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner three (recommendations ii, iv and xi) of the eleven recommendations contained in the Fourth Evaluation Round Report. In the light of these results, GRECO concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2 (i) (concerning members found not to be in compliance with the recommendations contained in the evaluation report) and asked the Head of Delegation of Ireland to provide a report on the progress in implementing the pending recommendations.
3. In the [Interim Compliance Report](#), adopted by GRECO at its 80th plenary meeting (18-22 June 2018) and made public on 5 July 2018, it was concluded that Ireland had still only implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Evaluation Report. Four recommendations had been partly implemented and four recommendations had not been implemented. In light of these results, GRECO also concluded that the overall low level of compliance with the recommendations remained "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. In accordance with Article 32, paragraph 2, sub-paragraph (ii.a), GRECO had drawn the Head of the Irish delegation's attention to the non-compliance with the relevant recommendations and the need to take determined action with a view to achieving further progress as soon as possible.
4. In addition, in accordance with Rule 31 para. 8.2, as revised, of its Rules of Procedure, GRECO asked the Head of the Irish delegation to submit, by 30 September 2019, additional information on the action taken to implement the eight pending recommendations. This information was received on 24 September 2019 (and updated on 25 February and 16 September 2020) and forms the basis of this Second Interim Compliance Report.
5. This [Second Interim Compliance Report](#) assesses the implementation of the eight pending recommendations (i.e. recommendations i, iii, v-x) since the adoption of the previous Interim Report and provides an overall assessment of Ireland's level of compliance with these recommendations.
6. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÕOT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. They were assisted by GRECO's Secretariat in drawing up this Second Interim Compliance Report.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

7. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
8. GRECO recalls that this recommendation remained partly implemented at the time of the adoption of the Interim Compliance Report. Earlier it had already been reported that the adoption of a new public sector normative framework (the Public Sector Standards Bill 2015) was underway which, if adopted, appeared to provide a uniform and consolidated legal framework for members of parliament, on an equal footing with other public officials. GRECO noted that the Bill provided strengthened obligations, similar to those of office holders (ministers), concerning potential and actual conflicts of interest in various situations. GRECO also noted that the Bill covered publicly employed staff (e.g. civil servants of Parliament) - but not the staff employed by the MPs themselves - and so GRECO reiterated its view expressed in the Evaluation Report that this situation may lead to discrepancies and different considerations depending on who is carrying out a particular task (i.e. the MP or his/her employee on behalf of the MP). GRECO maintained the position that uniform standards ought to apply to the extent possible in this respect. At the time of adoption of the Interim Compliance Report, the Public Sector Standards Bills had not been adopted yet. GRECO concluded that the Public Sector Standards Bill remained promising draft legislation, but as there had not been any substantive change since the adoption of the Compliance Report, the recommendation could not be considered to have been implemented.
9. The authorities now report that the Public Sector Standards Bill, which would have consolidated and updated the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, and Part XV of the Local Government Act 2001, was not yet passed by the *Oireachtas* (Parliament) upon the dissolution of the *Dáil Eireann* (the house of representatives) in January 2020 (ahead of the general election of 8 February 2020) and therefore lapsed. A new government was formed in June 2020, which in its governmental programme committed to “reform and consolidate the Ethics in Public Office legislation”. The lapsed Public Sector Standards Bill will however not be reinstated, but a review of Ireland’s ethics legislation will be carried out by the first quarter of 2021, to inform the drafting of a new consolidated Ethics Bill.¹
10. GRECO takes note of the information provided. While it welcomes the commitment of the new government to reform the existing ethics framework for members of parliament, given that with the lapsing of the Public Sector Standards Bill the work on this has to start from scratch, it can no longer conclude that this recommendation has been partly implemented.
11. GRECO concludes that recommendation i has not been implemented

¹ This review is expected to include *inter alia* a reassessment of the Public Sector Standards Bill and reviews of the recommendations of the relevant Tribunals, recommendations of the Standards in Public Office Commission, international best practices and the existing ethics legislative framework, as well as consultations with stakeholders.

Recommendation iii.

12. *GRECO recommended that the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.*
13. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. Earlier, in the Compliance Report, GRECO had already welcomed the draft legislation underway (in the form of the abovementioned Public Sector Standards Bill 2015), which – if adopted as foreseen – would establish a unified declaration regime at both local and national level, extending the obligations to all members of parliament in this respect and covering connected persons as well. As the Bill was still in the parliamentary process at the time of the Interim Compliance Report, GRECO could only conclude that the recommendation remained partly implemented.
14. The authorities refer to the information provided under recommendation i above: The Public Sector Standards Bill will not be reinstated, but a new consolidated Ethics Bill will be drafted. As part of the review process currently underway to inform the drafting of this new Ethics Bill, this recommendation (and international good practices in this area) will be further considered.
15. GRECO takes note of the information provided. Given that the work relating to the implementation of this recommendation has restarted and is at an early stage, it can no longer conclude that this recommendation has been partly implemented.
16. GRECO concludes that recommendation iii has not been implemented.

Recommendation v.

17. *GRECO recommended that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.*
18. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. In the Compliance Report, some training sessions were reported to have taken place since the 2016 parliamentary elections. However, no long-term approach to provide regular and dedicated training had been established. In the Interim Compliance Report, it was reported that the Standards in Public Office Commission was in the process of developing a comprehensive communications and outreach strategy on which it intended to liaise with the Houses of the *Oireachtas* (Parliament). GRECO welcomed the plan to establish dedicated ethics training for MPs on a regular basis but as the training was not yet in place, the recommendation had not been complied with to the extent expected.
19. The authorities now report that the Standards in Public Office Commission (which has oversight responsibility for the application of the Ethics Act to office holders and members of the civil and public service) has put in place a broad-ranging communications and outreach strategy, including training and information tools targeted at individuals within the Commission's remit. For members of parliament

who are not office holders² the statutory responsibility for training however lies with the Houses of the *Oireachtas* (Parliament). Following discussions with the Houses of the *Oireachtas* (Parliament), the Standards in Public Office Commission has included a basic module on ethics in the training it provides on electoral matters and the regulation of lobbying to members of the *Oireachtas* (Parliament) and their staff. Following the February 2020 elections, an induction training session of one hour was provided to all new members of the *Oireachtas* (Parliament), in March 2020, which was attended by approximately 20 members of parliament (out of a total of 220). Follow-up materials (i.e. links to relevant legislation, forms and guidance materials etc.) were circulated to the *Oireachtas* training unit for transmission to all members of parliament, following the training session. The next training session is planned for October/November 2020, with further session taking place annually thereafter.

20. In addition, the communications and outreach strategy of the Standards in Public Office Commission foresees annual presentations to MPs, an annual advisory drop-in clinic, the circulation of guidance materials and relevant forms and tailored guidance on the Commission's website (which was launched in July 2019). The annual presentation and drop-in advisory clinic were most recently held in October 2019.
21. The authorities furthermore state that once the new ethics legislation will be passed by the *Oireachtas*, the regulatory body responsible (whether this is the Standards in Public Office Commission or a new Public Sector Standards Commissioner) will seek to develop a comprehensive stakeholder outreach and training programme.
22. GRECO takes note of the information provided. It appreciates the efforts of the Standards in Public Office Commission to provide a basic module on ethics for MPs (even if this is strictly speaking not the responsibility of this Commission), as part of its outreach activities on the Ethics Act and Electoral Act. Even if attendance by members of parliament has been rather low so far, GRECO accepts that regular training on ethics has been established, as required by the recommendation. It trusts that the basis of this training will be aligned with the new ethics legislation, once adopted, and be further improved upon at that stage, where needed.
23. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Corruption prevention in respect of judges

Recommendation vi.

24. *GRECO recommended that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.*
25. GRECO recalls that this recommendation was partly implemented in the Interim Compliance Report. The authorities had reported on the discussions of the Judicial Council Bill in the *Seanad Éireann* (the Senate, the upper house of the Parliament). This Bill envisaged the establishment of a judicial council, comprising all serving members of the judiciary with a governing board consisting five *ex officio* members (the Chief Justice and court presidents) and six judges selected by their peers. The key objectives of the Bill further include promotion of excellence by judges in their judicial functions, high standards of conduct among judges, efficient and effective use of judicial resources, education of judges, respect for judicial independence and

² As outlined in paragraph 18 of the Fourth Round Evaluation Report, office holders are members of parliament who at the same time are members of the government or hold certain other high-level offices. As such office holders include the Prime Minister, deputy prime minister, minister of the government or ministers of state, the attorney general and chairman or deputy chairman of *Dáil Éireann* or *Seanad Éireann* (either house of parliament).

public confidence in the judiciary and the administration of justice. At the time of the Interim Compliance Report, further amendments to the Bill were being worked on with the aim of introducing further transparency of the disciplinary process. The Bill was expected to be enacted in the course of 2018.

26. The authorities now report that the Judicial Council Bill was enacted in July 2019 and the Council itself was established on 17 December 2019. The primary functions of the Council, which comprises all members of the judiciary, includes promoting and maintaining "excellence in the exercise by judges of their judicial functions and high standards of conduct among judges". The Board of the Council is responsible for carrying out the functions of the Council on a day-to-day basis.³ The Judicial Council Act furthermore provides for the setting up of a Personal Injuries Guidelines Committee, a Sentencing Guidelines Committee, a Judicial Studies Committee (which will have a role in facilitating the continuing education and training of judges), and a Judicial Conduct Committee (which will consider complaints in relation to judicial misconduct, prepare draft guidelines concerning judicial conduct and ethics for adoption by the Council and provide advice and recommendations to individual judges on judicial conduct and ethics) as well as Judicial Support Committees in each of the five jurisdictions to advise and assist the Council regarding matters of relevance to that jurisdiction. The Judicial Council has been allocated a budget of EUR 1.5 million for the period 2019-2020. An interim secretary was appointed by the Chief Justice in September 2019, with further staffing arrangements of the Council currently being finalised.
27. GRECO welcomes the entry into force of the Judicial Council Act, the subsequent establishment of the Judicial Council and the resources made available to it.
28. GRECO concludes that recommendation vi has been satisfactorily implemented.

Recommendation vii.

29. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*
30. GRECO recalls that this recommendation was not implemented in the Interim Compliance Report. GRECO took note of the information provided by the government on the Judicial Appointments Commission Bill 2017, which had completed its passage through the *Dáil Éireann* (the lower house) before going the *Seanad* (the upper house). The Bill would introduce a new judicial appointments commission comprising a non-judicial chairperson and a majority of lay members with specialist qualifications, who would be independently appointed. Further changes to be introduced by the Judicial Appointments Commission Bill were that a maximum of three names would be recommended to the Government for each judicial vacancy (instead of a minimum of seven, as it was before) and that all judicial appointments (and not just first-time judicial appointments) would be subject to the procedure. GRECO also took note of the information submitted by the judicial authorities themselves (through the Chief Justice of Ireland, the President of the High Court and Acting President of the Court of Appeal, President Designate of the Court of Appeal, the President of the Circuit Court and the President of the District Court) stressing the lack of in-depth consultations with the judiciary on the Judicial Appointments Commission Bill, the opposition of the judiciary to the content of the Bill and the inconsistency of this Bill with European standards (such as those reflected in Council

³ The Board comprises the Chief Justice and the Presidents of each court jurisdiction (as *ex officio* members), one judge elected by and from each of the five court jurisdictions, as well as one additional judge co-opted by the Board.

of Europe Recommendation Rec(2010)12, *inter alia* as there would be an overall majority of laypersons in the Commission, including the chairperson, who would be accountable to Parliament.

31. In the Interim Compliance Report, GRECO also emphasised that the criticism it expressed in the Evaluation Report was not aimed at the pre-selection carried out by the Judicial Appointments Advisory Board (JAAB), a body it considered to be suitable for the selection process. Rather it criticised the procedure of putting forward a non-prioritised list of at least seven candidates for the government to decide upon. Against this background, GRECO questioned whether the composition of an appointments commission as proposed in the Judicial Appointments Bill, placing judges in a clear minority position in favour of a strong lay representation (including the chairperson) accountable to Parliament, was in line with European standards. It therefore urged the authorities to re-consider this matter in order to limit potential risks of improper influence from the executive/political power over the appointment process to the judiciary, or any perception thereof, and to do so in close co-operation with the judicial authorities.
32. The authorities now report that the Judicial Appointments Commission Bill was not yet passed by the *Oireachtas* (Parliament) upon the dissolution of the *Dáil Eireann* (the house of representatives) in January 2020. Approximately 60 amendments remained to be approved by the *Dáil* at that point in time and the Bill therefore lapsed. The new government has included, in its Programme for Government (as adopted in June 2020), a commitment to enact legislation to reform judicial appointments before the end of 2020. It has also committed to engaging with stakeholders to ensure that this legislation enjoys broad support. The Minister of Justice is currently reviewing the relevant reforms with a view to bringing forward proposals for new legislation at the earliest opportunity.
33. GRECO takes note of the information provided on the lapsing of the Judicial Appointments Bill. It welcomes the intention of the new government to elaborate new proposals and to engage with stakeholders on the issue of judicial appointments. In this context, GRECO calls upon the new government to take up this issue in a manner that does justice to the concerns underlying this recommendation (regarding the influence of the executive over this process). As the process of selecting, recruiting, promoting and transferring judges remains as described in the Evaluation Report, GRECO can only conclude that this recommendation has not been complied with.
34. GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

35. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*
36. It is recalled that this recommendation was not implemented in the Interim Compliance Report. The authorities had earlier reported on the establishment of a Public Service Pay Commission, to provide advice on remuneration policy and to examine pay and pension levels across the public service. This position was maintained in the Interim Compliance Report, referring to Article 35 of the Constitution, which provides for judicial independence and safeguards in relation to remuneration and maintaining in this context there is no provision to provide separate structural pay determination arrangements for the judiciary. Representatives of the judiciary however pointed out that this recommendation

extends beyond the question of pay determination arrangements to issues, which have direct impact on judicial independence, integrity and quality. In the Interim Compliance Report, GRECO maintained its previous position that even if this Commission also covers pay levels within the judiciary, it could not be seen as a sufficient mechanism for questions concerning constitutional safeguards of the judiciary, which go well beyond remuneration. It also recalled that this recommendation had strong links to the establishment of a judicial council, which could have a significant impact on maintaining high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges.

37. The authorities now report that examination of judicial employment conditions is not specifically provided for under the Judicial Council Act (which, as noted under recommendation vi, entered into force in July 2019). The authorities maintain their position that judicial pay in Ireland is dealt with within the parameters of the current public service pay policy. In this context, there is no provision to provide separate structural or institutional pay determination arrangements for the judiciary. It is reiterated that the independence of the judiciary is guaranteed by Article 35 of the Irish Constitution, which also contains strong safeguards in relation to judicial remuneration and removal from office.
38. In the absence of any new information, GRECO cannot conclude that this recommendation has been complied with.
39. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

40. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*
41. It is recalled that this recommendation was not implemented in the Interim Compliance Report. Earlier the authorities had reported that the Judicial Council Bill, when enacted, would provide for the establishment of a Judicial Conduct Committee, which would *inter alia* be responsible for drafting guidelines concerning judicial conduct. This situation had not changed at the time of the adoption of the Interim Compliance Report.
42. The authorities of Ireland now report, as also reported under recommendation vi, that the Judicial Council was established on 17 December 2019. In turn, the Judicial Council set up a Judicial Conduct Committee on 30 June 2020, which met for the first time on 28 July 2020. This Committee has started the preparation of codes of conduct, for their future adoption by the Council. It is furthermore envisaged that judges will be accountable for alleged breaches of the codes to the Judicial Conduct Committee, with a possibility for complaints to be made. The legislation provides that the system will be operational by 30 June 2021, but it is likely that this will happen well before this date.
43. GRECO takes note of the information provided. It welcomes the setting up of a Judicial Conduct Committee and that the work on developing codes of conduct for judges started so swiftly following the establishment of this Committee. However, this work is still at an early stage and GRECO therefore cannot conclude that this recommendation has been implemented, not even partly.
44. GRECO concludes that recommendation ix remains not implemented.

Recommendation x.

45. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
46. It is recalled that this recommendation was not implemented in the Interim Compliance Report. Further measures were required to institutionalise training and to provide adequate resources and funding. These measures were foreseen in the Judicial Council Bill, which would provide a statutory basis for the Judicial Studies Committee.
47. The authorities now report, as indicated before, that following the adoption of the Judicial Council Act 2019 (which for the first time gives judicial training a statutory basis), a Judicial Studies Committee was set up on 10 February 2020. This Committee has been tasked with facilitating the continuing education and training of judges. A High Court Judge with vast experience in legal education has been recruited to oversee this process. A training needs analysis is currently underway and a training programme is being developed. Induction training will be included as a priority in the training strategy. It is expected that the first training under this new regime will be rolled out in the next few months.
48. GRECO takes note of the information. It welcomes the establishment of the Judicial Studies Committee at the Judicial Council and the steps towards the elaboration of a training programme taken so far, which should lead to more structured and institutionalised induction and in-service training for judges. Pending the finalisation of this process and further information on the actual training conducted and resources made available, GRECO cannot conclude that this recommendation has been complied with.
49. GRECO concludes that recommendation x remains not implemented.

III. CONCLUSIONS

50. **In view of the foregoing, GRECO concludes that Ireland has now implemented satisfactorily or dealt with in a satisfactory manner five of the eleven recommendations contained in the Fourth Round Evaluation Report.** Six recommendations have not been implemented.
51. More specifically, recommendations ii, iv and v have been dealt with in a satisfactory manner and recommendations vi and xi have been implemented satisfactorily. Recommendations i, iii, vii-x remain not implemented.
52. As regards members of parliament, some progress has been reported in respect of the training to be provided on ethics, conduct in situations of conflicts of interests and corruption prevention (recommendation v), in that the Standards in Public Office Commission has included a module on ethics in its training on obligations under the Electoral Act 1997, to members of the *Oireachtas* (Parliament) and their staff. GRECO trusts that this will be further improved upon following the enactment of the new ethics legislation in the future. The implementation of the two other pending recommendations on the establishment of a uniform and consolidated legal framework for ethical conduct of members of parliament (recommendation i) and improvements of the asset declaration regime (recommendation iii) has however taken a step back, due to the lapsing of the Public Sector Standards Bill 2015. While GRECO welcomes the commitment of the new government to undertake reforms in this area, as evident from the Programme for Government, given that this work is

now again at an early stage, it can only conclude that these recommendations have not been implemented, not even partly.

53. As regards judges, welcome progress has been reported with the establishment of the Judicial Council in December 2019, following the entry into force of the Judicial Council Act in July 2019 (recommendation vi). This Judicial Council Act has also provided a statutory basis for judicial training, with some initial steps taken towards the institutionalisation of induction and in-service training programmes for judges (recommendation x). It is expected that this will soon be followed by the elaboration of a code of conduct (recommendation ix).
54. Finally, the controversial Judicial Appointments Bill, which has a bearing on the selection, recruitment and promotion of judges (recommendation vii), had not been adopted before the dissolution of the *Dáil Eireann* (the house of representatives) in January 2020 and has now lapsed. Given that the compatibility of elements of this Bill (in particular as regards the composition of the Judicial Appointments Commission) with European standards remained questionable, GRECO does not regret that this Bill is no longer being pursued and that instead new proposals are being elaborated. In this context, GRECO wishes to reiterate its appeal to the Irish authorities to reform the selection, recruitment and promotion processes in respect of judges in a manner that does justice to the concerns outlined in the Evaluation Report and to do so in close co-operation with the judiciary.
55. GRECO concludes that the current level of compliance with the recommendations is no longer "globally unsatisfactory" in the meaning of Rule 31 revised, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides not to continue applying Rule 32 concerning members found not to be in compliance with the recommendations contained in the Evaluation Report.
56. Pursuant to paragraph 8.2 of Rule 31 revised of the Rules of Procedure, GRECO requests the Head of Delegation of Ireland to provide a report regarding the action taken to implement the pending recommendations (i.e. recommendations i, iii, vii, viii, ix and x) by 30 September 2021.
57. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

3.

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FOURTH EVALUATION ROUND

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

INTERIM COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 80th Plenary Meeting
(Strasbourg, 18-22 June 2018)

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I. INTRODUCTION

1. The [Fourth Evaluation Round Report on Ireland](#) was adopted by GRECO at its 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014, following authorisation by Ireland. GRECO's Fourth Evaluation Round deals with "Corruption Prevention in respect of Members of Parliament, Judges and Prosecutors".
2. As required by GRECO's Rules of Procedure, the Irish authorities submitted a Situation Report containing information on measures taken to implement the recommendations. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÕOT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
3. In the [Compliance Report](#), adopted by GRECO at its 75th plenary meeting (24 March 2017) and made public on 29 June 2017, it was concluded that Ireland had implemented satisfactorily or dealt with in a satisfactory manner three (recommendations ii, iv and xi) of the eleven recommendations contained in the Fourth Evaluation Round Report. In the light of these results, GRECO also concluded that the very low level of compliance with the recommendations was "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of its Rules of Procedure. It therefore decided to apply Rule 32, paragraph 2.i) in respect of members not in compliance with the recommendations contained in the mutual evaluation report and called on the Head of the Irish delegation to submit a report on progress in implementing the pending recommendations by 31 March 2018. Information was received on 17 April 2018 and on 18 May 2018 and forms the basis for the current Interim Compliance Report.
4. This [Interim Compliance Report](#) assesses the implementation of the eight pending recommendations (i.e. recommendations i, iii, v-x) since the adoption of the Compliance Report, and provides an overall assessment of Ireland's level of compliance with these recommendations.

II. ANALYSIS

Corruption prevention in respect of members of parliament

Recommendation i.

5. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
6. **GRECO** recalls that this recommendation was partly implemented at the time of the adoption of the Compliance Report, as a new public sector normative framework was underway (the Public Sector Standards Bill 2015) which, if adopted, appeared to provide a uniform and consolidated legal framework for members of parliament, on an equal footing with other public officials. GRECO noted that the Bill provided strengthened obligations, similar to those of office holders (ministers), concerning potential as well as actual conflicts of interest in various situations. GRECO noted that the Bill also covered publicly employed staff (e.g. civil servants of Parliament) -

but not the staff employed by the MPs themselves - and so GRECO reiterated its view expressed in the Evaluation Report that this situation may lead to discrepancies and different considerations depending on who is carrying out a particular task i.e. the MP or his/her employee on behalf of the MP. GRECO maintained the position that uniform standards ought to apply to the extent possible in this respect.

7. The authorities of Ireland now report that the Public Sector Standards Bill, which is currently making its way through the Houses of the Oireachtas (Parliament), is to consolidate and update the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001, and Part XV of the Local Government Act 2001. The Bill commenced Committee stage in the Dáil in April 2017.
8. The authorities reiterate that the aim of the Bill is, *inter alia*, to establish integrity principles in the public service, including MPs and to enhance the existing framework for identifying, disclosing and managing conflicts of interest, and minimising corruption risks for all public officials. The Bill would significantly strengthen the obligations for MPs in that it provides for them to have the same obligations as Ministers. Among the key reforms in the Bill is the introduction of a Public Sector Standards Commissioner to oversee a reformed complaints and investigations process and to establish a set of integrity principles for all public officials.
9. GRECO takes note of the information provided and concludes again that the Public Sector Standards Bill 2015 remains promising draft legislation. However the Bill remains subject to parliamentary discussion. There has therefore been no substantive change since the adoption of the Compliance Report and the recommendation cannot be considered to have been implemented.
10. GRECO concludes that recommendation i remains partly implemented.

Recommendation iii.

11. *GRECO recommended that the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.*
12. It is recalled that this recommendation was partly implemented in the Compliance Report. GRECO welcomed the draft legislation underway; the Public Sector Standards Bill 2015, if adopted, would establish a unified declaration regime at both local and national level, extending the obligations to all members of parliament in this respect as well as to cover connected persons.
13. The authorities report that the Public Sector Standards Bill 2015 is still in the parliamentary process. They have also submitted substantial information about the Bill as already noted in the Compliance Report.
14. GRECO takes note of the information provided. It maintains the position that the Public Sector Standards Bill 2015, if adopted, would represent a positive development in respect of income and assets declarations. That said, the Bill is still in the parliamentary process and there has been no substantive change since the compliance report.
15. GRECO concludes that recommendation iii remains partly implemented.

Recommendation v.

16. *GRECO recommended that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.*
17. *GRECO recalls that this recommendation was partly implemented as some training sessions had taken place since the 2016 parliamentary election and that there were plans for more guidance and training in 2017. However, no long term approach to regular and dedicated training has yet been established.*
18. *The Irish authorities now report that the Standards Commission is in the process of developing a comprehensive communications and outreach strategy to ensure that those subject to the legislation within the Commission's remit are aware of their obligations. Given the fact that responsibility for overseeing the compliance of some elected public officials rests with the Houses of the Oireachtas (Parliament), the Standards Commission intends to liaise with the Oireachtas to ensure a coordinated approach to training initiatives. It is expected that this strategy will be developed with implementation commencing by the end of 2018.*
19. *GRECO takes note of the information provided and welcomes the authorities' plan to establish dedicated ethics training for MPs on a regular basis. As such training is not yet in place, the recommendation has not been complied with to the extent expected.*
20. *GRECO concludes that recommendation v remains partly implemented.*

Corruption prevention in respect of judges

Recommendation vi.

21. *GRECO recommended that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.*
22. *It is recalled that this recommendation was not implemented in the Compliance Report. The authorities had indicated that legislation to provide for the establishment of a judicial council was underway; however, GRECO was not made aware of any draft text or details in respect of the establishment of an independent statutory council for the judiciary.*
23. *The authorities now report that the Judicial Council Bill was published in June 2017 and has been presented in Seanad Éireann (the Senate, upper house of Parliament). The authorities stress that the Senate debate revealed general support for the principles which are enshrined in the Bill, including the proposed establishment of a judicial council and an acknowledgement of the role which it could play in underpinning the independence of the judiciary. At the same time, it would provide a vehicle for addressing matters such as further education and training, as well as matters pertaining to discipline. The Bill is currently awaiting committee stage and work is underway to develop appropriate amendments which can be moved during that stage. The broad thrust of the amendments currently being worked upon aim at introducing additional transparency into the disciplinary process. Consideration is also being given to establishing a register of pecuniary interests for judges. The Government is committed to the enactment of the Bill during the course of 2018.*

24. The authorities add that the key objectives of the Bill, in addition to establishing a judicial council, are to provide for the maintenance and promotion of excellence by judges in their judicial functions, high standards of conduct among judges, efficient and effective use of judicial resources, education of judges, respect for judicial independence and public confidence in the judiciary and the administration of justice. The Council is to be made up of all serving members of the judiciary with a governing board consisting of five ex officio members (the Chief Justice and the court presidents) and 6 judges selected by peers.
25. GRECO takes note of the progress reported in respect of establishing a judicial council in Ireland and the functions related thereto, i.e. that draft legislation on the establishment of a judicial council is now in the parliamentary process and publicly available. Although the Bill is still subject to amendments during this process, there would appear to be broad consensus for it and GRECO notes that a future judicial council is to consist of all serving ordinary judges with a governing board consisting of a mix of ex officio chief judge members and other ordinary judges elected by peers. GRECO welcomes this development.
26. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

27. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*
28. GRECO recalls that this recommendation was not implemented in the Compliance Report. It noted that reforms were underway but was not in a position to assess them as they were only presented as Government intentions. GRECO encouraged the authorities to pursue the reform efforts in close consultation with the judiciary.
29. The Government of Ireland now refers to the Judicial Appointments Commission Bill 2017 which arises from a public consultation process on a review of the judicial appointments system in 2014, initiated by the Minister for Justice and Equality. The Government states that it has engaged in in-depth formal consultation with the senior representatives of the judiciary on this draft legislation. Passage of the Bill is progressing and the parliamentary debate has been vigorous, detailed and lengthy. The Bill was published on 30 May 2017 and has completed its passage through Dáil Éireann (the lower house) and is to commence its passage through the Seanad (the upper house). The Bill commits to the introduction of a new judicial appointments commission that will include a non-judicial chairperson, and a majority of lay members with specialist qualifications, who will be independently appointed. In line with the Government Programme, the Bill introduces significant changes to the existing system, such as that a maximum of three names may be recommended to Government for each judicial vacancy (as distinct from the current minimum of seven); and that all judicial appointments are subject to this procedure (as distinct from the current process which only deals with first-time judicial appointments). The new commission will have significant powers and wide functions to prepare selection procedures and an expertly designed framework of skills and attributes, based on essential eligibility matters addressed in the Bill. It will also be properly resourced and staffed.
30. In addition to the information submitted by the Government, GRECO has also received information, directly submitted to it, by the judicial authorities, through the Chief Justice of Ireland, the President of the High Court and Acting President of the Court of Appeal, the President Designate of the Court of Appeal, the President

of the Circuit Court and the President of the District Court concerning Recommendation vii. In their submission they stress that the Judicial Appointments Commission Bill 2017 has not been subject to in-depth consultations with the judiciary (contrary to what is stated by the Government) and that the judiciary has consistently opposed the content of the Bill, the components of which they believe is inconsistent with European standards as reflected in the Council of Europe Recommendation CM/Rec (2010)12.

31. Furthermore, these judiciary representatives submit that the judiciary has made detailed proposals to reform the judicial appointments process in order to develop a merit-based process which is free from interference from governmental and legislative arms. However, the Judicial Appointments Bill, currently before Parliament, contains a commitment to replacing the Chief Justice as chairperson of the appointments body and creating an overall majority of laypersons, including the chairperson, who would be accountable to Parliament. The representatives of the judiciary also refer to the Evaluation Report of GRECO in which the currently existing Judicial Appointments Advisory Board (JAAB) was considered suitable for the selection process.
32. Finally, the judiciary representatives refer to a statement in the European Commission Country Report Ireland 2018 (7.3.2018)¹ in which the envisaged composition of a judicial appointments commission raises concerns regarding the level of participation of the judiciary in that body, referring to the composition proposed which includes an overwhelming majority of lay members, including the chair, accountable to Parliament.
33. GRECO recalls that the current recommendation was, *inter alia*, based upon on-site discussions between its Evaluation Team (GET) and representatives of various interlocutors, including the judiciary, the executive branch, the Bar, the Law Society, the Prosecution Service and representatives of civil society. As reflected in the Evaluation Report, it is noteworthy that the perception of a "politicised" recruitment system was not aimed at the pre-selection procedure carried out by JAAB, but rather at the fact that the JAAB, a body of the judiciary, had to produce a list of candidates (at least seven) without priority and sometimes much longer lists without any order of priority to the government for its final appointment. Consequently, the potential risk of political lobbying and favouritism referred to in the Report, was in the second stage, i.e. once the list of candidates had been established and handed to the government for decision.
34. GRECO takes note of the information provided by the Government as well as by representatives of the judiciary. The Judicial Appointments Commission Bill 2017, which is currently in the parliamentary process, is aimed at reforming the system of judicial appointments, both in substance and in procedure. It would appear that there is no disagreement in Ireland that all appointments of judges should be based on merit, following a pre-selection process and that the selection should lead to a limited number of candidates to be submitted to the executive for a final decision. However, the Government's proposal goes beyond that as it proposes the establishment of a new commission for the selection process. According to information submitted to GRECO, such a commission is to consist of a strong majority of non-judicial members (10 members), and chaired by a non-judicial member, all accountable to Parliament, and only five² judges. Such a commission would replace the current Judicial Appointments Advisory Board (JAAB), which is made up of a majority of judges and chaired by the Chief Justice.

¹ European Commission, COM(2018) 120 final, page 46

² According to the Government, the Bill was amended on 31 May 2018: the number of judges proposed is now five (instead of three in the initial proposal).

35. GRECO has significant concerns about the composition of an appointments commission as proposed in the Judicial Appointments Bill (as amended on 31 May 2018), which would place judges in a clear minority position in favour of a strong lay representation (including the chairperson), accountable to Parliament. GRECO questions if this move is in line with European standards which, in situations where final judicial appointments are taken by the executive, calls for an independent authority drawn in substantial part from the judiciary to be authorised to make recommendations or opinions prior to such appointments.³ GRECO also recalls its own position, as clearly expressed in the Evaluation Report (para. 132), that the composition of the JAAB (consisting of a majority of judges and chaired by the Chief Justice) was considered suitable for the selection procedure.
36. GRECO takes the view that the Judicial Appointments Bill as far as the composition of the appointments commission is concerned needs to reflect European standards, aiming at securing judicial independence through substantial judicial representation in relation to the overall composition of the proposed commission. The controversial Bill, which has been subject to some amendments in this respect, is still under debate in Parliament, subject to critical media attention, and has been heavily criticised by the judiciary on grounds that GRECO assesses to be reasonable. GRECO urges the authorities to re-consider this matter in order to limit potential risks of improper influence from the executive/political power over the appointment process to the judiciary, or any perception thereof, and to do so in close co-operation with the judicial authorities.
37. GRECO concludes that recommendation vii remains not implemented.

Recommendation viii.

38. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*
39. It is recalled that this recommendation was not implemented in the Compliance Report; the authorities reported on the establishment of a Public Service Pay Commission, to provide advice on remuneration policy and to examine pay and pension levels across the public service. GRECO noted that even if this Commission also covers pay levels within the judiciary, it could not be seen as a sufficient mechanism for questions concerning constitutional safeguards of the judiciary, which go well beyond remuneration. Furthermore, GRECO recalled that this recommendation would require a dialogue with judicial representatives.
40. The Government of Ireland maintains its position that the establishment of the Public Service Pay Commission is relevant for this recommendation, in the light of Article 35 of the Constitution, which provides for judicial independence and safeguards in relation to remuneration and that in this context there is no provision to provide separate structural pay determination arrangements for the judiciary.
41. The representatives of the judiciary (see recommendation VII) take issue with this position as this recommendation extends beyond the question of pay determination arrangements to issues which have direct impact on judicial independence, integrity and quality.

³ Recommendation CM/Rec(2010)12 adopted by the Committee of Ministers of the Council of Europe on 17 November 2012, para. 47

42. GRECO takes note of the information provided and maintains its position as stated in the Compliance Report: *"the Public Service Pay Commission deals with general concerns concerning pay levels across the public service. Even if this Commission also covers pay levels within the judiciary, GRECO cannot see how this is a mechanism for questions concerning constitutional safeguards of the judiciary, at least not on its own. GRECO reiterates that this recommendation has strong links to the establishment of a judicial council. Indeed, a judicial council could make a significant impact on maintaining the high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges."* GRECO urges the authorities to re-consider this matter in close co-operation with the judicial authorities.
43. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

44. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*
45. It is recalled that this recommendation was not implemented in the Compliance Report; the authorities had reported that future judicial council legislation would provide for the establishment of a committee empowered to deal with standards of judicial conduct. GRECO noted that the situation was much the same as it was at the time of the adoption of the Evaluation Report.
46. The authorities of Ireland now report that the situation has not changed since the adoption of the Compliance Report, i.e. that the judicial council legislation, when enacted, will provide for the establishment of a judicial conduct committee which, *inter alia*, will be responsible for drafting guidelines concerning judicial conduct.
47. GRECO notes that the situation is largely the same now as it was described in the Compliance Report and concludes that recommendation ix remains not implemented.

Recommendation x.

48. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
49. It is recalled that this recommendation was not implemented in the Compliance Report as the training for judges had no formal structure and further measures were required to institutionalise training and to provide adequate resources and funding, measures that were foreseen in the Judicial Council Bill.
50. The authorities now repeat that the legislation to establish a judicial council will provide a statutory basis for the Judicial Studies Committee which is to facilitate the continuing education and professional development of judges.
51. GRECO notes again that the situation is largely the same now as it was described in the Compliance Report and concludes that recommendation x remains not implemented.

III. CONCLUSIONS

52. **In view of the foregoing, GRECO concludes that Ireland has still only implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Round Evaluation Report.** Four recommendations have been partly implemented and four recommendations have not been implemented.
53. More specifically, recommendations ii and iv have been dealt with in a satisfactory manner and recommendation xi has been implemented satisfactorily. Recommendations i, iii v and vi have been partly implemented and recommendations vii-x remain not implemented.
54. With respect to members of parliament, GRECO welcomes the Public Sector Standards Bill 2015, which has the potential to provide for a common and uniform legal framework for public officials, including members of parliament. GRECO also welcomes the proposed declaration regime, contained in the 2015 Bill, which aims at extending the obligations upon all members of parliament and at including close or connected persons. However, the process of the 2015 Bill is slow and it has yet to be finalised and adopted by parliament. Progress is also still required in respect of training of MPs on issues such as ethics and conduct in situations of conflicts of interests and corruption prevention.
55. As far as judges are concerned, GRECO notes that some progress has been made since the adoption of the Compliance Report in that the Judicial Council Bill 2017 is now pending before Parliament and appears to be a positive step in the direction of establishing such a council. Contrary to that, GRECO notes that the Judicial Appointments Bill 2017 is subject to much controversy and it appears questionable whether it is in line with European standards aimed at securing judicial independence in respect of appointments and promotion of judges. GRECO urges the authorities to continue their efforts to reform the judiciary, as indicated in the Evaluation Report, and to carry this out in close co-operation with the judiciary.
56. GRECO concludes that the overall low level of compliance with the recommendations remains "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure.
57. Pursuant to Rule 32 2. (i) of the Rules of Procedure, GRECO requests the Head of the Irish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i, iii and v-x) as soon as possible, but at the latest by 30 June 2019.
58. In accordance with Rule 32, paragraph 2 subparagraph (ii), GRECO instructs its President to send a letter – with a Copy to the President of the Statutory Committee – to the Head of Delegation of Ireland, drawing his attention to the need to take determined action with a view to achieving tangible progress as soon as possible.
59. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.

4.



Group of States against Corruption

Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Public

GrecoRC4(2017)7

FOURTH EVALUATION ROUND

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

COMPLIANCE REPORT

IRELAND

Adopted by GRECO at its 75th Plenary Meeting
(Strasbourg, 20 -24 March 2017)

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I. INTRODUCTION

1. The Compliance Report assesses the measures taken by the authorities of Ireland to implement the recommendations issued in the Fourth Round Evaluation Report on Ireland which was adopted at GRECO's 65th Plenary Meeting (10 October 2014) and made public on 21 November 2014, following authorisation by Ireland ([Greco Eval IV Rep \(2014\) 3E](#)). GRECO's Fourth Evaluation Round deals with "Corruption prevention in respect of members of parliament, judges and prosecutors".
2. As required by GRECO's Rules of Procedure, the authorities of Ireland submitted a Situation Report on measures taken to implement the recommendations. This report was received on 5 October 2016 and served, together with the information submitted subsequently, as a basis for the Compliance Report.
3. GRECO selected Estonia and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Mari-Liis SÕOT on behalf of Estonia, and Mr David MEYER on behalf of the United Kingdom. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
4. The Compliance Report assesses the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any outstanding recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities after the adoption of the present Compliance Report.

II. ANALYSIS

5. GRECO addressed 11 recommendations to Ireland in its Evaluation Report. Compliance with these recommendations is dealt with below.

Corruption prevention in respect of members of parliament

Recommendation i.

6. *GRECO recommended that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament – including their staff as appropriate – covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.*
7. **The authorities** report that the existing public ethics framework is subject to legal reform with the introduction of a bill in Parliament: the Public Sector Standards Bill 2015 is to consolidate and update the Ethics in Public Office Act 1995, the Standards in Public Office Act 2001 and Part XV of the Local Government Act 2001. The Bill was published on 23 December 2015 and went through the second stage in the Dáil (lower House of Parliament) on 20 January 2016. The authorities state that the Bill will recommence at Committee Stage in the Dáil in April 2017 with a view to its enactment before the summer recess the same year. The Bill is available online¹.

¹ <http://www.per.gov.ie/en/public-sector-standards-bill/>

8. More precisely, the authorities explain that the aim of the Bill is to establish integrity principles in the public service; to enhance the existing framework for identifying, disclosing and managing conflicts of interest and minimising corruption risks for all public officials, including MPs, in a single text. Also, the Bill provides the same obligations for MPs and ministers and that the legislation (if adopted) may be followed by codes of ethics. However, the staff of MPs are not included since they are employed by MPs and not by a public body.
9. GRECO takes note of the efforts to establish a new public sector normative framework, currently contained in the Public Sector Standards Bill 2015. GRECO welcomes this Bill which, if adopted, would appear to provide a uniform and consolidated legal framework for members of parliament, on an equal footing with other public officials. GRECO also notes that the Bill provides strengthened obligations, similar to those of office holders (ministers), concerning potential as well as actual conflicts of interest in various situations. GRECO notes that the Bill also covers publicly employed staff (e.g. civil servants of Parliament) but not the staff employed by the MPs themselves. GRECO reiterates its view expressed in the Evaluation Report that this situation may lead to discrepancies and different considerations depending on who is carrying out a particular task, the MP or his/her employee on behalf of the MP. Although GRECO sees the legal difficulty in bringing such staff under the same legislation as the public officials, it maintains its position that uniform standards ought to apply to the extent possible in this respect. Finally, it notes that the 2015 Bill has not yet been adopted by Parliament.
10. GRECO concludes that recommendation i has been partly implemented.

Recommendation ii.

11. *GRECO recommended that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protection and encouragement for whistle blowers contained in the protected Disclosures Act 2014 are fully understood and implemented.*
12. The authorities state that the provisions of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 are not incompatible with the Protected Disclosures Act 2014. These provisions do not act as a disincentive to whistleblowing. Nor do they encroach on the right of a person to make a protected disclosure in accordance with the Protected Disclosures Act 2014. Section 111 of the 2013 Act explicitly does not apply to a member of parliament who made or received confidential communication, or who owns a private paper. At no time is a member prohibited by this legislation from disclosing any private paper that is their property. Similarly, either party to any confidential communication (including the MP) is entitled to disclose that communication. Section 111 of the 2013 Act refers specifically to knowing or reckless disclosure, which is not legitimate, by a person other than a member of parliament, and other than the person who made the confidential communication to the MP. In addition, Section 111 does not impact on any pre-existing rights of disclosure that a Member of Parliament may have.
13. Furthermore, Section 111 of the Act 2013 contains a number of caveats before the offence of knowingly or recklessly disclosing a confidential communication or private paper of a member of parliament can be committed. These include knowing or reckless disclosure and disclosure that is not authorised by the 2013 Act.
14. Disclosure is authorised by the 2013 Act in the following circumstances: Section 105(a) makes provision for a member (of parliament) to give consent to a third party to have access to or disclose their private paper. Additionally, section 105(b) permits the disclosure of a private paper upon application to the High Court if it: "is

relevant to the investigation of any offence alleged against the member (or parliament), or is essential by virtue of an overriding public interest arising in the context of proceedings before a court, tribunal, commission or Part 2 [parliamentary] inquiry”.

15. Section 106 of the 2013 Act makes it explicit that the provisions/offences within the 2013 Act do not impact on any pre-existing rights of a person to disclose information communicated to a Member i.e. *“Nothing in this Part prevents a person who has communicated with a member and who is otherwise entitled by law to disclose the fact or content of the communication from doing so whether or not the person represented to the member at the time of the communication that its source or content would be treated as confidential.”*
16. Where a person is to face prosecution for an offence under Section 111 of the 2013 Act, it shall be a defence (under section 15 of the Protected Disclosures Act 2014) for the person to show that, at the time of the alleged offence, the disclosure the subject matter of the offence *“was, or was reasonably believed by the person to be, a protected disclosure.”*
17. The Irish authorities conclude that the above provisions would enable a whistle blower rather than act as a disincentive.
18. GRECO takes note of the extensive information provided, which explains the meaning of and inter-relation between the different elements of the provisions concerned. It recalls that, as mentioned in the Evaluation Report, the purpose of the recommendation was to ensure that, for example, a staff member or third party may disclose potential corruption without fear of prosecution, under section 111. GRECO is of the opinion that the explanations provided by the authorities meet the concern of the recommendation.
19. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

20. *GRECO recommended the existing regime on asset declarations be enhanced by (i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and (ii) that consideration be given to widening the scope of members’ declarations to also include close or connected persons, in line with the existing rules for office holders.*
21. The authorities report that the existing regime on asset declarations is subject to reform; the Public Sector Standards Bill 2015 broadens the material and personal scope of declarable interests and provides for a common definition of declarable interests applying at both local and national level. Indeed, the authorities state that the Bill will, if adopted, strengthen the disclosure regime for members of parliament in that the obligations to declare will be the same as for the office holders.
22. More precisely, under the Bill, MPs will have to declare both assets and liabilities over certain thresholds to the Public Sector Standards Commissioner to be established by the Bill. The authorities specify that section 7 sets out the declarable interests which will be published, while section 8 provides that in the case of Category A officials (including members of parliament) the amount of income where it exceeds €2 600 and any individual assets (excluding pensions or the private home) and liabilities over €50 000, will have to be declared to the Commissioner. These interests and liabilities are to be declared on a non-public basis, which

entitles the Commissioner to monitor and carry out an investigation where considered appropriate. The authorities explain that this is in order to balance the right to privacy with the public interest.

23. In addition, the Bill rules that senior public officials and politicians (category A) will make periodic disclosures in relation to their own interests. The interests of an official's spouse or child must only be declared where the interest could reasonably be perceived to be connected with the performance of the public official's functions. Interests of family relatives are to be declared on a private basis to the Commissioner. Also, the authorities report that interests of connected persons (which includes relatives, as well as business partners and companies and other such legal arrangements that the official has a beneficial interest in or is a director of) will have to be disclosed by all officials in the context of making *ad hoc* disclosures where s/he has actual knowledge of interest and where it could reasonably be perceived to be connected with the performance of their functions.
24. GRECO welcomes this draft legislation underway to address the present recommendation and it encourages the authorities to pursue their efforts. Indeed, the Public Sector Standards Bill 2015 sets forth a unified declaration regime at both local and national level, extending the obligations upon all members of parliament in this respect. It would appear that quantitative data on MPs' significant financial and economic involvements are to be included in the declarations. GRECO notes that the declaration regime is intended to also cover connected persons. However, the Bill has not yet been adopted and GRECO is looking forward to scrutinising the legislation, once adopted by Parliament.
25. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

26. *GRECO recommended that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of Parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity.*
27. The authorities report that the Public Sector Standards Bill 2015 is to replace the Standards Public Office Commission with a single Public Sector Standards Commissioner. In particular, the Commissioner will have increased powers of enforcement and through the establishment of an independent Deputy Commissioner will implement more streamlined and improved complaints and investigation procedures. The Commissioner will be empowered to initiate investigation, even in the absence of the receipt of a complaint. In addition, the authorities state that the Commissioner will have stronger powers of sanction and a broader role of guidance and advice and will have oversight of the Codes of Conduct applicable to public officials. The procedures and sanctions are set out in part 4 of the Bill which is available on-line².
28. The authorities add that under the existing legislation, an investigation report prepared by the Standards in Public Office Commission is published on the Commission's website, which entitles a wide scrutiny by the general public and media. Under the Bill, a report on an investigation is to be published when violations have been found.

² <http://www.per.gov.ie/en/public-sector-standards-bill/>

29. GRECO notes that the authorities have considered the establishment of a new monitoring mechanism, which may guarantee the supervision in respect of all members of parliament, regardless of whether they are office holders or not. Although the Bill has not yet been adopted, the establishment of a new independent monitoring mechanism has been duly considered by the Irish authorities as reflected in the Public Sector Standards Bill 2015. As a consequence, the recommendation is to be regarded as complied with.
30. GRECO concludes that recommendation iv has been dealt with in a satisfactory manner.

Recommendation v.

31. *GRECO recommended that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.*
32. The authorities report that specific information sessions are provided by the Parliamentary Service from time to time. Following the 2016 General Election, members of parliament were provided with initial briefings by the Standards in Public Office Commission in relation to the existing ethical framework, namely the Ethics in Public Office Acts 1995 and 2001, the Codes of Conduct for the guidance of members drawn up pursuant to Section 10 of the 2001 Act and tax clearance and statutory declaration requirements under the Acts. The authorities also state that further sessions took place during the second half of 2016. In 2017, the Commission organised "drop-in clinic" to provide MPs with advice concerning their annual disclosures. The Commission has also identified a need for establishing further guidelines in 2017.
33. GRECO takes note of the information provided and acknowledges that some training sessions have taken place since the 2016 parliamentary election and that there are plans for more guidance and training in 2017. However, the current recommendation calls for regular dedicated training, which requires a more long term approach in respect of training in ethical matters. As a consequence, GRECO encourages the authorities to do more and to establish training programmes on a more permanent basis in order to keep the members of parliament aware of their obligations over time.
34. GRECO concludes that recommendation v has been partly implemented.

Corruption prevention in respect of judges

Recommendation vi.

35. *GRECO recommended that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.*
36. The authorities report that the drafting of legislation to provide for the establishment of a judicial council is well advanced and that significant progress has been made since the adoption of the Evaluation Report. Also, the authorities state that the independence of such a council is to be enshrined in a legislative framework.
37. GRECO takes note of the information provided. It welcomes the fact that legislation to establish a judicial council is underway. GRECO encourages the authorities to continue their efforts to establish such a body. However, considering that it has not

been made aware of any draft texts or details in respect of the progress made so far, GRECO cannot conclude that this recommendation has been complied with, even in part.

38. GRECO concludes that recommendation vi has not been implemented.

Recommendation vii.

39. *GRECO recommended that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.*
40. The authorities report that the system for appointing judges has been under review in the Department of Justice & Equality since 2014. In addition, they report that a public consultation process was conducted in 2014 and comprehensive submissions were received from the Judiciary, the Bar Council, the Law Society, the Free Legal Aid Centres, the Irish Council for Civil Liberties and many other groups and individuals. The authorities furthermore submit that the 2016 Programme for Government contains a commitment to reform the judicial appointments system. To this end, the Government has approved a general scheme of the Judicial Appointments Commission Bill in December 2016, which was before the Justice and Equality Committee of Parliament on 25 January 2017. The Government intends to publish the Bill in March 2017. The intentions of the Government are, *inter alia*, to replace the current Judicial Appointments Advisory Board with a Judicial Appointments Commission (with a lay member majority), that appointments will be based on a reduced number of suggested candidates (three instead of seven) and that such a Commission is also to suggest candidates for promotion.
41. GRECO takes note of the information provided which indicate that reforms are underway. GRECO is not in a position to assess the substance of these reforms as it has not been provided with more than the current intentions of the Government. GRECO encourages the authorities to pursue their reform efforts in close consultation with the Judiciary to the extent feasible and looks forward to being further informed of the results of these efforts. However, considering that it has not been provided with any draft texts or details in respect of the progress made so far, GRECO cannot conclude that this recommendation has been complied with, even in part.
42. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

43. *GRECO recommended that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined – in close dialogue with judicial representatives – with a view to maintain the high levels of judicial integrity and professional quality in the future.*
44. The authorities report that the Government has established a Public Service Pay Commission, to provide advice on public service remuneration policy, to examine pay levels across the public service and to provide objective analysis on the appropriate pay levels for identifiable groups within the public sector. It is also foreseen that the Commission is to provide objective analysis on the appropriate pay levels and pensions for officeholders' and this will include the judiciary. The Commission will provide an initial report to the Government on these matters in the second quarter of 2017.

45. GRECO notes that the Public Service Pay Commission deals with general concerns concerning pay levels across the public service. Even if this Commission also covers pay levels within the judiciary, GRECO cannot see how this is a mechanism for questions concerning constitutional safeguards of the judiciary, at least not on its own. GRECO reiterates that this recommendation has strong links to the establishment of a judicial council. Indeed, a judicial council could make a significant impact on maintaining the high levels of independence of the judiciary and guaranteeing the respect of constitutional principles for judges. GRECO also recalls that this recommendation would require a dialogue with judicial representatives, for example, via a future judicial council. Consequently, the establishment of the Public Service Pay Commission does not in itself address the concern raised in the current recommendation.
46. GRECO concludes that recommendation viii has not been implemented.

Recommendation ix.

47. *GRECO recommended (i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and (ii) connect such an instrument to an accountability mechanism.*
48. The authorities report that a future judicial council legislation, once adopted, will provide for the establishment of a judicial council committee, which will be empowered to promote and maintain high standards of judicial conduct. In addition to investigating complaints concerning the conduct of individual judges, such a committee will also be given responsibility for preparing and submitting draft guidelines concerning judicial conduct and ethics to a future judicial council. The authorities also specify that an investigative mechanism will apply where there is an allegation of judicial misconduct and the definition of the term "judicial misconduct" is to be included in the legislation.
49. GRECO takes note of the information provided. It notes that the current situation remains much the same now as it was at the time of the adoption of the Evaluation Report. In addition to some basic ethical principles contained in the Constitution, there is no formal document reflecting standards of conduct for judges. That said, work to establish such a code already started in 2011, as noted in the Evaluation Report, but it has not come to completion. Moreover, in the current situation, including the fact that a judicial council has not yet been established, there is no accountability mechanism in place.
50. GRECO concludes that recommendation ix has not been implemented.

Recommendation x.

51. *GRECO recommended that dedicated induction and in-service training for judges be institutionalised and adequately resourced while respecting the independence of the judiciary.*
52. The authorities report that the Committee for Judicial Studies is currently responsible for providing judicial training and ongoing education of the judiciary. More precisely, the aim is to enhance knowledge and understanding of law and legal principles among judges with particular regard to new developments in the law, including legislation. To this end, the Committee has an Induction and Mentoring Programme for new judges, to be organised by the respective court presidents. This is combined with a mentoring system in each court.

53. The authorities report that the draft legislation to establish a judicial council also provides for the formal establishment of a judicial studies committee to facilitate the continuing education and professional development of judges with regard to their judicial functions.
54. GRECO notes that the situation referred to in the Evaluation Report has not changed since the adoption of that Report. GRECO reiterates that the recommendation was issued in response to the observation made in the Evaluation Report (paragraph 161), that in-service training for judges had no formal structure and further measures were required to institutionalise training and to provide adequate resources and funding. As a consequence, GRECO can only repeat the recommendation and invites the authorities to take determined action on this issue.
55. GRECO concludes that recommendation x has not been implemented.

Corruption prevention in respect of prosecutors

Recommendation xi.

56. *GRECO recommended that the policy for handling complaints against the Prosecution Service be enhanced with a view to (i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and (ii) further developing the statistics concerning such complaints.*
57. The authorities state that the internal policy concerning the handling of complaints against the Prosecution Service has been reviewed in the light of this recommendation. The policy now includes an independent structure for managing all the complaints received and ensuring transparency in the complaints procedures. All complaints are considered by an officer, who is independent of the person against whom the complaint was made. Minor complaints, which can be resolved by providing additional information, correcting an error or through explanations, are replied to by the Section/Unit Head in consultation with the officer against whom the complaint was directed. The Divisional Head deals with complaints of a more serious nature. In addition, the policy now includes a review mechanism; a complainant may require the complaint to be reviewed. Such a review will be conducted by the Deputy Director or by the Director (DPP). In addition, a new unit has been set up within the DPP, the Communication and Victims Liaison Unit, which is responsible for monitoring and providing quality assurance in relation to the handling of all complaints. This Unit is also in charge of elaborating statistics related to complaints made against the office.
58. GRECO welcomes this review of the internal policy for the handling of complaints in the light of this recommendation. As explained by the authorities, the overall objective of the policy change was to create a more independent structure for dealing with complaints against prosecutors. For example, since the change, all complaints are to be considered by an officer independent of the person complained about. More serious complaints are to be dealt with by a hierarchically senior officer. In addition, a review mechanism has been introduced under the authority of the Deputy Director or the Director of the Service (DPP). Furthermore, GRECO is pleased that a new unit, the Communication and Victims Liaison Unit, has been established within the office of the DPP, with the responsibility of recording, monitoring and coordinating the complaints received as well as maintaining and developing the related statistics concerning the complaints received. To sum up, GRECO is pleased that a more solid mechanism to deal with complaints has been put in place and that this framework provides more independence to the process as well as enhanced oversight.
59. GRECO concludes that recommendation xi has been implemented satisfactorily.

III. CONCLUSIONS

60. **In view of the foregoing, GRECO concludes that Ireland has implemented satisfactorily or dealt with in a satisfactory manner three of the eleven recommendations contained in the Fourth Round Evaluation Report.** Three recommendations have been partly implemented and five recommendations have not been implemented.
61. More specifically, recommendations ii and iv have been dealt with in a satisfactory manner and recommendation xi has been implemented satisfactorily. Recommendations i, iii and v have been partly implemented and recommendations vi-x have not been implemented.
62. With respect to members of parliament, GRECO welcomes the establishment of the Public Sector Standards Bill 2015, which has the potential to provide for a common and uniform legal framework for public officials, including members of parliament. GRECO also welcomes the proposed declaration regime, contained in the 2015 Bill, which aims at extending the obligations upon all members of parliament and to include close or connected persons. However, the 2015 Bill has not yet been finally prepared and voted in Parliament. Progress is also still required in respect of establishing dedicated regular training of MPs on issues such as ethics and conduct in situations of conflicts of interests and corruption prevention.
63. As far as judges are concerned, GRECO notes with concern that only limited progress has been made since the adoption of the Evaluation Report. However, GRECO notes that draft legislation for the establishment of a judicial council as well as in respect of other recommendations is reportedly under preparation, notably as regards the procedures for recruiting judges. GRECO urges the authorities to continue their efforts to reform the judiciary, as indicated in the Evaluation Report, and to carry this out in close co-operation with the judiciary.
64. As regards prosecutors, GRECO welcomes the establishment of a more independent policy in respect of the internal handling of complaints against the prosecutors and its service (DPP). The new policy also has the potential to develop enhanced oversight and transparency in respect of this complaints mechanism.
65. In view of the above, and in spite of the achievements made, GRECO concludes that the overall very low level of compliance with the recommendations is "globally unsatisfactory" within the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32 concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of the Irish delegation to provide a report on the progress in implementing the pending recommendations (i.e. recommendations i, iii-x and as soon as possible, but at the latest by 31 March 2018, pursuant to paragraph 2(i) of that rule.
66. Finally, GRECO invites the authorities of Ireland to authorise, as soon as possible, publication of the current report.



Group of States against Corruption
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

IRELAND

Adopted by GRECO at its 65th Plenary Meeting
(Strasbourg, 6-10 October 2014)

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EXECUTIVE SUMMARY

1. Despite substantial reforms in the past relating to public administration including, for example, the adoption of the Freedom of Information Act, the Ethics Acts and the establishment of connected accountability mechanisms, there is growing concern about corruption in Ireland. From rather low perceived corruption levels, Ireland's ranking according to Transparency International's perception index fell significantly in 2012. The drop could possibly be connected with the findings of a domestic enquiry, the "*Mahon Tribunal*", investigating corruption allegations in relation to planning permission and rezoning issues, involving the business sector as well as politicians.
2. Similar to the trends in several other countries, political parties and politicians have low levels of trust in Ireland, according to international surveys. The Irish authorities are well aware of this and reforms are underway. Having said that, the legislative process in the Irish Parliament is very transparent; a culture of openness has been developed, built on a solid legal framework, within which modern communication techniques are used to a large extent in order to provide for broad public access and participation. Furthermore, the conduct of parliamentarians is governed by a wide range of standards, including constitutional principles, norms in the Ethics Acts and several codes of conduct and guidelines. However, the complexity of this structure is striking and the various norms are not always fully compatible with each other. As a result, interpretation of the standards can be challenging and a consolidated values-based normative framework - for ethical principles and conduct of MPs in various situations of conflicting interests - would be beneficial. Members of parliament are obliged to provide asset declarations; however, these obligations also need to be broadened, for example, to cover liabilities as well as the interests of persons connected to members. Moreover, the monitoring of MPs' adherence to standards, codes of conduct and other obligations also need to be consolidated, made more uniform and preferably given a higher degree of independence vis-à-vis Parliament and its members.
3. The Judiciary and the Prosecution Service are among the most trusted public institutions in Ireland. The independence and professionalism of judges is undisputed. However, recent measures taken to reduce public salaries, following the financial crisis, have been of particular concern for judges as their constitutional safeguard for the protection of financial benefits has been amended. This has triggered a discussion within the judiciary on how to uphold the historically high ethical standards of an independent and professional judiciary in the future. In this connection, the establishment of a judicial council and reforms of the current system of appointing and promoting judges, are in the focus as necessary measures to maintain judicial integrity and independence. Furthermore, there is a need to establish a code of conduct/ethics connected to an accountability mechanism for judges and to institutionalise ongoing training. Such measures, which enjoy strong support from the judiciary itself, require substantial additional resources. The administrative situation in respect of prosecutors in Ireland is very different to the one concerning judges for one major reason: prosecutors are subject to well-developed legislation, codes of conduct, guidelines, appointment procedures etc. of the civil service, complemented by dedicated measures targeting the particularities of the profession of prosecutors. That said, it would appear that the Prosecution Service in Ireland needs to enhance the organisational structures for receiving and handling complaints concerning the integrity and ethical conduct of prosecutors and also to be more transparent vis-à-vis the general public in this respect.

I. INTRODUCTION AND METHODOLOGY

4. Ireland joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in December 2001), Second (in December 2005) and Third (in December 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 current Fourth Evaluation Round, launched on 1 January 2012, deals with "Corruption prevention in respect of members of parliament, judges and prosecutors". By choosing this topic, GRECO is breaking new ground and is underlining the multidisciplinary nature of its remit. At the same time, this theme has clear links with GRECO's previous work, notably its First Evaluation Round, which placed strong emphasis on the independence of the judiciary, the Second Evaluation Round which examined, in particular, the executive branch of public administration, and the Third Evaluation Round, which focused on the incriminations of corruption (including in respect of parliamentarians, judges and prosecutors) and corruption prevention in the context of political financing.

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

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

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

8. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2013) 13E) by Ireland, as well as other data, including information received from civil society. In addition, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Ireland from 10-14 March 2014. The GET was composed of Mr Antoine DALLI, Internal Audit and Investigations Department, Office of the Prime Minister (Malta), Mr Adrian GRZYCUK, Senior Economic Policy Analyst, Lower Chamber of Parliament, Social, Economic & EU Policies Division (Poland), Mr Noel L. HILLMAN, Judge at the US District Court of New Jersey (USA) and Ms Kitty NOOY, Chief District Prosecutor, National Integrity Programme Manager, Public Prosecution Service (Netherlands). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO.

9. The GET interviewed members and other representatives of the Houses of the Oireachtas, the Committees on Members' Interests of the Dáil Éireann and the Seanad Éireann, the Standards in Public Office Commission, the Government Reform Unit and the Department of Public Expenditure and Reform. Furthermore, the GET met with the Chief Justice and other representatives of the judiciary, including the Supreme Court, the High Court, the Circuit Court and the District Court. The GET also interviewed officials of the Department of Justice and Equality and the Office of the Director of Public Prosecutions. The GET's meetings also included representatives of the Association of Judges, the Law Society, the Bar Council, Transparency International, as well as representatives of academia and the media.

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

II. CONTEXT

11. Ireland has over the years, despite not having been considered as particularly affected by corruption, according to various perception indices, undertaken substantial reforms including anti-corruption policies. As GRECO noted previously (in 2005¹), the public administration has been considerably modernised and the introduction of the Freedom of Information Act in 1997 and the Ethics Acts 1995/2001, to which monitoring by the Standards in Public Commission is connected, represent major achievements in respect of transparency and accountability. The investigations into public affairs and maladministration brought by various public inquiries, known as tribunals, is another form of monitoring which deserves mention; governed by the *Tribunal of Inquiry Act of 1921* as amended, Parliament may establish independent inquiries into matters of urgent public importance. Additionally, the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 established a statutory framework for parliamentary inquiries into matters of significant public importance.

12. Furthermore, Ireland has developed a thorough system of regulation of political financing coupled with an important monitoring role given to the Standards Commission and has further strengthened the transparency of such funding, following recommendations issued by GRECO in 2009².

13. GRECO also concluded in 2009 that overall, the criminal justice regulations in Ireland comply with the requirements of the Council of Europe Criminal Law Convention on Corruption (ETS 173)³, an instrument that was ratified by Ireland already in 2003. Ireland ratified the United Nations Convention against Corruption in 2011.

14. It is to be noted that until 2010/2011 citizens perceived corruption levels in Ireland as rather low and the country figured among the least corrupt 14 countries of Transparency International's yearly corruption perception index (CPI). In 2011 and 2012 the CPI ranking of Ireland decreased considerably - to place 25 in 2012. This drop followed years of financial and banking crises, starting in 2008 and coincided with the findings of a 15-year public inquiry - the "*Mahon Tribunal*"⁴ - in respect of alleged corruption involving politicians and the business sector. The Tribunal mostly investigated planning permissions and land rezoning issues in the 1990s in the Dublin County Council area, and in its final report - a massive piece of 3 270 pages - which was published in March 2012, the Tribunal concluded that in respect of some councillors at county council level, "corruption had become a regular aspect of their public role", that corruption affected every level of Irish political life and that those with the power to stop it were often involved; corruption was at the time it occurred, "an open secret" and "an acknowledged way of doing business".

15. The "*Mahon Tribunal*" submitted a number of recommendations, the main ones dealing with issues, such as criminalising the breach of political ethics, strengthening the whistle blower legislation, *inter alia*, by accepting anonymous complaints, limiting political donations, regulating lobbying, expanding disclosure requirements for public officials, including politicians, restricting the rules on gifts and restricting politicians convicted for bribery from holding public office etc. The Irish Government is currently in the process of implementing several of the recommendations issued by the "*Mahon Tribunal*".

16. In terms of the focus of GRECO's Fourth Evaluation Round as regards corruption prevention in respect of members of parliament, it is to be noted that similar to what is the case in a large number of European countries surveyed, parliaments and political

¹ GRECO's Second Evaluation Round Report on Ireland (Greco Eval II Rep (2005) 9E, paragraphs 78 and 116

² GRECO's Third Evaluation Round Report on Ireland, Theme II (Greco Eval III Rep (2009) 4E, paragraph 111

³ GRECO's Third Evaluation Round Report on Ireland, Theme I (Greco Eval III Rep (2009) 4E, paragraph 75

⁴ Named after its last Chairman

parties top the list of least trusted institutions in Ireland, according to the European Commission's Special Eurobarometer on corruption 2013; the study indicates that 57% of those surveyed in Ireland think that corruption is widespread among politicians which corresponds well to the current EU average of those surveyed. As far as the judiciary is concerned, the picture is much the opposite, judges in Ireland have for a long time been much respected for a high degree of independence and integrity and therefore enjoyed a very high degree of trust from the public; the Eurobarometer 2013 indicates that only 15% of those surveyed in Ireland think that corruption is widespread within the courts, which is well below the EU average of those surveyed. The perception in respect of the public prosecution service is similar to that of the judiciary according to the aforementioned Eurobarometer; 15% of those surveyed in Ireland believe that the corruption is widespread in this area, which is lower than the EU survey average.

17. It is the aim of the present report, with its analysis and recommendations, to assist the Irish authorities in their efforts not only to regain but also to raise the level of integrity of, and the public's trust in, some of its fundamental institutions and their individual members. The report is timely considering that the Government's current reform programmes – linked, *inter alia*, to the findings of the "Mahon Tribunal" as well as on-going discussions in respect of reforms of the judiciary – need to address shortcomings in several of the areas targeted by this report.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. The Republic of Ireland is a parliamentary democracy based on the Westminster model with a written constitution and a popularly elected president who has mostly formal powers. Parliament (the Oireachtas) consists of the House of Representatives, the lower house (Dáil Éireann, 166 members), and the Senate, the upper house (Seanad Éireann, 60 members). The government is headed by a prime minister (Taoiseach), who is appointed by the president of the republic on the nomination of Dáil Éireann. Members of the government are appointed by the president on the nomination of the prime minister with the approval of Dáil Éireann. With the exception of the prime minister and the minister for finance, who must be members of Dáil Éireann, members of the government may be chosen from both houses. These members of parliament are also "office holders"⁵.

19. The legislature consists of the president and the two houses of parliament. The Speaker of Dáil Éireann is automatically returned (no need to stand for a new general election) but all other members of the lower house are directly elected from multi-seat constituencies. As regards Seanad Éireann, 11 members are nominated by the prime minister, three members are elected by graduates of the National University of Ireland, three members are elected by graduates of Trinity College Dublin; and 43 members nominated either by members of parliament or bodies registered for that purpose, are elected from five vocational panels of candidates by an electorate consisting of members of parliament and local authorities. For all seats filled by election, proportional representation using the single transferable vote system is used.

20. The balance to be struck between various interests, such as the national public interest and/or any other particular interest and dealing with the practical and political consequence of striking a particular balance is a matter for individual members. Party discipline and local interest considerations frequently appear to play a significant part in such decisions. All ministers are also MPs and, in addition to performing their functions as office holders, they are free to represent their constituencies. Paragraph 2.2.9 of the Code of Conduct for Office Holders provides: *"In their capacity as elected representatives, Ministers (including Ministers of State) are free to make representations on behalf of constituents, including to other Ministers, provided that the responses sought or expected to their representations or given to the representation of other office holders are in keeping with responses which would be given to Members of the Houses of the Oireachtas generally. Ministers are free to receive representations from other office holders on a similar basis."*

21. Article 16.1.1 of the Constitution provides that *"every citizen without distinction of sex who has reached the age of twenty-one years, and who is not placed under disability or incapacity by this Constitution or by law, shall be eligible for Membership of Dáil Éireann."* Article 18.2 of the Constitution provides that *"A person to be eligible for Membership of Seanad Éireann must be eligible to become a Member of Dáil Éireann"*.

22. Section 41 (Disqualification for Membership of the Dáil) of the Electoral Act 1992, as amended, provides that, subject to section 42(3), a person who – (a) is not a citizen of Ireland, or (b) will not reach the age of 21 years on polling day or, if there is no polling day in relation to the constituency concerned by reason of the operation of section 58(b),

⁵ The following persons are deemed office holders: the prime minister, the deputy prime minister, ministers of the government or ministers of state, a member who holds the office of attorney general, chairman or deputy chairman of Dáil Éireann or Seanad Éireann, and the chairman of a committee of either house or joint committee of both houses being an office that stands designated for the time being by resolution of each house; the offices of chairman of a committee or joint committee are not currently designated as office holders by resolution of the houses.

the day which is polling day generally throughout the State in relation to the election concerned, or (c) is a member of the Commission of the European Communities, or (d) is a judge, advocate general or registrar of the Court of Justice of the European Communities, or (e) is a member of the Court of Auditors of the European Communities, or (f) is a member of the Garda Síochána (the police force), or (g) is a whole-time member of the Defence Forces, or (h) is a civil servant who is not by the terms of his employment expressly permitted to be a member of the Dáil, or (i) is a person of unsound mind, or (j) is undergoing a sentence of imprisonment for any term exceeding six months imposed by a court of competent jurisdiction in the State, or (k) is an undischarged bankrupt under an adjudication by a court of competent jurisdiction in the state or (l) is a directly elected Cathaoirleach of a local authority shall not be eligible for election as a member, or, subject to section 42 (3), for membership, of the Dáil [and], in the case of paragraph (l), a person shall be disqualified for nomination for election as a member and the disqualification shall extend for 12 months after ceasing for any reason to hold that office.

23. Article 15.14 of the constitution provides that no person may be at the same time a member of both houses of the Oireachtas, and, if any person who is already a member of either house becomes a member of the other house, s/he shall forthwith be deemed to have vacated his/her first seat.

Transparency of the legislative process

24. All additions or changes to the body of primary legislation are made by way of acts of the Oireachtas. To become law a bill must first be approved by the House of Representatives and in most circumstances also by the Senate (although the lower house can override a refusal by the Senate to pass a bill), and then signed into law by the president. Bills to amend the constitution must also be approved in a general referendum before being presented to the president. The president is effectively obliged to sign all laws approved by parliament, although s/he has the power to refer bills to the Supreme Court for a ruling on the constitutionality. Once signed by the president, the bill becomes an act of the Oireachtas.

25. Constitutional, legal and procedural provisions in relation to consideration of draft laws by parliament concern themselves primarily with setting out a formal framework for the consideration of legislation. The constitution defines the constitutional relationship between and respective roles of government, the president and each house of parliament, in relation to legislation as well as in other matters. Articles 20 to 27 of the constitution deal specifically with legislation. The procedure for the consideration of draft laws by parliament is set out in the procedural rules (Standing Orders) adopted by each house. In the case of Dáil Éireann, these procedures are principally set out in Standing Orders 124 to 153 of the Standing Orders relative to Public Business and amendments thereto. The Seanad Standing Orders contain similar provisions.

26. As of 5 November 2013, the Standing Orders of Dáil Éireann require that ministers furnish preliminary texts of draft laws (proposals for legislation⁶) to the relevant parliamentary committee or provide the house with an explanation for not so doing. While their ready availability on the web and otherwise contributes to transparency of the process, they do not, in general, expressly address issues of transparency *within* process. The authorities stress that increasing transparency in the legislative process has been achieved in the main through cultural, administrative and technical changes that are not underpinned by any statutory or procedural imperative.

27. The text of draft laws and amendments proposed to such drafts are made available to the public. As soon as a draft law (a "bill") is initiated in either house, it is

⁶ Also referred to as the general scheme or draft heads of a bill.

considered to be a public document and is published on parliament's website and also made available as a printed text. Typically, a bill is accompanied by an explanatory memorandum that provides information on the purpose of the bill and explanations in respect of its individual provisions in more accessible language. As the bill passes through each house, amendments tabled by members (and the government) are published before they are considered and when a bill is amended the revised text is similarly published.

28. A committee charged with considering a bill may be ordered (or may choose) to request and consider written and oral submissions on the bill from the public. Moreover, draft laws are considered in public; Article 15.8 of the Constitution provides that sittings of each house of parliament shall be in public unless, in case of special emergency, two-thirds of the members present assent to a private sitting. The pre-1937 (Free State) constitution contained the same provision. Such a private sitting last took place on 6 January 1922.

29. As well as publishing the debates of the houses and their committees, parliament provides a variety of live and recorded webcastings, IPTV and television services to the public and the media. Parliament also operates its own TV channel, *Oireachtas TV*, broadcast on UPC Ireland channel 207.

30. The authorities submit that consideration of preliminary texts of draft laws may take place; from time to time, before the text of a bill is finalised for initiation in parliament, a preliminary text or proposal for legislation is presented to parliament, published and referred to a parliamentary committee for mandatory consideration and/or forwarded directly by the member of the government concerned to the relevant committee with a request to review the proposal. Where this occurs, it generally involves consideration of written and oral submissions from interested parties. The GET was told that the intention is that this will increasingly become the norm. To this end, the Standing Order (rules of procedure) 123A was adopted on 5 November 2013: "*Prior to its presentation or introduction to the Dáil, the general scheme or draft heads of a bill shall, save in exceptional circumstances [...], be given by a Member of the Government or Minister of State to the Committee empowered under Standing Order 82A to consider Bills published by the Member of the Government*"; together with Standing Order 125 which states: "*in the event the pre-legislative consideration under Standing Order 123A has not taken place, ... the Member of the Government or Minister of State proposing [the motion for second reading of the bill] shall give the reason therefore during his or her opening remarks*".

31. Moreover, each draft law has its own webpage which gives access to all texts of the bill published, amendments tabled to the bill and all parliamentary debates on the bill as it passes through parliament. Also, it is common practice in relation to legislation for government departments to publish draft general schemes and draft bills on departmental websites. It is open to the public to make submissions on these documents which will then be taken into consideration in tandem with the pre-legislative scrutiny of the bill by the pertinent committee.

32. As indicated above, whether there should be public consultation (i.e. consultation *with* the public as opposed to consultation *in* public) on a particular draft law is a matter for the house itself or the committee with responsibility in that area of public administration to decide. In either case, such decisions may be made by consensus or by majority. A committee that has decided to consult in relation to a particular draft law (or legislative proposals) may publish a general request for views and/or may approach particular individuals or groups. Committees may also hear from or meet with individuals or groups.

33. In general, members of parliament are appointed to committees so that the party or group strength of the committee reflects relative strengths in the house in question. Members are nominated by their parties or groups for appointment to serve on committees on this basis. Appointments of members to serve on committees and discharge of members from committees require an order of the house. The order forms part of the official report of the debates of the house, published as previously described. Each committee also has a webpage on which the membership of the committee is listed. As a general rule (although this is not a requirement), the membership is also listed in each report made by a committee.

34. Attendance by members at individual meetings of the committee is published as part of the official report of debates for each meeting. As a general rule, relevant submissions received by a committee are published on the committee's webpages; the committee hears evidence and debates in public; the committee's deliberations in public are transmitted by a variety of live and recorded webcasting, IPTV and television services to the public and the media; and a written report of the minutes of evidence or debates is generally published, as is any report that the committee decides to make.

35. As indicated above, the general rule is that parliamentary debates take place in public, are broadcast and fully reported, both in print and on the web. Whether occurring in committees or in the plenary, votes are also considered to be an integral part of the proceedings and are published as part of those proceedings.

36. The GET did not come across any criticism from interlocutors met concerning the openness in respect of the legislative process in Ireland and commends the Irish authorities for having established a culture of far going transparency in the legislative process. It notes in particular that this has been possible on the basis of the constitutional requirement that sittings in parliament as a main rule are public alone without any major legislative measures. Not only the plenary debates are subject to far reaching transparency but this applies similarly to the pre-legislative process at committee level. It would appear that Ireland is well advanced in using modern communication techniques in this respect in order to connect the legislative processes with the wider public.

Remuneration and economic benefits

37. In 2012, the average gross annual salary in Ireland was €36 079.

38. The basic annual salary⁷ of a deputy (a member of Dáil Éireann) is €87 258. The basic annual salary of a senator (a member of Seanad Éireann) is €65 000. In addition to the basic salary as a deputy or as a senator, there are annual rates for additional functions, for example, the speaker in the Dáil Éireann or a minister would get €70 282, the speaker in the Seanad Éireann €38 160, a chairperson of a committees in the Seanad €5 989 and in the Dáil €8 740. Other specified positions, such as party whips also attract allowances. A member who is eligible to receive more than one of the allowances, for example, as an MP and an office holder will only be paid the higher of those allowances during that period and a chairperson who chairs more than one parliamentary committee can only be paid one such extra allowance.

39. Other additional benefits include payment of a parliamentary standard allowance (PSA); entitlement to staff (secretarial allowance); free postal facilities (through the issuing of pre-paid envelopes up to a monthly limit); free telephone calls from the parliament building; periodic payments towards the cost of purchasing mobile telephones and accessories; a one-off grant for the establishment and equipping of a constituency office (only Dáil Éireann). Chairpersons of committees may receive an annual allowance

⁷ The salaries have been reduced by the Financial Emergency Measures in the Public Interest Acts 2009-2013.

in respect of vouched entertainment expenses. The authorities have submitted details of each benefit.

40. Members of parliament are not exempt from the ordinary income taxes, pension related and the "universal social charge" deductions from their salaries. No special tax rate exists in respect of members.

41. While salary is paid until the election, in general, members' parliamentary benefits as referenced in paragraph 39 are no longer provided when a person ceases to be a member. This includes the period between the dissolution of parliament and a general election, whether or not the member is re-elected.

42. Members of parliament may supplement the budget for their offices from their own resources, including from donations they receive. Donations may be financial or in-kind. Donations may only be used for political purposes as defined under section 49 of the Electoral (Amendment) Act 2001. There is no requirement on members to disclose the use to which donations are put, except for such expenditures during election campaigns⁸. However, MPs (of both houses) are required to disclose to the Standards in Public Office Commission any donations they receive for political purposes where the value of a donation or donations received from the same donor in the same calendar year exceeds €600. Furthermore, they are not permitted to accept donations exceeding €1 000. Under the Electoral Acts, the Standards Commission furnishes reports to the Chairperson of the House of Representatives on the annual disclosure of donations received by members of the houses.

43. The GET notes that MPs' salaries and benefits appear to be generally well regulated. It notes with some concern that MPs may supplement their office benefits provided by the state with donations of constituency office premises received from elsewhere under a regime separate from other forms of donations. Such input could possibly amount to improper interference with the integrity of MPs. Importantly, there are limits to this kind of "office donations" and there are also disclosure rules connected to them. See also the GET's reasoning under "Gifts" below.

Ethical principles and rules of conduct

44. The ethical framework relating to the conduct of parliamentarians is governed by Article 15.10 of the Constitution which provides that *"Each House shall make its own rules and standing orders, with power to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its Members, and to protect itself and its Members against any person or persons interfering with, molesting or attempting to corrupt its Members in the exercise of their duties."* Legislation in this area must be consistent with the constitutional position.

45. In line with the constitutional provision, both houses of parliament have codes of conduct for members who are not office holders⁹, both adopted in 2002, drawn up by the respective Committees on Members' Interest of each house of parliament in consultation with the Standards in Public Office Commission. Also, a Code of Conduct for Office

⁸ There is a requirement to report expenditure for political purposes, including in respect of office facilities, in the period leading up to an election, as part of the regulatory regime for election spending and political donations.

⁹ Code of Conduct for Members of Dáil Éireann other than Office Holders <http://www.theStandardsCommission.gov.ie/en/Codes-of-Conduct/TDs/>
Code of Conduct for Members of Seanad Éireann other than Office Holders <http://www.theStandardsCommission.gov.ie/en/Codes-of-Conduct/Senators/> Code of Conduct for Office Holders (including Guidelines) <http://www.theStandardsCommission.gov.ie/en/Codes-of-Conduct/Office-Holders/Code-of-Conduct-for-Office-Holders-.pdf>

Holders has been drawn up by the government in consultation with the Standards Commission.

46. These codes of conduct, *inter alia*, state that members must in good faith strive to maintain public trust placed in them, that their conduct does not bring the integrity of their office into serious disrepute, have consideration for the public interest and for preventing conflicts of interest etc, not solicit or accept any financial profit in exchange for promoting or voting in parliament. The codes also include definitions of conflicts of interest etc.

47. The Ethics in Public Office Act 1995¹⁰ and the Standards in Public Office Act 2001 ("Ethics Acts") as amended, are the main laws in place for regulating ethics in the public sector, in particular as regards the control of conflicts of interest. The Ethics Acts provide a statutory scheme for the disclosure of interests of members of parliament who are not office holders (Part II), and additional disclosure rules for members who are also office holders (Part III). Moreover, this legislation provides a framework within which each house of parliament is to deal with conduct and complaints against its respective members who are not office holders; principally through Committees on Members' Interests. Further, they establish and regulate the Standards in Public Office Commission, which main concern is related to the conduct of office holders.

48. Section 10 of the Standards in Public Office Act 2001 provides for the establishment of Codes of Conduct for MPs "from time to time" which set out the standards of conduct and integrity expected to be observed by the persons to whom they relate in the performance of their official duties.

49. In addition, there are separate guidelines for members of both the houses who are not office holders concerning the steps to be taken by them to ensure compliance with the provisions of the Ethics Acts¹¹.

50. The GET notes that the current regulatory structure for ethical standards and conduct of members of parliament is a rather complex patchwork consisting of a range of different provisions, including constitutional principles¹², legislative norms, soft law provisions and guidelines. This creates a requirement to assess which set of standards apply or which standards prevail over the other, which, in the view of the GET, appears unnecessarily cumbersome. Moreover, the definitions used are not always fully compatible with each other; for example, there are diverging definitions of conflicts of interest, further discussed below. The GET understood from various interlocutors met that there was a general perception that the existence of several provisions regulating the same or similar situations, sometimes differently, creates complexity to the interpretation and application of the current provisions. Interlocutors stated that there was a need to establish a new consolidated legal/ethical framework which would

¹⁰ The Ethics in Public Office Act 1995 has been amended by the Standards in Public Office Act 2001 and collectively may be cited as the Ethics in Public Office Acts, 1995 and 2001, and shall be construed together as one. Both Acts have been published in a consolidated format by the Law Reform Commission.

Ethics in Public Office Act 1995
<http://www.irishstatutebook.ie/1995/en/act/pub/0022/index.html>

Standards in Public Office Act 2001

<http://www.irishstatutebook.ie/2001/en/act/pub/0031/index.html>

¹¹ Guidelines for Members of Dáil Éireann who are not Office Holders

<http://www.oireachtas.ie/parliament/media/committees/Membersinterests/Final-Guidelines-2012-for-circulation.pdf>

Guidelines for Members of Seanad Éireann who are not Office Holders

[http://www.oireachtas.ie/parliament/media/committees/Membersinterests/1.-Final-version-Ethics-Guidelines-for-Seanad-Eireann-2013-\(18.12.12\).docx](http://www.oireachtas.ie/parliament/media/committees/Membersinterests/1.-Final-version-Ethics-Guidelines-for-Seanad-Eireann-2013-(18.12.12).docx)

¹² It should be noted that the Constitution of Ireland provides in Article 15.10 that "Each House shall make its own rules and standing orders, with powers to attach penalties for their infringement, and shall have power to ensure freedom of debate, to protect its official documents and the private papers of its members, and to protect itself and its members against any person or persons interfering with, molesting or attempting to corrupt its members in the exercise of their duties".

encompass regulation of the conduct of members of parliament. The GET shares these concerns and was therefore pleased to learn that the ethical framework and standards in respect of public officials, including parliamentarians, were in the process of being overhauled and reformed by the Government. An ethics legislative project is being pursued by the Department of Public Expenditure and Reform with the aim of developing an integrated ethics bill involving a comprehensive overhaul and modernisation of the current legislative framework for ethics, including anti-corruption measures¹³. These reform efforts - to a large extent responses to the findings and key recommendations of the "Mahon Tribunal" referred to above- merit support. In this context, the GET is of the opinion that the expected conduct of MPs cannot be completely separated from the expected conduct of their employees. While MPs in Ireland are considered, as a main rule, to be responsible for the conduct of their employees under general employment legislation, the normative ethical standards of MPs do not expressly apply to MPs' staff members. This situation may lead to discrepancies and different considerations depending on who is carrying out a particular task, the MP him/herself or the employee on behalf of the MP. The GET takes the view that staff working on behalf of MPs need to be governed by the same standards as the MP in that particular function. In view of the above, **GRECO recommends that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct.**

Conflicts of interest

51. The Ethics Acts 1995/2001 aim at preventing both potential and actual conflicts of interests through disclosure. Potential conflicts of interest are to be disclosed, according to Section 5 of the Ethics Act, which requires members to provide annual statements of their registrable interests, following a standard list of items, such as remunerations and various interests (shares, land etc, further detailed under "Declaration of Assets", below). In respect of MPs who are also office holders (Section 13), the prevention of potential conflicts of interest goes further also to cover their "additional interests", ie relating to spouse/civil partners and other relatives).

52. Prevention of actual conflicts of interests is provided for in Section 7 of the 1995 Ethics Act which regulates that a member who proposes to speak or vote in parliament and who has actual knowledge that s/he or a "connected person"¹⁴ has a material interest in the matter and has not declared such interest under the statement of registrable interests furnished to the Commission and laid before the House, has to make a declaration to this end before or during the speech and, in relation to voting, before the vote, in writing. Section 14 of the same Act provides a similar obligation upon office holders to report to the Standards Commission.

53. The Codes of Conduct for members of Dáil Éireann as well as members of Seanad Éireann provides, *inter alia*, that a conflict of interest exists where a member participates in or makes a decision in connection with the execution of his or her office knowing that it will improperly and dishonestly further his or her private financial interest or another person's private financial interest directly or indirectly; that a conflict of interest does not exist where the member or other person benefits only as a member of the general public or a broad class of persons; that members must base their conduct on a consideration of the public interest and are individually responsible for avoiding conflicts of interest; and that members must endeavour to arrange their private financial affairs to prevent such

¹³ The GET was informed that a consolidated and modernised statutory legal framework governing ethical obligations for public officials was to be presented to the Government during the second half of 2014.

¹⁴ Relative, trustee of a trust, partners etc.

conflicts of interest arising and must take all reasonable steps to resolve any such conflict quickly and in a manner which is in the best interests of the public.

54. The GET welcomes that the Irish system of regulating conflicts of interest is built on a complementary approach in that it covers both potential conflicts, which are to be declared following a standard format at regular intervals, and actual conflicts, which are subject to *ad hoc* reporting (before a speech, voting etc). That said, it notes that although the definitions of conflicts of interest are broader in the codes of conduct than in the Ethics Acts, both these regimes have in common a clear focus on financial/material interests. This scope needs to be broadened in a new common definition, also to include other forms of conflicting interests, such as non-pecuniary advantages, which is currently under consideration by the Irish authorities, as an objective of its ethics reforms. Furthermore, the GET sees no good reason only to focus on personal conflicts of interest in respect of MPs who are not office holders while those who are also office holders have to include such risks in respect of connected persons. The GET considers that the current regulations concerning office holders' obligations to include conflicts of interests involving not only themselves but also connected persons ought to apply in respect of all MPs. Consideration could also be given to expanding such rules to staff of members of parliament. These proposals need no separate recommendation but should be taken into account in conjunction with the recommendations in paragraphs 50 and 80 respectively.

Prohibition or restriction of certain activities

Gifts

55. The Codes of Conduct for Members of Dáil (Section 8) and Seanad Éireann (Section 8) who are not office holders each provide identical provisions in respect of gifts: that members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties; and that members may accept incidental gifts and customary hospitality.

56. The Ethics Act 1995/2001 does not prohibit or restrict the receipt of gifts by members who are not office holders. That said, Section 5 of that Act provides that members (including office holders) are required to disclose gifts received¹⁵, with the value, or the aggregate value from the same person, exceeding €650 during the registration period.

57. With regard to gifts to office holders, section 15 of the 1995 Ethics Act provides for the surrendering of gifts given to them by virtue of office with a value in excess of €650 or an aggregate value of €650 for gifts given to an office holder by the same person in a single calendar year.

58. Furthermore, paragraph 2.2.8 of the Code of Conduct for Office Holders provides that office holders should not accept offers to meet the costs of travel facilities and/or commercial accommodation in connection with official activities (including of a spouse/partner if so accompanied), where such offers are made by private citizens or private enterprises. Discretion may be used where an office holder is the official guest of another government or official body, or of a not for profit representative organisation or the like.

59. The GET notes that Ireland has in place a number of provisions dealing with gifts. These provisions provide restrictions upon the receivers to accept gifts and in combination with public disclosure requirements in respect of gifts exceeding a certain value. The GET also notes that the current ethical norms and legislation taken together

¹⁵ Gifts for purposes of registration exclude donations for election campaigns, gifts given for personal reasons and political allowances.

are unnecessarily complex and confusing. For example, the Codes of Conduct of the two houses of parliament prohibit gifts that may interfere with MPs' honest and impartial exercise of their official duties and at the same time the rules make exceptions for incidental gifts and customary hospitality, which, in the view of the GET, potentially opens the way for wide interpretation. Furthermore, MPs (including those who are office holders) have to disclose received gifts over a certain value, according to the Ethics Act, while only those MPs who are office holders, also have to surrender such gifts. As already mentioned in this report (paragraph 42), to this comes yet another provision concerning donations in respect of MPs' offices, where the disclosure requirements are slightly different. The GET does not really see why there needs to be such fragmented rules for various situations of gifts to members of parliament. The rules on gifts, as an integral part of potential conflicts of interest, clearly need to be consolidated and preferably aligned whether they concern ordinary MPs or those who are also office holders. Clear provisions in this respect for all MPs would be beneficial to MPs themselves, to gift providers and to the wider public. The GET refers in this respect to the recommendation in paragraph 50.

Incompatibilities and accessory activities, post-employment restrictions

60. With the exception of those occupations that would exclude a person from being eligible for parliament (Section 41 of the Electoral Act) (see paragraphs 19 and 20), the holding of another occupation or carrying out of accessory activities by a member of parliament is not prohibited as such. The authorities stressed that rather than prohibiting or restricting parliamentarians who are not office holders from carrying out external activities, the legislation focuses on requiring the members to declare such positions in order to prevent conflicts of interest.

61. That said, the GET notes that the Code of Conduct for Office Holders (paragraph 2.2.4) goes further and provides that office holders should not engage in any activities that could reasonably be regarded as interfering or being incompatible with the full and proper discharge by them of the duties of their office, such as company directorships carrying remuneration. Even if remuneration is not paid, it is regarded as undesirable for them to hold directorships. Moreover, an office holder should not carry on a professional practice while being an office holder but may make arrangements for the maintenance of a practice until such time as s/he ceases to be an officer holder and returns to the practice. Office holders should not take any part in the decision-making or management of the affairs of a company or practice and should dispose of, or otherwise set aside any financial interests which might conflict, or be seen to conflict, with their position as an office holder. The GET finds this more restrictive regime in respect of MPs who are also office holders as perfectly legitimate, considering the different roles of MPs and office holders.

62. There are no measures in the Ethics Acts which in any way affect MPs' employment or other non-paid activities after they leave parliament. The issue of post term employment is, however, regulated in respect of office holders in the relevant Code (at 2.2.4) as follows: "*Office holders, in taking up appointments on leaving office, should be careful to avoid any real or apparent conflict of interest with the office they formerly occupied. Particular care should be taken in the first few months following departure from office. Office holders should give careful consideration to the type of occupation chosen having left office. Although it is in the public interest that former office holders are able to move into business or other areas of public life, it is equally important that there should be no cause for any suspicion of impropriety when taking up a particular appointment. In this context, office holders should act in a way which ensures it could not be reasonably concluded that an office holder was influenced by the hope or expectation of future employment with the firm or organisation concerned or that an unfair advantage would be conferred in a new appointment by virtue of, for example, access to official information the office holder previously enjoyed.*"

63. To sum up, in addition to the rules on eligibility to parliament, (Article 41 of the Electoral Act), according to which MPs cannot be elected if they hold certain other listed public positions, there are no general rules restricting MPs' accessory or post-employment positions. Instead, situations that may raise conflicts of interest while an MP is in office are to be declared publicly (see "Declaration of Interest", below). No such requirement applies in respect of MPs after they have left parliament. While this is true for MPs in general, the GET notes that in respect of those MPs who have additional functions as office holders, there are rules in place restricting their possibilities to have accessory activities. The GET also notes that for the same category of MPs, the Ethics Act provides clear guidance when taking up post-employment positions. The GET sees the logic of having a distinction between MPs who are office holders and those who are not. At the same time it notes that ordinary members of parliament could well engage in particular matters (including legislation) in parliament while having in mind interests that would come into play during their mandate or once s/he leaves parliament. In this context, the GET also refers to particular conflicts of interest that may arise in respect of former MPs performing lobby activities in parliament. Aware of GRECO's position in this respect, the GET encourages the authorities to reflect on the possibility of strengthening post-employment rules/guidelines for all members of parliament as appropriate. But again, the GET recognises the logic for differentiated approaches for ordinary MPs and officeholders in this respect, and that any restriction needs to be proportionate in order to balance the relevant competing interests at issue. The GET refers in this respect to the recommendation in paragraph 50.

Financial interests, contracts with State authorities, misuse of public resources, third party contacts (lobbying)

64. There is no prohibition or restriction on the holding of financial interests by MPs. However, they are subject to the obligation to declare such interests, which is described in detail, below ("Declaration of assets etc").

65. Likewise, there are no specific rules regarding MPs entering into contracts with state authorities other than the general rules to avoid conflicts of interest and to disclose such situations. Moreover, the general rules on public procurement apply.

66. The Codes of Conduct for Members of Dáil and Seanad deal with the use of public resources (Section 9 in both documents): "*In performing their official duties, Members must apply public resources prudently and only for the purposes for which they are intended.*" Moreover, the Code of Conduct for Office Holders provides, *inter alia*, that official facilities should be used only for official purposes, that office holders should ensure that their use of officially provided facilities are designed to give the public value for money and to avoid any abuse of the privileges which are attached to office (2.2.3.). Moreover, MPs are – like anyone else – subject to general provisions of criminal law such as theft, misappropriation and deception offences. They also fall within the definition of "public official" for the purposes of corruption in office offences in section 8 of the Prevention of Corruption (Amendment) Act 2001 which provides that "*A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence...*"¹⁶.

67. Members' contacts with third parties, are dealt with by the general provisions in the Code of Conduct of the Dáil on interaction between members and third parties to prevent conflicts of interest (paragraph 4) and not to solicit, accept or receive financial benefit in exchange for promoting, voting etc. in parliament (Section 6). Identical rules are contained in the Code of Conduct of the Seanad (paragraphs 5 and 6). The Code of Conduct for Office Holders (2.2.5.) goes slightly further while stating that contacts

¹⁶ <http://www.irishstatutebook.ie/2001/en/act/pub/0027/sec0008.html#sec8>

between office holders and lobbyists should be conducted so that they do not give rise to a conflict between public duty and private interests. The GET is pleased that the Codes of Conduct of both houses deal with MPs' contacts with third parties, but again, the rules relating to office holders go further than those of ordinary MPs. In this context, the GET notes that the Department of Public Expenditure and Reform published the Registration of Lobbying Bill 2014 on 20 June 2014. The purpose of this Bill is to establish a web based register of lobbying activity and deliver appropriate transparency on "who is contacting whom about what". According to Section 6 of the Bill all members of Dáil Éireann and Seanad Éireann are to be classed as designated public officials or 'the lobbied'. The Bill makes provision for the Lobbying Registrar to produce a code of conduct for persons carrying out lobbying activities with a view to promoting high professional standards and good practice. The Standards in Public Office Commission will be the Lobbying Registrar. A review of the legislation – once adopted – one year after its commencement will provide an opportunity to ensure that the legislation is meeting its objectives. While general lobbying regulations are not central to the issues being evaluated in the current report, lobbying is an increasingly important phenomenon with clear links to corruption prevention in respect of members of parliament. The GET refers in this respect to the recommendation in paragraph 50.

Misuse of confidential information

68. There are provisions in the Codes of Conduct for members of the Dáil and Seanad which deals with the use of official information or information obtained in confidence (paragraph 10 of both documents): "*Members must not use official information which is not in the public domain, or information obtained in confidence in the course of their official duties, for personal gain or the personal gain of others.*"

69. According to the 1995 Ethics Acts (Section 35 (1)) "*A person shall not disclose information obtained by him or her under this Act or by being present at a sitting of a Committee or Commission held in private*". A person who contravenes this provision shall be guilty of an offence. This provision applies to any member of parliament.

70. Certain provisions of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 (Section 111) are also relevant in this regard: For example, in case a private paper of a member or a confidential communication is knowingly or recklessly disclosed by a person other than the member and such disclosure is not authorised, the person is guilty of an offence and could be sanctioned with a fine and/or imprisonment up to six months.

71. There is also a range of provisions concerning confidentiality of and access to government information, which apply to MPs who are at the same time office holders.

72. The GET notes with some concern that the disclosure of confidential communication, according to Section 111 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 may lead to a sanction of 6 months of imprisonment, regardless of the reasons for the disclosure. The GET takes the view that such a provision carries the risk of discouraging whistle blowers from coming forward with suspicions or evidence of wrongdoing, including corruption and other similar misbehaviour. In this context, the Irish authorities refer to the Protected Disclosures Act 2014, which came into operation in July 2014; Section 15 of this Act provides that "*in a prosecution of any person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that "...the disclosure was or was reasonably believed by the person to be, a protected disclosure*". Furthermore, the Irish authorities stress that the Protected Disclosures Act was drafted to ensure that no obstacles were placed in the way of potential whistleblowers which would prove to be a disincentive to whistleblowing. They also point out that provisions of the 2013 Act would encourage rather than discourage whistleblowers in that: a) MPs themselves are exempt

from Section 111; b) Section 106 authorises a person making a confidential communication to disclose it without violating Section 111; c) an MP may authorise disclosure of a private paper to a third party pursuant to Section 105(1)(a); and d) upon application to the High Court a private paper may be disclosed pursuant to Section 105(1)(b) if relevant to an investigation of an MP or in cases of an "overriding public interest" arising in the context of court proceedings, tribunal, commission or parliamentary inquiry. The authorities also refer to Article 15.10 of the Constitution, which provides that each House shall have power to protect its official documents and the private papers of its members. The statutory definition of what constitutes a "private paper" and "confidential communication" is set out in the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013.

73. The GET wishes to stress that, on the one hand, the 2013 Act provides legitimate protection of confidential information, on the other hand the rather severe sanctions contained in its Section 111 for disclosing information may discourage persons who are not MPs or not the authors of confidential communications from "blowing the whistle", notwithstanding the protections under Section 15 of the Protected Disclosures Act 2014. For example, if a staff member or other third party not expressly exempted from the 2013 Act wishes to make a disclosure of potential corruption or other malfeasance, s/he should be able to do so without fear of prosecution under Section 111. In order to assuage this concern, **GRECO recommends that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protections and encouragement for whistleblowers contained in the Protected Disclosures Act 2014 are fully understood and implemented.**

Declaration of assets, income, liabilities and interests

74. In accordance with Section 5 of the Ethics in Public Office Act 1995, members of parliament, including office holders, are required to disclose their interests (but not the individual value of the interests) including any material factors which could influence members of parliament in performing their official duties according to the following list¹⁷:

- A remunerated profession (exceeding €2 600 per year);
- Shares or other investments (value exceeding €13 000);
- A directorship of any company;
- Interest in land (exceeding €13 000);
- Interest in any contract for the purchase of land;
- Certain gifts (excluding personal) (any gift over €650);
- Below cost supply of travel facilities and entertainment;
- Remunerated position as political lobbyist or consultant;
- Certain contracts in relation to supply of goods and services to a public body;
- Below cost supply of property or a service.

75. The annual registration requirements and procedure can be summarised as follow. If serving as a member on 31 December in any year, members (including office holders) are required to submit to the Standards in Public Office Commission ("the Commission") by 31 January following, on a form provided by the Commission, a statement in writing of their registrable interests. The statement covers any period(s) when they were a member of either house of parliament between 1 January and 31 December. This registration period may be subject to modifications in case the Dáil and Seanad would be dissolved on the latter date.

¹⁷ The authorities have submitted detailed information on the requirements of each type of interest.

76. Members' statements of registrable interests are entered into a register established by the clerk of each house and are laid before each house and published in Iris Oifigiúil and on the Oireachtas' website. Furthermore, a copy of the registers is furnished by the Clerks to the Standards in Public Offices Commission.

77. In addition, the Ethics Act provides that a member who proposes to speak or vote in parliament and who has actual knowledge that s/he or a "connected person"¹⁸ has a material interest in the subject matter shall make a declaration about this interest before or during the speech and, in relation to voting, before the vote, in writing. Section 14 of the same Act provides a similar obligation upon office holders who propose to perform a function of their office and who have a material interest to report this to, in the case of the prime minister, the chair of the Standards Commission; in the case of any other minister of the Government or a minister of State to the prime minister and the Commission and, in the case of any other office holder, to the Commission Members may also submit voluntary statements at any time during the year if their interests change, if they receive advice that they must disclose an interest or if they have failed to comply with a requirement to disclose an interest (Section 30 of the Ethics Act 1995).

78. The GET is pleased that MPs' disclosed financial interests are to be registered and made public. However, it notes with concern that the Ethics Act does not require the disclosure of liabilities of these officials. Moreover, there is no obligation upon MPs to include certain potential interests, such as offers of remunerated/non-remunerated activities and agreements for future activities/interests. Members may on a voluntary basis disclose any kind of interest, but there is no evidence that MPs would disclose more than what is prescribed; it is therefore quite obvious that most often such voluntary possibilities would not suffice. Several interlocutors met were of the opinion that the disclosure rules would need to be amended in order to cover MPs' liabilities as well as other potential interests that may have a bearing on possible conflicts of interest. The GET strongly agrees with this position.

79. Furthermore, the GET observed that while ordinary members of parliament are required to disclose only their own personal interests in the annual statements of interests under Section 5 of the 1995 Act, the law obliges those who are also office holders to state in their annual forms any interests of which the office holder has actual knowledge concerning a spouse, a civil partner, his/her own children and those of the spouse/partner, which could materially influence the office holder in the performance of the functions of his/her office. The GET firmly believes that the regime concerning all MPs needs to be amended also to cover closely related persons, similar to what is already obligatory for office holders.

80. The GET was also concerned to learn that the law does not require that the actual value of the individual interests be disclosed. The only guidance as to the value of the interests are the stipulated thresholds given in the law. The GET takes the view that an indication of the real value of the assets, incomes or liabilities is of central importance when assessing such interests of MPs.

81. In view of the foregoing, and in order to ensure a proper level of transparency and thus facilitate the identification of possible conflicts of interest, **GRECO recommends that the existing regime on asset declarations be enhanced by i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders.**

¹⁸ Relative, trustee of a trust, partners etc.

Supervision and enforcement

82. The Ethics Act foresees two main avenues for challenging suspected breaches of its regulations by members of parliament: i) in respect of MPs who are not office holders, the Committee on Members' Interests of Dáil Éireann¹⁹ and the Committee on Members' Interests of Seanad Éireann²⁰ may, in addition to their other functions²¹, carry out investigations concerning their respective members and ii) complaints against MPs who are also office holders, are to be submitted to the Standards in Public Office Commission (Standards Commission) for investigation.

83. According to Section 8(2) and (4) of the 1995 Ethics Act, any person or member of parliament may make a complaint about a member (who is not an office holder) for not having complied with the codes of conduct or the Ethics Acts to the *Committees on Members' Interest* of each of the houses. The legislation stipulates that a complaint must be made in writing. Once a complaint from a person other than a member of the Oireachtas which contains a specific allegation against a named member (who is not an office holder) has been received by the Clerk of the Dáil/Seanad, the Clerk reviews the information and forms an opinion as to whether the complaint is frivolous, vexatious, or if there is insufficient evidence to establish a *prima facie* case. If the complaint passes these tests it is to be referred to the Committee, which has to consider whether the case merits an initial investigation (i.e. carries out an assessment as to whether there is, at the time of the consideration, or if there will be in the future, evidence sufficient to sustain a complaint). The Committee may decide not to carry out an investigation or to discontinue an ongoing investigation if at any time they form the view that sufficient evidence is not or will not be available in relation to the complaint. If the pertinent commission decides not to carry out or discontinue an investigation the respective committee must prepare and furnish a statement in writing of the reasons for the decision. Such statements are to be provided to the complainant and the member named in the complaint.

84. The GET was concerned to learn that the clerks of the Dáil or Seanad have the power to dismiss cases without involving the respective committee and furthermore that dismissals by the clerk or, following investigation by the respective committee, are not made public. Only decisions following an investigation where there is a finding against a member are made public. The GET strongly believes that the prevailing confidentiality around decisions to dismiss a complaint can be very negative for the public's confidence in the important work of these committees to ensure compliance with their own rules. It is also difficult to understand that the complainant is bound by such confidentiality. Consequently, the GET takes the view that all final decisions (including dismissal) by the pertinent supervisory bodies in charge of investigating complaints against the conduct of members of parliament must, as a main rule, be open to public scrutiny. Reference in this respect is also made to the reasoning and recommendation in paragraph 102.

85. Once the committee takes on board a complaint, it holds a sitting for the purpose of conducting an investigation and affords the member against whom the complaint has been made the opportunity to put his/her side forward. The committee observes its own rules of procedure, subject to the provisions determining the powers conferred upon the Committee within the framework of the Constitution and other legislation.

86. As a general rule, complaints can only be made against current members of either house. Neither committee can investigate members of the other house or former members of their, or the other, house (unless requested by the former member to continue an investigation). If the person who is the subject of the complaint ceases to be

¹⁹ Consists of 5 Members of the Dáil, the quorum is 3.

²⁰ Consists of 7 Members of the Seanad, the quorum is 3.

²¹ These committees are also in charge of drawing up guidelines and codes of conduct for MPs and for providing advice to members.

a member then, pursuant to Section 9(3) of the Ethics Act, the committee can take no further steps unless the former member requests, in writing, that the committee carry out or complete their investigation. In a similar vein, the committee may not carry out an investigation concerning a member who is or, at the relevant time, was an office holder.

87. The committees investigate, *inter alia*, complaints alleging contraventions of Section 5 and/or 7 of the Ethics Acts. These can relate to the obligation to provide statements of registrable interests; the obligation to declare an interest in proceedings in which a member proposes to speak or vote; the obligation on a member to comply with advice and/or guidelines given to him/her by the committee etc. The committees may also investigate a complaint that a member has done or omitted to do any other "specified act" (i.e. be inconsistent with the proper performance of the functions of office or position or be inconsistent with the maintenance of confidence in such performance by the general public and be of significant public importance). The GET was informed that the definition of what constitutes a "specified act" was subject to some controversy and that possible clarification of the law was underway²².

88. When considering whether a matter is of significant public importance, members are advised that the guidance contained in Section 4(5)(b) of the 2001 Act serves to identify such a situation, i.e. that the benefit alleged to have been received by a specified person or a connected person is or might have been or expected to be not less than €12 697.00. However, members are also advised that this section should not be construed as meaning that matters, the value of which is below this threshold could not be deemed to be of significant public importance. The Committee must have regard to "all the circumstances" when considering whether a matter is of significant public importance and in this regard the monetary limit of €12 697.00 is only indicative.

89. If, during the course of a committee investigation in relation to a specified act, the committee forms the view that the member did not contravene the provision complained of but may have violated other rules, the committee is not hindered from also investigating the latter contravention.

90. In terms of investigative powers, it can be noted that the committee is permitted to determine its rules of procedure in relation to an investigation; it may receive submissions and such evidence as it thinks fit. Thus, it is open to the committee to receive only written evidence. The Chairperson of the committee may also direct the member or any other person to appear before the committee. However, the committee cannot direct the member (the subject of the investigation) to produce evidence to the committee, but any other person whose evidence is required may be ordered to produce or submit evidence or to witness before the committee, subject to sanctions.

91. The Committees on Members' Interests normally proceed on the basis of consensus. In the event that this is not possible in relation to a particular question before one or the other of the committees, the committee may vote on the matter. In these circumstances the matter is decided by a majority of the members present and voting, the Chairman having an ordinary vote only. In the event that there is an equality of votes, the question is decided in the negative.

92. Should the relevant Committee on Members' Interests of Dáil or Seanad Éireann decide, following an investigation, it may draw up a report that a member is in breach of the Ethics Act. According to Section 28.2 of this Act, breaches of its regulations may lead to the following sanctions against members of parliament: (a) taking note of the report,

²² The Standards Commission stated in its annual report for 2006 that it had found it difficult in many cases to clearly determine whether a matter which comes before it is a 'specified act'. It has also noted that many complainants, potential or otherwise, found it difficult to grasp the meaning of the provisions. It has in one instance received legal advice in the course of which the provisions were described as 'rather nebulous'. The Commission has recommended to the Minister that this issue be addressed by amending the legislation.

(b) censuring of the member, and (c) the suspension of the member for a period not exceeding 30 days during which the house shall have been in session, or, in addition, until such time as the member takes the steps specified in the resolution to secure his/her compliance with the Act. This may involve the withholding of salary for the period in question, under section 28(2A)(a).

93. If the Committee on Members' Interests is of the opinion that the member may have committed an offence, it must (i.e. this is a mandatory requirement) prepare a report in writing and furnish it, together with any relevant document, to the Director of Public Prosecutions (DPP). Thereafter, the DPP is required to notify the Committee of any action taken, or the result thereof.

94. All final reports made by the Committees on Members' Interests to Dáil or Seanad Éireann are considered public and are available on the [Oireachtas' website](#). Summary information in relation to complaints to the Committees on Members' Interests 2010-2013 is as follows:

Committee on Members' Interests of Dáil Éireann (from 1 August 2010)

Complaints made or considered	Reports published and/or other action taken ²³			Matter referred to SIPO	Investigation discontinued	Ongoing
	Sanctions recommended	Other action recommended	No action recommended			
6 ²⁴	0	1	3	1	1	0

Committee on Members' Interests of Seanad Éireann (from 1 August 2010)

Complaints made or considered	Reports published and/or other action taken			Matter referred to SIPO	Investigation discontinued	Ongoing
	Sanctions recommended	Other action recommended	No action recommended			
9	0	0	4 ^{25 and 26}	2	2	1

95. *The Standards in Public Office Commission*, established under the Ethics Act 1995, is the supervisory body in respect of public employees and office holders. However, parliamentarians who are also office holders are covered under its exclusive jurisdiction. The Commission is an independent body, consisting of six members; a serving or retired High Court or Supreme Court judge, the Comptroller and Auditor General, the Ombudsman, the Clerk of the Dáil, the Clerk of the Senate, and an ordinary member (former member of parliament) who is not a serving MP. The Standards Commission is required to take its decisions by a majority of all its members. The Commission is served

²³ See http://www.oireachtas.ie/parliament/oireachtasbusiness/committees_list/dailMembersinterests/ for reports made. Also includes one case in which the committee caused a motion to be moved in the Dáil noting a Standards Commission finding that a member had failed to furnish to the Standards Commission within nine months of the date of their election a Statutory Declaration and a Tax Clearance Certificate/Application Statement; that the member was now in compliance; and accordingly considering that no further action was required. The Dáil so resolved - see [relevant entry in Dáil Debates for 3 May 2012](#).

²⁴ Includes 388 identical complaints counted as 1 composite complaint: matter was referred to the Standards Commission - cf. paragraph 100.

²⁵ Includes one case in which the committee caused a motion to be moved in the Seanad noting a Standards Commission finding that a member had failed to furnish to the Standards Commission within nine months of the date of their election a Statutory Declaration and a Tax Clearance Certificate/Application Statement; that the member was now in compliance; and accordingly considering that no further action was required. The Seanad so resolved - see [relevant entry in Seanad Debates for 4 July 2012](#)

²⁶ In the remaining three cases, the committee found that there were no reasonable grounds for the complaints in the manner contemplated in the Acts and consequently that no action was to be taken against the Senators concerned.

by a Secretariat comprising nine staff. One of the principal functions of the Commission is to provide advice and guidelines on compliance with the Ethics Acts to office holders.

96. Complaints may be made by anyone concerning a member of parliament who is also an office holder, concerning an alleged contravention of the disclosure provisions under the 1995 Ethics Act. Complaints must be made in writing and complainants cannot be anonymous.

97. The Standards Commission can appoint an Inquiry Officer to assist it in its consideration as to whether an investigation is warranted (section 6 of the 2001 Act). The Inquiry Officer conducts a preliminary investigation of the complaint. The Ethics Acts give the Inquiry Officer powers to procure the evidence; interview the complainant; confront and interview the person who is the subject of the complaint and to make a statement; request relevant documents and finally to report in writing to the Standards Commission. Such a report would not contain any determinations or findings, but would, if the Commission so requests, include an expression of the opinion of the Inquiry Officer as to whether there is *prima facie* evidence to sustain the complaint.

98. The Commission may also decide to investigate a possible contravention on its own initiative; however, it does not have any power to appoint an Inquiry Officer where it has not received a complaint. The GET was informed that this is considered a critical shortcoming, which *de facto* prevents the Commission from dealing with cases *ex officio* and the Commission, itself, recommended in 2004 that it be granted more powers in this respect. The GET shares the view of the Commission and would strongly suggest that the Irish authorities consider various measures in order to reinforce the investigative possibilities of the Commission. A broad recommendation to that effect has been made below (paragraph 102).

99. Following its investigations, the Commission prepares a report with its findings and suggestions to the Committee on Members' Interests of the relevant house. The Commission itself has no power to decide on measures to be taken, but its report may lead to a motion for a resolution that certain action or actions be taken by that house in relation to the matter (section 28 of the 1995 Act). Section 28 also applies when the Commission has investigated a member who is not an office holder. The possible actions are the same as those described above in respect of members who are not office holders, with the addition that office holders may also risk the withholding of his/her salary.

100. In case the Standards Commission comes to the conclusion that the person subject to investigation may have committed an offence relating to the performance of his/her functions as an office holder, it must prepare and furnish a report in writing to the Director of Public Prosecutions (DPP) for consideration of this Office.

101. In November 2012, the Standards Commission received 388 individual complaints which concerned the alleged failure by one MP to disclose as a registrable interest land which he part-owned abroad. The Commission found that 70 of these complaints were invalid under the provisions of the Ethics Acts as the identity of the complainants was not known. In September 2013, the Commission decided that evidence sufficient to sustain the complaints referred to it was not and would not be available. Accordingly, it decided to discontinue its investigation. In addition, the Commission directly received two complaints on the same matter. As the MP was not an office holder at the time of the alleged contraventions, the complaints were invalid and the complainants were informed that if they wished to pursue the matter, they must complain to the Clerk of Dáil Éireann. No other complaints about MPs' contraventions of the Ethics Acts were received by the Commission in 2011-2013.

102. The GET notes that the main supervision over members' abidance with the parliamentary codes of conduct and the Ethics Acts rests with parliament itself.

Complaints made by members in respect of MPs who are not office holders are to be filed with the Committee on Members' Interests of the Dáil or the equivalent Committee of the Seanad, depending on to which house the MP concerned belongs. In respect of those MPs who are also office holders, the Standards in Public Office Commission is the mechanism for investigating alleged complaints. The GET was informed by the Irish authorities that this divided approach, reflects an interpretation of the constitutional position. Even so, the GET does not find the current division of the supervisory functions very convincing. It would appear that only very few complaints are filed in any of these systems and that one single body, for example, the Standards Commission, would appear well placed to carry out the supervision in respect of all members of both houses and regardless of whether the MPs are office holders or not, if sufficiently resourced. Such a consolidated approach would at least from the view of the wider public appear much clearer. Moreover, a consolidated approach would provide better oversight and have the potential to bring a coherent approach into the decision making. It would also be more convincing for the public that complaints against MPs are not being investigated by other MPs but by an independent body. Furthermore, the GET notes with concern that the current complaints mechanisms do not allow for anonymous complaints and that the Standards Commission is not allowed to appoint investigators without a formal complaint being filed, which *de facto* prevents it from investigating misconduct *ex officio*. Moreover, the GET takes the position that all complaints, whether they lead to decisions of early dismissal, dropped investigations or final decisions should, to the extent possible, be made available to the public. Public scrutiny is already a well-established component in the Irish system; however, that would be further reinforced if all decisions were made public. Finally, the GET believes that a consolidated independent monitoring mechanism needs to be vested with sufficient powers to carry out investigations (including *ex officio*) and possibly to use sanctions. For these reasons, **GRECO recommends that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity.**

Advice, training and awareness

103. On their election to Dáil Éireann or Seanad Éireann, members are provided with an introductory handbook on parliamentary practice and procedures. This aims, *inter alia*, at familiarising members of parliament with the Ethics in Public Office Acts 1995 and 2001. The handbook contains a short summary of the main provisions of the Ethics Acts, the Code of Conduct for members and the tax clearance and statutory declaration requirements for members of parliament.

104. Statutory guidelines are prepared by the Committees on Members' Interests for non-office holders and by the Standards Commission for office holders on compliance with the provisions of the Ethics in Public Office Acts 1995 and 2001.

105. Furthermore, the Standards Commission informs office holders in writing upon appointment of their obligations under the Ethics Acts and under the Code of Conduct for Office Holders. Moreover, office holders have a right to seek statutory binding advice as to those obligations in any particular circumstance. At the beginning of each year, the Standards Commission also informs all members of parliament (including the office holders) to provide copies of the forms for Statements of Registrable Interests and to remind them of the guidelines and their right to request advice.

106. In January each year the Minister for Public Expenditure and Reform submits written information to all ministers and the parliamentary office holders to remind them of their annual obligations under the Ethics Acts. In particular, the minister reminds the office holders of their obligation to furnish the (a) annual statement of registrable

interests to the Standards Commission and (b) the statement of additional interests to the Clerk and (c) to lay the annual statement of a special adviser's own interest before the Oireachtas.

107. Furthermore, all departments are required by section 7 of Department of Finance Circular 4/2002²⁷ to inform each newly appointed office holder of his or her obligations under the Ethics Acts by way of a minute from the head of the department to which the office holder has been appointed. Circular 4/2002 also provides for periodic reminders concerning office holders' ethics obligations.

108. Pursuant to Section 12 of the Ethics Acts, the Committee on Members' Interests of each house and the Standards Commission are to provide advice to individual members and to office holders, on a confidential basis, concerning the Ethics Acts. Members, including office holders are then required to act in accordance with the advice given. The Secretariat of each committee and of the Standards Commission also provide advice to members on an informal basis.

109. Members of Dáil and Seanad Éireann, may seek advice from the Committee on Members' Interests of Dáil or Seanad Éireann (as relevant) according to Section 12 of the Ethics Acts. This is intended to be used as a pre-emptive procedure that Members would use in case of any doubt about a provision of the Ethic Acts. While there is no obligation to seek advice, once such advice is given a member must comply with it. A similar provision exists for an office holder to request advice from the Standards Commission. The GET had some concern that requiring a member to follow advice might chill a member from candidly seeking ethics assistance. That said, the GET was assured that an informal process also exists to seek non-binding advice.

110. The GET notes the numerous measures taken on a regular basis in order to keep members of parliament and office holders aware of the rules and their obligations, such as how to declare interests etc. and the possibility for MPs to seek advice from either the parliamentary committees on members' interests or the Standards Commission, informally or formally. These measures are good examples on how to assist in this respect. It would appear, however, that no particular attention is given to training on the ethics and conduct requirements; how to prevent conflicts of interest and other such topics relating to corruption prevention. Such training appears all the more important considering the complexity of the current normative system and would also be necessary if a new legal framework were to be established. Consequently, **GRECO recommends that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention.**

²⁷ Circular 4/2002 -Standards in Public Office Act 2001 <http://circulars.gov.ie/pdf/circular/finance/2002/04.pdf>.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

111. The Constitution (Article 34.1) provides that "*Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.*" The Constitution also provides that the courts shall comprise of courts of first instance including a High Court and courts of local and limited jurisdiction and a Court of Final Appeal, to be known as the Supreme Court, the president of which is the Chief Justice.

112. Article 35.2 of the Constitution provides that "*All judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law*". No individual or body may give any directive in individual cases to judges as to how they may determine a case. All holders of judicial office in Ireland are full-time professional judges: there are no lay judges.

113. As a main rule²⁸, the courts at each jurisdictional level are courts of general jurisdiction and, generally, judges at each jurisdictional level may be called upon to hear criminal and civil (including family) cases²⁹. The High Court operates lists for various categories of litigation (e.g. Chancery, Judicial Review, Commercial, Asylum, Companies Bankruptcy), and judges may be assigned to those lists for particular periods. However, each judge of the High Court may be assigned to try any proceeding within that court's jurisdiction.

114. The Supreme Court currently consists of the Chief Justice and 9 ordinary judges, the President of the High Court being ex-officio a member of the court. The Supreme Court performs the functions of a court of final appeal and has appellate jurisdiction from all decisions of the high court (subject to such exceptions as may be provided for in legislation) and (to the extent provided by legislation) from decisions of other courts. The Court generally sits in rotating three judge panels assigned by the Chief Justice. The Supreme Court also has the function, where a bill passed by the legislature is referred to that court for the purpose, of adjudging whether the bill is or is not repugnant to the Constitution. The Constitution provides that legislation may not exclude from the Supreme Court's jurisdiction cases as to the constitutional validity of any law. When deciding on a question as to the constitutionality of a law, the Supreme Court is required to issue a single judgment, no other opinion being pronounced or disclosed. The Supreme Court, consisting of not less than five judges, determines any issue which may arise as to the permanent incapacity of the President of Ireland.

115. The Court of Criminal Appeal is not specifically mentioned in the Constitution but was created by Act of the Legislature (the Houses of the Oireachtas) and ordinarily consists of three judges, one being a judge of the Supreme Court (the Chief Justice or the latter's nominee) and the others being High Court judges nominated by the Chief Justice, though additional judges of the Supreme Court or High Court may attend where the Chief Justice requests. It has appellate jurisdiction in cases tried on indictment, i.e. from the High Court, the Circuit Court and the Special Criminal Court.

116. An amendment to the Constitution to enable the establishment of a new Court of Appeal as, provided for in the Thirty-third Amendment of the Constitution (Court of Appeal) Act 2013, was approved by the electorate in a referendum on 4 October 2013 and signed into law on 1 November 2013. The new Court of Appeal will be a permanent court which will sit in several divisions, to hear appeals in civil cases and to hear appeals

²⁸ With the exception of the Special Criminal Court and the Court of Criminal Appeal.

²⁹ With the exception of the specialist judges of the Circuit Court who are confined in their jurisdiction to adjudicating in certain types of collective personal insolvency proceedings.

in criminal cases, replacing the current Court of Criminal Appeal (see below). It will have capacity to hear all appeals from the High Court (with such exceptions and subject to such regulations as may be prescribed by law), thus hearing the majority of cases now dealt with by the Supreme Court. The establishment of the Court of Appeal will require the enactment of an "Implementation Bill" that will deal with many practical issues in regard to the new court, such as the formal establishment and membership of the Court of Appeal, the appointment of judges, the organisation of the court, and provision for the office of Registrar of the Court among other issues. It is planned that the Court of Appeal will be established during the second half of 2014 and that it will require ten judges (nine ordinary and a president).

117. The High Court consists of a president and 35 ordinary judges. The President of the Circuit Court is ex-officio a member of the court. The High Court has "full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal", and this extends to the question of the validity of any law having regard to the provisions of the constitution. The High Court has exclusive jurisdiction in respect of *habeas corpus* under the constitution, and also has exclusive jurisdiction in judicial review and various specialised areas of law, such as insolvency and Admiralty. The High Court when exercising criminal jurisdiction is known as the Central Criminal Court, may try all cases on indictment (i.e. requiring to be tried before a judge and jury), and has exclusive jurisdiction to try treason, certain subversive offences, murder, attempted murder, conspiracy to murder, rape, aggravated sexual assault and attempted aggravated sexual assault, certain offences against competition law and various offences arising under international conventions incorporated into Irish law. The High Court has appellate jurisdiction in civil cases from the circuit court, by way of a rehearing *de novo*.

118. The courts of local (i.e. territorial) and limited (i.e. limited as to value of claims or seriousness of offences triable) jurisdiction at first instance mandated by the constitution were established by Act of the Legislature, with a right of appeal as determined by law. Legislation has provided for two courts of local and limited jurisdiction, viz. the circuit court and the district court.

119. The Circuit Court is the intermediate first instance jurisdiction. It consists of a president, 37 ordinary judges and six specialist judges. The president of the circuit court is ex-officio a member of the court. The court operates in eight regional circuits, at least ten judges being assigned to the Dublin circuit, three to the Cork circuit, and one judge each to the remaining circuits. The Circuit Court, generally, has a civil jurisdiction in cases involving claims not exceeding €38 000 and a criminal jurisdiction in respect of all offences triable on indictment except those within the exclusive jurisdiction of the High Court, mentioned above. Legislation has been enacted, raising to €75 000 the monetary threshold of the Circuit Court's general civil jurisdiction and €60 000 the monetary threshold in personal injuries actions.

120. The District Court is the lowest first instance jurisdictional tier, being the equivalent of a magistrate's court. It consists of a president and 63 ordinary judges. The court operates locally in 24 districts, one judge being assigned to each district with the exception of the Dublin Metropolitan District (to which the president and 20 judges are assigned) and the Cork District (to which three judges are assigned). The District Court, generally, has a civil jurisdiction in cases involving claims not exceeding €6 300 and a criminal jurisdiction, exercised summarily (i.e. without a jury) in respect of all minor offences which by law are triable (a) only in summary manner, (b) in summary manner at the prosecution's discretion and (c) in summary manner at the accused's election. Legislation has been enacted, and at the time of writing is expected shortly to be commenced in operation, raising to €15 000 the general monetary threshold of the District Court's jurisdiction.

121. The constitution envisages the establishment by legislation of special courts for the trial of offences in cases where it is determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice, and the preservation of public peace and order. In accordance with that provision, a Special Criminal Court was established in 1972 dealing largely, though not exclusively, with offences related to subversive activity and offences associated with organised crime.

122. The constitution also provides for military tribunals (courts-martial) for the trial of offences against military law and to deal with a state of war or armed rebellion.

123. Contrary to the situation in several other member states, Ireland does not have a judicial council. Councils for the judiciary are, in accordance with Council of Europe standards, independent bodies that seek to safeguard the independence of the judiciary and of individual judges in order to promote the efficient functioning of the judiciary³⁰ in dealing with matters, such as appointments, disciplinary measures and education with the judiciary.

124. The GET was informed that the need for such a structure – a permanent judicial council – has long been recognised in Ireland. Despite a general consensus on the need for a judicial council and strong historical support from major political parties and that it has been described as a legislative priority of the current government, it has not yet materialised. The GET was made aware of the content of the “Judicial Council Bill”, indicating that a future council would deal with matters, such as education and training, preparations of guidelines and codes of conduct as well as carrying out disciplinary inquiries. The GET was also informed that pending the introduction of such legislation, in conformity with a decision made at a national conference of the judiciary in November 2011 an interim judicial council was established on a non-statutory basis, consisting of all judges of the courts, tasked with preparing for the establishment of a judicial council on a statutory basis. The board of the interim judicial council was formed by the Chief Justice and presidents of the high court, circuit court and district courts, and a judge from each of those jurisdictions elected by his or her colleagues from the jurisdiction concerned. In light of recent history adverse to the judiciary (see below concerning constitutional safeguards etc.) and reforms suggested in this report, the need for an independent council of the judiciary is manifest; however, when defining precise structures and tasks of such a body the authorities would need broad support from the judiciary itself and the establishment of such a statutory body needs to be accompanied by funding and resources adequate to its functions. **GRECO recommends that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations.**

Recruitment, career and conditions of service

125. All holders of judicial office in Ireland are full-time professional judges. No judicial office in the superior courts may be held other than on a permanent basis. The Courts of Justice Act 1936 allows for the possibility of temporary appointment of judges to the Circuit and District Courts by the government in situations of temporary absence of a judge of such a court, or an unusual and temporary increase in the workload etc. These provisions for temporary appointment have been held to be constitutionally valid, on the premise that for the duration of any fixed short-term appointment the independence of the appointee would be guaranteed by the constitution. No temporary appointments to the circuit or district courts have been made in recent years.

³⁰ Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

126. All judges of the ordinary courts are appointed by the president of the republic on the advice of the government. The Judicial Appointments Advisory Board (JAAB) was established by statute in 1995, charged with "identifying persons and informing the Government of the suitability of those persons for appointment to judicial office." The JAAB acts on the request of the Minister for Justice and Equality where a judicial office stands vacant or before a vacancy in a judicial office arises. The JAAB consists of the Chief Justice (Chairperson); the presidents of the High Court, Circuit Court and District Court; the Attorney General; a practising barrister nominated by the Chairman of the Bar Council; a practising solicitor nominated by the President of the Law Society of Ireland; and not more than three persons appointed by the Minister for Justice and Equality engaged in or having knowledge or experience of commerce, finance, administration, or persons who have experience as consumers of the service provided by the courts. Non *ex-officio* members are appointed for a period not exceeding three years and are eligible for re-appointment.

127. There are no statutory provisions specifically providing for assessment of integrity of the JAAB as a body. An individual member of the JAAB may be subject to statutory disclosure requirements under the Ethics Acts by virtue of the office they hold, as in the case of the Attorney General. Holders of judicial office are not subject to the Ethics Acts. The secretary to the JAAB – the Chief Executive Officer of the Courts Service – is also subject to the Ethics Acts regime.

128. The JAAB is required to check whether a candidate satisfies the eligibility requirements for the particular judicial office concerned (stipulated years of professional legal practice – 12 years for the supreme court and high court, ten years for circuit and district courts) and may not recommend a person unless those requirements are met. The JAAB may for the purpose of considering candidates for judicial office consult persons (e.g. the legal professional body to which a legal practitioner belongs) concerning the suitability of applicants for judicial office and interview applicants. Furthermore, applicants must complete a standardised detailed application form which includes questions on their practice, qualifications, education, character, etc., outline why they are suitable for judicial office and commit to undertake training or education courses as required by the Chief Justice or the president of the court concerned. Also, Section 22 of the Standards in Public Office Act, 2001, as amended, precludes the JAAB from recommending a person to the Minister for Justice and Equality for appointment to judicial office unless the person has furnished to the JAAB a tax clearance certificate and a declaration that all taxes, interest or penalties have been paid.

129. The JAAB must submit the names of at least seven persons for each position it recommends for appointment (unless less than seven apply) together with particulars of their education, professional qualifications, experience and character. In advising the president on the appointment of a person to judicial office, the government is required firstly to consider persons recommended by the JAAB to the Minister for Justice and Equality for that purpose.

130. The judges of the Special Criminal Court are appointed, and are removable at will, by the government. Persons appointed to the Special Criminal Court under the Offences against the State Act, 1939 are, in practice, drawn from serving judges of the district, circuit or high court. The general approach has been to appoint a replacement to the court from the same court jurisdiction as the outgoing judge. Where a judge is no longer required to serve as a member of the Special Criminal Court, for example, on appointment to the Supreme Court or by resignation from the Special Criminal Court, then the judge can continue to serve as a judge in the appropriate court jurisdiction.

131. The procedure in respect of promotion of judges is less developed than that of selection and recruitment of new judges. It should be noted that judges in Ireland are independent office holders under statute and do not hold office under a contract of

employment – they are not classed as public or civil servants and are not subject to the management and reporting structures, nor do they enjoy incremental salary scales, as applies to public or civil servants. Appointments of serving judges to other judicial offices are made by the President of the Republic on the advice of the government and are not subject to the process conducted by the JAAB. Where the government proposes to advise the President on an appointment to the office of Chief Justice, President of the High Court, President of the Circuit Court or President of the District Court it is to have regard first to the qualifications and suitability of persons who are serving at that time as judges.

132. The GET discussed the current structure for recruitment of judges with various interlocutors, including the judiciary itself, representatives of the executive branch, the Bar, the Law Society, the Prosecution Service, representatives of civil society and media. On the one hand, they all seemed to agree that judges in Ireland (“once on the bench”) enjoy much respect for being highly qualified professionals with a high degree of integrity in their work and performance. On the other hand, the current system for recruiting judges is widely perceived as being politicised. In particular, the process under the JAAB has been criticised for being limited to a written procedure and also for the JAAB having to produce too long a list of suitable candidates instead of shortlisting only the best candidates in order of priority. As a result, the current appointments are susceptible to political lobbying and favouritism once the lengthy lists of candidates of at least seven names, but often more (sometimes up to 20 names and in extreme cases more than that) without any order of priority has been submitted to the government. It would appear that the interlocutors of the legal branches agreed that the current selection system under the JAAB needs to be reformed focusing on two major components: i) more rigorous and merit based selection, including interviews leading to ii) a targeted brief shortlist of only the very best candidates in order of priority. Furthermore, the GET noted that the promotion of judges is even more susceptible to political interference as there is no pre-selection at all outside the executive branch in this respect. The GET sees no need to treat such procedures principally different from those concerning new recruitments. It takes the view that reforms of the procedures for recruiting and promoting judges along the lines described above, would serve the purpose of limiting undue influence over these processes. Consequently, **GRECO recommends that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers.** The GET notes that the composition of the JAAB would appear suitable for a more profound selection procedure; however, such a task could also come under the auspices of a judicial council should such a body be established (as recommended in paragraph 124). Whatever option the Irish authorities will choose eventually, the GET wishes to stress that new procedures for the recruitment and promotion of judges need to be provided with appropriate resources.

133. The mobility (transfers and rotation) of judges within the court to which they are assigned is in the hands of the president of the particular court. In respect of transfers between circuit and district courts, judges - who consent - may be transferred by the government to another circuit or district.

134. The tenure of judges of the Supreme Court and the high court is guaranteed by the constitution. While Supreme Court, high court and circuit court judges retire at the age of 70, district court judges retire at 65. However, a district court judge may be continued in office for successive periods of one year until the age of 70, if allowed by a special warrant. The GET heard criticism in respect of these differences which were described by some as an historical anomaly, heard no justifiable reasons for the discrepancy, and suggests that all judges be subject to the same retirement regime.

135. The constitution provides that a judge of the Supreme Court or the High Court cannot be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by each house of parliament calling for the judge's removal. "Stated misbehaviour" would appear to extend beyond behaviour in the course of one's duties as a judge. In arriving at such a resolution, members of the houses of parliament would be required to act in accordance with the rules of procedural fairness guaranteed by the constitution. Judges of the lower courts have been given by statute tenure equivalent to that of their counterparts in the superior courts.

136. The gross annual salary of judges ranges from €127 234 in respect of a judge at a district court to €202 622 for a judge at the Supreme Court. However, for judges appointed as of 1 January 2012 the equivalent remuneration rates are €114 711 in the District court and €182 895 in the Supreme Court. The annual salaries of the presidents of the respective courts are some €20 000-30 000 higher than the salaries of ordinary judges. Besides coverage for travel and subsistence expenses and a judicial allowance for costs incurred in the carrying-out of their judicial functions, judges do not receive additional benefits.

137. Net judicial remuneration in Ireland has been cut significantly as a result of the recent financial crisis. Previously protected by a constitutional provision that their salaries could not be reduced, judges were initially exempt from a pay reduction which applied to other public officials, and when the judiciary as a whole did not agree to a voluntary cut, a political backlash ensued; the constitutional protection was revoked and amended³¹ by public referendum and a series of pay and pension cuts were implemented. The cumulative effect of these measures has been to reduce overall judicial compensation, in some cases by as much as 40-50%, according to judicial representatives. It was explained to the GET that the most immediate impact has been on judges currently serving, many are said to be demoralised following the government's campaign for the referendum, some are under financial stress and they have no longer the same constitutional guarantee against further pay cuts at the same time as the far-going constitutional restraints from receiving any other incomes prevail. Moreover, the new system has introduced salary differences between judges, depending on their entry into the service. These circumstances are bound to have a negative impact on the possibility to recruit top quality judges in the future, according to most interlocutors met by the GET, at the same time as the need to recruit is likely to increase as many serving judges are contemplating leaving the service on early retirement, because of the changed conditions. The GET takes note of the upcoming situation which is particularly difficult in a common law country, such as Ireland, where judges are recruited from the practicing bar, having proven their qualities following decades of successful work and thus entering into the service at a late stage with a rather limited pension vesting period.

138. To sum up, while the GET is fully aware that all public officials in Ireland have experienced pay cuts as a result of the financial crisis, it would appear that the judges have been particularly affected not only in financial terms, but also in respect of their future constitutional guarantees. These measures go beyond the mere financial aspects as they have a principal impact on judicial independence. The GET understood that the lack of a judicial council or other forms of associations on behalf of judges³², made them particularly fragile during the government campaign for the need to reduce judicial salaries and benefits. This further highlights the need to establish a judicial council as an important link between the judiciary and the executive branch, as recommended in paragraph 124. However, the upcoming situation would also merit further measures aiming at returning to a situation of long-term stability within the judiciary and to

³¹ Following the amendment, the judiciary retains the general constitutional protection for their individual protection, but may as a group have their remuneration proportionally reduced when similar groups of public servants have their remuneration reduced in the public interest.

³² The Association of Judges in Ireland was established in late 2011 to further the profession of judges and to give a collective voice to judges.

reinforcing the respect for, and integrity of, an independent judiciary justifiably proud of its history and similarly able for the future. **GRECO recommends that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined - in close dialogue with judicial representatives - with a view to maintaining the high levels of judicial integrity and professional quality in the future.**

Case management and procedure

139. The presidents of all courts, or in their absence senior ordinary judges, are empowered to distribute and allocate the various cases having reached the particular court. New cases are listed by date and distributed to judges randomly. Once a case has been allocated to a particular judge and that judge has commenced hearing the case, the judge may not be removed from the case save in the circumstances mentioned below arising on a judicial review or appeal. That said, it is established practice for judges to recuse themselves in a case where they have an interest, see also below (conflict of interests).

140. According to established case law, Irish courts are vested with jurisdiction to (a) ensure that litigation is conducted in a timely and efficient manner so as to secure effective access to the courts (see, e.g. *O'Connor v Nurendale Ltd t/a Panda Waste Services* [2010] IEHC 387 and *Donnellan v Westport Textiles Limited (In Voluntary Liquidation) and Others* [2011] IEHC 11) and (b) dismiss proceedings on grounds of inordinate and inexcusable delay (see, e.g. *Byrne v. The Minister for Defence and Others* [[2005] IEHC 147).

141. Where a case requires priority listing for hearing, an application may be made by any of the parties, in the case of the high court to the judge in charge of the list for the category of litigation concerned or where that judge may not be in a position to accommodate early listing of the case, to the president of the high court, and in the case of the circuit or district court, the judge of the circuit or district concerned.

142. Under section 46 of the Courts and Court Officers Act 2002, as amended by section 55 (a) of the Civil Liability and Courts Act 2004, if a judgment in court proceedings has been reserved and is not delivered before the expiration of two months from the date on which it is reserved, the president of the court concerned shall, as soon as may be after expiration of that two-month period, and the expiration of each subsequent period of two months (if judgment is not delivered first), list the proceedings or cause them to be listed before the judge who reserved judgment therein and give notice in writing to the parties to the proceedings of each date on which the proceedings are listed.

143. The constitution requires that court proceedings be conducted in public save for limited exceptions to be prescribed by law, applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction; matrimonial causes and matters; lunacy and minor matters; proceedings involving the disclosure of a secret manufacturing process etc. (Section 45 of the Courts (Supplemental Provisions) Act 1961). Proceedings concerning family law and child care sexual offences may also be held *in camera*.

Ethical principles, rules of conduct and conflicts of interest

144. Some basic ethical principles are provided for in the constitution: Article 35.2 provides that all judges are independent in the exercise of their judicial functions and subject only to this constitution and the law. Article 34.5. 1 of the constitution provides for an oath to be made by a person appointed as a judge: "*In the presence of Almighty God I, NN, do solemnly and sincerely promise and declare that I will duly and faithfully*

and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me."

145. Standards of conduct for judges are not currently reflected in any formal document. As referred to above (paragraph 124), an interim judicial council was informally established by judges with the aim of paving the way for such a council on a statutory basis. Within this informal framework, a committee on judicial ethics, chaired by a justice of the Supreme Court, has considered the matter of the content of guidelines on judicial conduct and ethics and produced a draft preliminary text to this end.

146. The GET welcomes the moves taken by the judiciary to introduce a code on judicial ethics; work that apparently started already in 2011. The GET also supports the idea to connect the guidelines contained in the draft text to disciplinary measures, all within the framework of a future judicial council. Unfortunately, these measures have been delayed, as it appears, by the slow process for the establishment of a judicial council. In this connection, the GET takes the view that a code of ethics of the judiciary could well be established, if agreed by the judiciary, even in the absence of a judicial council, should that process be further delayed. **GRECO recommends i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and ii) connect such an instrument to an accountability mechanism.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

147. The constitution sets forth that judges may not be members of the legislature, or hold any other office or position of emolument. This does not preclude a judge from receiving royalties from books (no paid appointment being involved) or holding honorary offices (an example being an adjunct professorship) or membership of commissions or tribunals not exercising executive or legislative functions provided this does not impose undue strain on the work of his or her court and has the approval of its president. The GET notes that the Irish constitution is strict in terms of accessory activities and remuneration. These issues could well be further developed in a code of conduct as referred to in the previous paragraph.

148. There are no specific rules regulating judges' employment or engagement in other activities after having exercised judicial functions and the GET sees no need, nor legal basis for such measures.

Recusal and routine withdrawal

149. The principles concerning and the circumstances in which a judge should recuse himself/herself are set out in case law³³. Moreover, it is established practice for judges to recuse themselves in a case where they have an interest, or where there are grounds on which a reasonable person might fear that in respect of the issues involved s/he would not get an independent hearing. Any party to proceedings may apply to a judge to recuse himself/herself where there is an apprehension of objective or subjective bias in the case. Failure by a judge to accede to such an application, where justified, would be grounds for the setting-aside - on an application for judicial review on appeal. The GET acknowledges that there is clear case law for situations of conflicting interests or potential conflicts, which it would be useful to include in a future code of conduct of the judiciary (see

³³ The leading judgment (of the Supreme Court) in *Dublin Wellwoman Centre Ltd & Ors. v Ireland v & Ors.* [[1995] 1 I.L.R.M. 408]

paragraph 146). Guidelines in this respect would bring clarity to the wider public in such matters.

Gifts

150. The GET also notes that there are no specific rules on the acceptance of gifts by judges. The authorities stress that acceptance of a gift as an inducement in relation to the functions of a judge would constitute a criminal offence as well as grounds for proceedings for impeachment. Moreover, the GET did not come across any indication that gifts to judges represented a particular problem in Ireland; however, a clear reference to the prohibition of gifts should be included in the future code of conduct (see recommendation in paragraph 146).

Third party contacts, confidential information

151. There are no specific statutes regulating this area with respect to judges. However, it is well established practice that a judge would not communicate with a third party concerning a case in which s/he is exercising a function. The GET takes note of this important practice and suggests that such practice as well as the handling of confidential information be included in a future code of conduct (see recommendation in paragraph 146).

Declaration of assets, income, liabilities and interests

152. There are no specific requirements, duties or regulations in place for judges and their relatives to submit asset declarations. That said, the authorities underline that where a judge has an interest in a dispute the subject of proceedings which have been listed before him or her, the judge would have an obligation to recuse himself or herself from hearing the proceedings in accordance with the principles enunciated in case law, see above.

153. The GET discussed the advisability of introducing mandatory asset declarations with representatives of the judiciary. While it received no opposition in principle to such a measure, it also notes that the judiciary is strictly regulated in respect of accessory activities and the like under the Constitution and also one of the most trusted state institutions in Ireland, the GET sees no immediate need to introduce mandatory asset declarations. Having said that, such a measure could well be considered when constitutional safeguards of the judiciary and employment conditions are being dealt with, see paragraph 138.

Supervision and enforcement

154. There is no special regime to supervise judges in their performance. As mentioned above, any party to proceedings may apply to a judge to recuse himself/herself where there is an apprehension of objective or subjective bias in the case. Moreover, accusations against judges may be dealt with by the presidents of the courts.

155. Judges are, like any other person, criminally liable. There are no immunities or special procedures for judges under Irish law in relation to prosecution for criminal offences. As regards the applicability of corruption offences, judges are included in the definition of "public official" for the purposes of the corruption in office offence in section 8 of the Prevention of Corruption (Amendment) Act 2001 in addition to being liable for prosecution for the general active and passive corruption offences under section 1 of the Prevention of Corruption Act, 1906 (as amended by section 2 of the Prevention of Corruption (Amendment) Act, 2001 and section 2 of the Prevention of Corruption (Amendment) Act 2010).

156. The GET's interviews with judges at all four court levels confirm the judiciary's mindfulness of the need to establish a judicial council as a necessary link between the judiciary and other powers of the state. Such a body which, according to information provided to the GET, should not only be tasked to develop guidelines and codes of conduct but also to act in order to enforce such rules. The GET has already expressed its view in this report as to the need for establishing such a council; it wishes to add that the current situation with no form of disciplinary body of the judiciary may lead to a perception that judges are incapable of investigating and policing themselves for misconduct short of an impeachable offence, wary of a uniform code of conduct. However, the GET found the opposite to be true. Judges in Ireland want clear guidelines to govern their conduct to be accompanied by a transparent process to investigate and adjudicate allegations of misconduct. The GET agrees with such a need and has already made a recommendation for the establishment of a judicial council, tasked with such functions, see paragraph 124.

Advice, training and awareness

157. No individual or body may give any directive in individual cases to judges as to how they may determine a case. A procedure known as the case stated procedure enables a judge from a lower court in certain circumstances to seek advice - a ruling from a higher court - at a formal hearing conducted *inter partes* - on a discrete point of law relevant to the case being dealt with at first instance.

158. Currently, judicial education is overseen by a Committee on Judicial Studies chaired by the Chief Justice and consisting of the presidents of the various jurisdictions and other members of the judiciary nominated for the purpose. Judicial education encompasses induction as well as continuing education.

159. As regards *induction training*, each new appointee to judicial office is provided with briefing material which includes a copy of the Bangalore Principles of Judicial Conduct and United Nations-authored material on judicial ethics and standards of conduct. Under the auspices of the Committee on Judicial Induction and Mentoring (CJIM), chaired by the Chief Justice, each new appointee is assigned a judicial colleague as mentor who is tasked to provide guidance and advice to the new judge on matters including judicial ethics and standards in the first three months after the new judge's appointment, and to be available to give advice when needed during the course of the first 12 months after appointment. The judicial mentors have themselves received training for the purpose, including on the subject of ethics and standards.

160. The GET understood that there is no formalised *in-service training*. Judges are sporadically invited to education/training sessions at various conferences. Interlocutors mentioned that one such event was organised in 2013 by a high court judge at the district court judges' conference in 2013.

161. While the induction training appears to be based on a good mix of education and mentorship, the GET notes that in-service training of judges has no formal structure at all. It learned during discussions with representatives of the judiciary that the more recent attempts to institutionalise training have not been accompanied by any dedicated funding and the current Committee on Judicial Studies, directly led by the Chief Justice, was only assisted by one temporary staff member. The GET understood that these attempts were no more than first initiatives to be developed within the framework of a judicial council, should that be established. The GET welcomes the efforts made in respect of induction training but wishes to stress that further measures are required to institutionalise training and, above all, to provide adequate resources and funding. **GRECO recommends that dedicated induction and in-service training for judges be institutionalised and adequately resourced, while respecting the independence of the judiciary.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

162. The prosecution system in Ireland is grounded in the constitution and in statutory law, most notably the Prosecution of Offences Act, 1974. All crimes and offences prosecuted in any court, other than a court of summary jurisdiction, shall be prosecuted in the name of the people and at the suit of the Attorney General or some other person authorised in accordance with law to act for that purpose. The Act of 1974 established the Director of Public Prosecutions (DPP) as the officer so authorised. A member of the Garda Síochána (national police) may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of and in compliance with any directions issued by the DPP.

163. The Director of Public Prosecutions independently enforces the criminal law in the courts. To this end the DPP directs and supervises public prosecutions on indictment in the courts and gives general direction and advice to the Garda Síochána in relation to summary cases and specific direction in such cases where requested. The DPP decides whether to charge people with criminal offences, and what the charges should be. The Office has defined its mission as *"To provide on behalf of the People of Ireland a prosecution service that is independent, fair and effective"*.

164. In 2001, following a report of an independent study group, a division headed by the Chief Prosecution Solicitor was established within the Office and under the Director's control, to provide solicitor services. Prosecutors in Ireland, attached to the Office of the DPP, are members of the civil service and as such, they are subject to the terms and conditions, legislation, codes of conduct and disciplinary code as apply to all civil servants. The vast majority of the prosecutors in the DPP are solicitors and are also subject to the code of conduct of and are regulated by the Law Society. All cases on indictment are prosecuted by independent barristers who are subject to the code of conduct and regulated by the Bar Council. In addition, the DPP has issued a number of publications, including Guidelines for Prosecutors³⁴, a Code of Ethics for Prosecutors³⁵, Strategy Statements³⁶ and Annual reports³⁷.

165. The Director of Public Prosecutions has no investigative function, the investigation of criminal offences in Ireland being, primarily, the function of the Garda Síochána. Other specialist agencies such as the Office of the Director of Corporate Enforcement and the Competition Authority have both investigative and summary prosecution roles in relation to offences within their areas of competence.

166. The Office of the Director of Public Prosecutions is not part of the judicial branch. The Director is, by virtue of statute, independent in the performance of the functions of the DPP. Section 6 of the Act of 1974 underscores that independence by making it unlawful for persons other than defendants or complainants in criminal proceedings, or persons likely to be defendants, or their legal or medical advisers, members of their family or social workers, to communicate with the DPP officers for the purpose of influencing the making of a decision to withdraw or not to initiate criminal proceedings or any particular charge in criminal proceedings.

167. The sole power to prosecute on indictment rests with the DPP (apart from cases still dealt with by the Attorney General³⁸). The Office of the Director of Public

³⁴ <http://www.dppireland.ie/filestore/documents/GUIDELINES - Revised NOV 2010 eng.pdf>

³⁵ <http://www.dppireland.ie/filestore/documents/Code of Ethics ENG.pdf>

³⁶ [http://www.dppireland.ie/filestore/documents/Strategy Statement 2013-2015 \[Eng\].pdf](http://www.dppireland.ie/filestore/documents/Strategy Statement 2013-2015 [Eng].pdf)

³⁷ [http://www.dppireland.ie/filestore/documents/AR 2012 \[eng\].pdf](http://www.dppireland.ie/filestore/documents/AR 2012 [eng].pdf)

³⁸ Note sections 3 (5) and 5 of the POA 1974, - the Attorney General now prosecutes only sea pollution and dumping at sea cases.

Prosecutions consists of two legal divisions, the directing division and the solicitors' division. There is also an administration division that provides the organisational, infrastructural, administrative and information services required by the office. Currently, there are some 185 permanent staff in the office of the DPP.

168. The Directing Division comprises a small number of professional officers, both barristers and solicitors, whose principal function is to make submissions to the director, to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions to the Solicitors' Division, local State Solicitors and counsel regarding the conduct of criminal proceedings. These professional officers are divided into three units, each led by a unit head. A unit head, the head of the directing division, the Deputy Director or the Director are entitled to validate or invalidate decisions of professional officers. Members of the Garda Síochána or victims of a crime may seek, and will usually receive, a review on any decision not to prosecute a professional officer.

169. The work of appearing for the director in court is carried out either by the full-time legal staff in the Solicitors' Division in Dublin, or by the local State Solicitors in courts outside Dublin. The Solicitors' Division is headed by the Chief Prosecution Solicitor, who acts as solicitor to the -Director, and is staffed by solicitors and legal executives. The conduct of trials on indictment is handled by barristers who are nominated by the director on a case by case basis and prosecute in accordance with the director's instructions.

170. Most summary prosecutions brought in the district court are brought in the name of the director. In practice the great majority are presented by officers of the Garda Síochána without specific reference to the director's office, except in cases where Gardai seek or are required by general direction to seek, a direction. The institution and carriage of such prosecutions are monitored generally by senior members of the Garda Síochána. The director may assume the conduct of a prosecution instituted by a member of the Garda Síochána at any time.

171. In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition Authority, the investigation branch of the Revenue Commissioners, the Health and Safety Authority and the Office of Director of Corporate Enforcement, who retain power to prosecute summary offences within their functional area.

172. The GET met with the representatives of the DPP in the headquarters of this constitutionally independent state institution and was generally impressed with its clear organisational structure and dedicated staff.

Recruitment, career and conditions of service

173. The Director of Public Prosecutions (DPP) is a civil servant in the civil service of the State who is appointed by the government from a selection of candidates recommended to the government by a statutory committee, consisting of the Chief Justice, the Chairman of the General Council of the Bar of Ireland, the President of the Law Society, the Secretary to the Government and the Director General of the Office of the Attorney General.³⁹ Tenure is a matter to be determined by the government on appointment, the current office holder being on a 10-year non-renewable term. All other prosecutors, although not civil servants, are appointed to the office under the rules applying to civil servants on permanent contract subject to an upper retirement age. State solicitors are currently appointed by the director, on the basis of a ten-year, renewable, contract for services.

³⁹ Section 2 of the Prosecution of all offences act, 1974.

174. The Director is responsible for the appointment and promotion of prosecutors, however, the office is assisted by the Public Appointments Service to ensure independence and probity in the recruitment process. Recruitment is carried out in accordance with the Codes of Practice established by the Commission for Public Service Appointments. The director is responsible for the dismissal of prosecutors at the grade of principal officer and above, while the deputy director is responsible for dismissal of prosecutors of a lower grade.

175. Once it has been determined that a candidate be considered for appointment to the prosecution service, a comprehensive background check into such issues as integrity/propriety is conducted by the Garda Síochána. Officers appointed to interview boards are selected both from the Office, who themselves will have gone through a similar selection process, and independent experts recommended by the Public Appointments Service.

176. The general conditions of service of civil servants apply equally to prosecutors within the office and salary scales equate with similar ranks across the civil service. Currently, prosecution solicitors' salaries range from €31 928 to €76 224. Senior prosecutors, who are the managers in the solicitors' division, are on a salary range from €81 080 to €103 976. Officers assigned to the directing division, whose function is to take decisions in relation to the initiation or continuation of criminal prosecutions and to give ongoing instructions and directions regarding their conduct, includes some prosecutors holding higher rank. Their pay scales range from €65 000 to €143 535. Salaries increase annually at an incremental rate and identifying a particular prosecutor's point on either scale will depend on many variables, including experience, years of service, level of qualification etc. The gross annual salary of the Director of Public Prosecutions equates with that of a secretary general of a department of state, grade 3, and is currently €176 350. There are no additional benefits that accrue to prosecutors except a pension scheme, which applies equally to all officers in the civil service.

Case management and procedure

177. All new cases, except certain categories of minor cases which are subject to delegated authority, are initially assigned to the directing division. A senior officer in that division assigns each case to an individual professional officer on the basis of experience, specialist expertise and current caseload. Where a prosecution is to be taken, the case will be transferred to the Solicitors Division, which is divided into six separate sections on the basis of functionality and expertise. Each section has a head, who will assign cases to an officer within his/her section on the basis of experience, specialist expertise and current caseload. No officer will be assigned a case where there is potential for a conflict of interest.

178. The director, or a senior member of staff, would be entitled to remove a prosecutor from a case in circumstances such as the identification of potential conflicts of interest, incompetence, in compliance with the office mobility strategy, or in the interests of a fair division of work load.

179. There is a computer management model in place, which tracks all files received in the office, designed to alert management to potential undue delay. There is also a secondary structure calculated to identify potential delays in replies to requests for information from external agencies, which includes an escalation procedure.

Ethical principles, rules of conduct and conflicts of interest

180. All prosecutors are to meet the obligations under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001. Requirements include the provision of an annual disclosure of any interests which could influence them in the performance of

their official duties. Their terms and conditions of employment also require that they avoid conflicts of interest which might be inconsistent with their official positions or interfere with the performance of their work.

181. Furthermore, the Civil Service Code of Standards and Behaviour⁴⁰, issued by the Minister for Finance pursuant to section 10 (3) of the Act of 2001, details the standards of integrity required, addressing issues such as improper influence, conflict of interest, rules regarding the acceptance of gifts etc. Non-adherence to the code is subject to disciplinary action in accordance with the Civil Service Disciplinary Code⁴¹

182. Chapter 3 of the Guidelines for Prosecutors contains the Code of Ethics and includes particular sections on independence, responsibility, integrity and competence.

183. The GET was pleased to note that the prosecutors in Ireland are guided by detailed legislation and codes of conduct which apply throughout the civil service. In addition, they are guided by complementary guidelines specifically targeting their functions in the prosecution service. The GET found this framework to be exemplarily clear and precise (further details described below).

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

184. In addition to the provisions of the Code of Ethics for Prosecutors, the Civil Service Code of Standards and Behaviour provides at Para 14.1 that "*Civil servants may not at any time engage in, or be connected with, any outside business or activity which would in any way conflict with the interests of their Departments/Offices, or be inconsistent with their official positions, or tend to impair their ability to carry out their duties as civil servants. For this reason, civil servants intending to be engaged in or connected with any outside business or employment should inform their Personnel/Human Resources Management Section of such an intention. Whole-time civil servants whose duties are of a professional character (e.g. doctors, engineers, architects, veterinary surgeons, solicitors, etc.) must not engage in private practice in their professions. Any case in which the propriety of undertaking a particular business or occupation could reasonably be open to question must be referred by the civil servant concerned to the Secretary General or Head of Office*".

185. Paragraph 20 of the Civil Service Code of Standards and Behaviour, outlines restrictions on post-employment activities in respect of all civil servants, outside appointments as well as concerning post-employment engagements. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions, or engaging in other paid or unpaid activities after exercising a prosecutorial function; however, the GET did not come across any practical concerns in this respect.

Recusal and routine withdrawal

186. Paragraph 1.7 (n) of the Code of Ethics requires that prosecutors disqualify themselves from participating in any prosecution in which they are unable to act impartially or in which it may appear to a reasonable observer that such is the case. It is stated in the code that such proceedings include, but are not limited to, instances where the prosecutor has actual bias or prejudice concerning an accused, complainant or witness; has previously served as a lawyer for another party, or was a material witness, in the prosecution; where a member of the prosecutor's family has an interest in the

⁴⁰ <http://hr.per.gov.ie/files/2011/06/Civil-Service-Code-of-Standards-and-Behaviour.pdf>

⁴¹ <http://hr.per.gov.ie/files/2011/04/Disciplinary-Code.pdf>

outcome of a prosecution; or where a person, who is connected with the prosecutor, has an interest in the outcome of the prosecution of which the prosecutor has actual knowledge.

187. According to the same code a prosecutor is obliged to bring to the attention of the director any circumstances which might reasonably lead a member of the public or party having an interest in a case to perceive any conflict of interest or lack of impartiality on the part of the prosecutor.

Gifts

188. Paragraph 1.7 of the Code of Ethics for Prosecutors requires, *inter alia*, that prosecutors "must not accept any gift, prize, loan, favour, inducement, hospitality or other benefit in relation to anything done or to be done or omitted to be done in connection with the performance of their duties or which may be seen to compromise their integrity, fairness or independence. A prosecutor may, subject to law and to any legal requirements of public disclosure, receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit could not reasonably be perceived as intended to influence the prosecutor in the performance of his or her duties or otherwise give rise to an appearance of partiality".

189. In addition, the acceptance of a gift as an inducement in relation to a case in which a prosecutor was exercising a function would constitute a criminal offence.

Third party contacts, confidential information

190. Paragraph 1.7 of the Code of Ethics for Prosecutors requires, *inter alia*, that prosecutors have to avoid impropriety and the appearance of impropriety and avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality (d); that not allow the prosecutor's family, social or other relationships improperly to influence the prosecutor's conduct as a prosecutor (g); not use or lend the prestige of their position as prosecutors to advance their private interests or those of a member of their family or of anyone else, nor shall prosecutors convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of their duties (h); not knowingly permit any person subject to the prosecutor's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions; and carry out their functions honestly, fairly, consistently impartially and objectively and without fear, favour, bias or prejudice (k).

191. Paragraph 1.7 (j) of the Code of Ethics stipulates that prosecutors shall not use or disclose confidential information acquired in their capacity as a prosecutor for any purpose unconnected with the performance of their duty or the needs of justice. Moreover, a breach of the Official Secrets Act 1963 constitutes a criminal offence.

Declaration of assets, income, liabilities and interests

192. All prosecutors, attached to the Office of the DDP, by being subject to the same obligations as civil servants must meet the requirements under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001. This includes submitting statements of interests for the purpose of Section 18 of this law. To this end, prosecutors are obliged to state any interest (but not the value) held by him/her as well as by his/her spouse, children who could materially influence the performance of his/her functions. There is a special form to be filled in, which covers the following items: occupational income, shares, directorships, land, travel, accommodation, meals etc, public service

contracts, gifts, property and service and other interests. The form is accompanied by explanatory notes.

193. The GET notes in this respect that the rules on asset declarations are weak in the following respects; there is no requirement to disclose quantitative data about the various interests, liabilities and potential interests such as offers of remunerated/non-remunerated activities and agreements for future activities/interests are not to be declared. The rules could well be strengthened in these respects; however, as these rules on asset declarations are not particularly designed for prosecutors but to the civil service in general, this matter ought to be addressed in a such a context. Consequently, the GET sees no need to single out prosecutors in this respect.

Supervision and enforcement

194. As a starting point, in Ireland, prosecutors are, like any other person, criminally liable for their actions. There are no immunities or special procedures for prosecutors under Irish law in relation to prosecution for criminal offences. Prosecutors are included in the definition of "public official" for the purpose of corruption offences.

195. The supervision of the implementation of the Ethics Acts or the Civil Service Code, as far as the prosecution service is concerned, applies in respect of all prosecutors holding a delegated ability to direct the initiation or course of a prosecution ("designated positions"). Non-compliance with these instruments would be considered a matter to be dealt with under the Civil Service Disciplinary Code; the Standards in Public Office Commission is to investigate such matters and draw up a report of its investigation that will be furnished to the relevant public body. If the commission determines that there was a contravention and that the contravention was a serious matter, the report will be laid before parliament. A public body in receipt of such a report may take appropriate disciplinary action.

196. All other disciplinary proceedings against prosecutors are under the responsibility of the Director of Public Prosecutions, or where appropriate the Deputy Director of Public Prosecutions, following the procedures as set out by the Civil Service Disciplinary Code.

197. The Civil Service Disciplinary Code provides for a range of disciplinary actions as follows:

- formal written notes
- deferral of an increment
- debarment from competitions or promotion for a specified period of time
- transfer to another office or division
- withdrawal of concessions or allowances
- reduction in remuneration, withholding of an increment
- downgrading
- suspension without pay
- dismissal.

198. Complaints against prosecutors' conduct are to be addressed to the DPP. To this end, the DPP has included in its website clear instructions aimed at the general public on how to file complaints against the Prosecution Service in case it does not meet expectations. Furthermore, descriptions aimed at the general public concerning the procedures within the DPP are also available on-line.

199. There is no dedicated internal department of the DPP to deal with complaints against prosecutors. In the current system, such complaints are, as a main rule, to be addressed by the prosecutor who delivered the service complained of and, subsequently, within his/her hierarchy. In October 2012, the DPP issued an internal policy document on a pilot basis concerning the handling of such complaints. This policy was reviewed in

May 2013 and is currently in operation. It follows, *inter alia*, from the policy document that complaints are to be registered and dealt with by the division concerned (where the alleged problem occurred) and that the Private Office of the DPP and the Communication and Development Unit (CDU) of the Administration Division are to be kept informed of incoming complaints. Moreover, the CDU is to co-ordinate the handling of the complaints, monitoring its logging etc. The GET welcomes the guidelines issued as a means of consolidating this somewhat scattered structure. That said, the GET also notes with some concern that the current mechanism implies that the actual dealing with complaints most often are under the responsibility of the prosecutor (in consultation with the line manager) involved in the matter complained of.

200. Statistics about complaints filed with the DPP are available as of 2013 (i.e. from the date of the application of the complaints policy referred to above). It follows from a document, submitted to the GET after the visit, that in 2013 the DPP received six complaints, that these were dealt with by six lawyers, that acknowledgements were issued in respect of two complaints, that all complainants have received final responses within a time period of 5-12 working days. The GET believes that these statistics could well be more developed, in particular, to include brief descriptions of the substance of the complaints and the reasons for the decisions of the DPP.

201. To sum up, the GET has already commended Ireland for having put in place detailed legislation, codes of conduct for the civil service, also applicable to prosecutors, and particular guidelines for prosecutors. In the light of this well-developed body of provisions, the monitoring mechanism within the DPP for their implementation needs to be considerably enhanced. The GET takes the view that it would be preferable if a more independent structure within the DPP or, ultimately, an external mechanism for dealing with complaints against prosecutors were to be established in order to avoid that the processing of complaints are handled by the same person who was involved in the matter complained of.

202. In view of the above, **GRECO recommends that the policy for handling complaints against the Prosecution Service be enhanced with a view to i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and ii) further developing the statistics concerning such complaints.**

Advice, training and awareness

203. Prosecutors can request advice on ethical conduct, including in situations concerning conflicts of interests and related issues from the office of the DPP.

204. The Office of the DPP has a dedicated training unit, led by a training officer of the DPP, which organises induction training for new staff as well as in-service training on a regular basis.

205. As part of induction training, all new staff receive training in relation to the Civil Service Code of Standards and Behaviour, Civil Service Regulations Acts, Official Secrets Act, Standards in Public Office Act, Ethics in Public Office Act, Freedom of Information Act, Data Protection. New staff are also informed about confidential information held by the office and accountability. This training is provided on an annual basis.

206. In addition, in-service training has been regularly organised and over recent years has dealt with special topics such as various forms of economic crime, fraud and corruption. It has also covered topics such as good governance and public procurement as well as international instruments and domestic legislation relating to prosecutors and prosecution of crime as well as the induction topics on ethics referred to above.

207. The authorities also refer to the issuing of notices and directives by the director, concerning sensitive matters, such as information sharing and access to personal information as a complement to the in-service training.

208. The GET welcomes the fact that the DPP has developed dedicated and structured training on a regular basis covering pertinent issues of the Prosecution Service, including measures aiming at fostering ethical conduct and prevention of corruption.

VI. RECOMMENDATIONS AND FOLLOW-UP

209. In view of the findings of the present report, GRECO addresses the following recommendations to Ireland:

Regarding members of parliament

- i) that the existing ethics framework be replaced with a uniform and consolidated values-based normative framework encompassing the ethical conduct of members of parliament - including their staff as appropriate - covering various situations of conflicts of interest (gifts and other advantages, third party contacts including lobbyists, accessory activities and post-employment situations etc.) with the aim of providing clear rules concerning their expected conduct (paragraph 50);**
- ii) that the authorities clarify the scope of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 so as to ensure that the protections and encouragement for whistleblowers contained in the Protected Disclosures Act 2014 are fully understood and implemented (paragraph 73);**
- iii) that the existing regime on asset declarations be enhanced by i) extending the obligations upon all members of parliament to disclose their interests to include quantitative data on their significant financial and economic involvements as well as in respect of significant liabilities; and ii) that consideration be given to widening the scope of members' declarations to also include close or connected persons, in line with the existing rules for office holders (paragraph 81);**
- iv) that the establishment of a consolidated independent monitoring mechanism be considered in respect of members of parliament, that it be provided with necessary means to investigate complaints as well as to sanction findings of misconduct and that all its decisions, including on the dismissal of cases are given an appropriate level of publicity (paragraph 102);**
- v) that the parliamentary authorities provide dedicated regular training for members of parliament on issues such as ethics, conduct in situations of conflicts of interests and corruption prevention (paragraph 110);**

Regarding judges

- vi) that, with due expedition, an independent statutory council be established for the judiciary, provided with adequate resources and funding for its organisation and operations (paragraph 124);**
- vii) that the current system for selection, recruitment, promotion and transfers of judges be reviewed with a view to target the appointments to the most qualified and suitable candidates in a transparent way, without improper influence from the executive/political powers (paragraph 132);**

- viii) **that an appropriate structure be established within the framework of which questions concerning constitutional safeguards of the judiciary in connection with employment conditions are to be examined - in close dialogue with judicial representatives - with a view to maintaining the high levels of judicial integrity and professional quality in the future (paragraph 138);**
- ix) **i) that a code of conduct for judges be formally established, including guidance and confidential counselling in respect of conflicts of interest and other integrity related matters (gifts, recusal, third party contacts and handling of confidential information etc.) and ii) connect such an instrument to an accountability mechanism (paragraph 146);**
- x) **that dedicated induction and in-service training for judges be institutionalised and adequately resourced, while respecting the independence of the judiciary (paragraph 161);**

Regarding prosecutors

- xi) **that the policy for handling complaints against the Prosecution Service be enhanced with a view to i) establishing more independent processing of matters concerning the integrity and ethical conduct of prosecutors and ii) further developing the statistics concerning such complaints (paragraph 202).**

210. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Ireland to submit a report on the measures taken to implement the above-mentioned recommendations by 30 April 2016. These measures will be assessed by GRECO through its specific compliance procedure.

211. GRECO invites the authorities of Ireland to authorise, at their earliest convenience, the publication of this report and to make it 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.
