Adoption: 7 December 2012
Publication: 8 January 2013

Public
Greco Eval IV Rep (2012) 5E

FOURTH EVALUATION ROUND

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

EVALUATION REPORT

ESTONIA

Adopted by GRECO at its 58th Plenary Meeting
(Strasbourg, 3-7 December 2012)

F O U R T H E V A L U A T I O N R O U N D

TABLE OF CONTENTS

EXECUTIVE SUMMARY **4**

I. INTRODUCTION AND METHODOLOGY **5**

II. CONTEXT **7**

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT **9**

INTRODUCTION TO THE PARLIAMENTARY SYSTEM 9
Transparency of the legislative process *9*
REMUNERATION AND ECONOMIC BENEFITS 11
ETHICAL PRINCIPLES AND RULES OF CONDUCT 12
CONFLICTS OF INTEREST 13
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES 15
Gifts *15*
Incompatibilities, accessory activities and financial interests *15*
Contracts with State authorities *16*
Post-employment restrictions *16*
Misuse of confidential information *16*
Misuse of public resources *17*
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS 17
SUPERVISION 18
Declarations of economic interests *18*
Additional employment and other activities *20*
ENFORCEMENT MEASURES AND IMMUNITY 20
TRAINING AND AWARENESS 21

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES **22**

OVERVIEW OF THE JUDICIAL SYSTEM 22
Categories of courts and jurisdiction levels *22*
Independence of the judiciary and the administration of courts *23*
Consultative and decision-making bodies *24*
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE 25
Recruitment requirements *25*
Appointment procedure and career advancement *25*
Evaluation of a judge's performance *27*
Transfer of a judge *27*
Termination of service and dismissal from office *28*
Salaries and benefits *29*
Lay judges *29*
CASE MANAGEMENT AND COURT PROCEDURE 30
Assignment of cases *30*
The principle of hearing cases without undue delay *30*
The principle of public hearing *31*
ETHICAL PRINCIPLES AND RULES OF CONDUCT 31
CONFLICTS OF INTEREST 32
PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES 32
Incompatibilities and accessory activities *32*
Recusal and routine withdrawal *33*
Gifts *33*
Post-employment restrictions *33*
Third party contacts, confidential information *34*
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS 34
SUPERVISION 34

Ethical principles and conflicts of interests ... *34*
Additional employment and activities ... *35*
Declarations of economic interests ... *35*
ENFORCEMENT MEASURES AND IMMUNITY ... 36
TRAINING AND AWARENESS ... 38

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS ... 40

OVERVIEW OF THE PROSECUTION SERVICE ... 40
Consultative and decision-making bodies ... *41*
RECRUITMENT, CAREER AND CONDITIONS OF SERVICE ... 41
Recruitment requirements ... *41*
Appointment procedure and promotion to a higher rank ... *42*
Evaluation of a prosecutor's performance ... *43*
Transfer of a prosecutor ... *43*
Termination of service and dismissal from office ... *43*
Salaries and benefits ... *43*
CASE MANAGEMENT AND PROCEDURE ... 44
ETHICAL PRINCIPLES AND RULES OF CONDUCT ... 45
CONFLICTS OF INTEREST ... 46
Incompatibilities and accessory activities ... *46*
Recusal and routine withdrawal ... *46*
Gifts ... *46*
Post-employment restrictions ... *47*
Third party contacts, confidential information ... *47*
DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS ... 47
SUPERVISION ... 48
Additional employment and accessory activities ... *48*
Declarations of economic interests ... *48*
ENFORCEMENT MEASURES AND IMMUNITY ... 48
TRAINING AND AWARENESS ... 50

VI. RECOMMENDATIONS AND FOLLOW-UP ... 51

EXECUTIVE SUMMARY

1. Estonia has traditionally been considered and remains one of the least corrupt countries in post-communist Europe. Preceding to and subsequent to its accession to the EU, the levels of perceived corruption have decreased significantly. However, specifically in the field of corruption prevention amongst members of Parliament, judges and prosecutors more progress could be achieved.

2. The size of the Estonian society, the relatively low number of the country's officials and the compact nature of the above professional groups, are seen by themselves as a deterrent and an efficient self-regulatory framework for reducing corruption. For this reason, corruption prevention in Estonia has not been pursued in a systematic and coherent manner.

3. While the general legal framework for the prevention and the fight against corruption applicable to the three professional groups appears to be satisfactory, and would potentially become more focused following the entry into force in April 2013 of the revised Anti-Corruption Act, the manner in which the currently effective law has been applied in the different contexts, i.e. in Parliament, within the judiciary and the prosecutorial service, has not been sufficiently clarified and has led to a number of implementation gaps.

4. With respect to each of the three target groups, mostly common problems have been identified which include: the lack of application of the conflicts of interest rules (particularly, in respect of members of Parliament), the absence or insufficient definition of ethical principles and rules of conduct (particularly, with regard to members of Parliament); the lack of practical guidance as regards the acceptance of gifts associated with official duties and of procedures for reporting and registering courtesy gifts; the weak supervision of compliance with ethical principles and rules on conflicts of interests and on disclosure of economic interests. This is compounded by the insufficient awareness of ethical requirements and the absence of on-going counselling and tailor-made training programmes.

I. INTRODUCTION AND METHODOLOGY

5. Estonia joined GRECO in 1999. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in April 2001), Second (in October 2003) and Third (in November 2007) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

6. 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.

7. 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.

8. 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.

9. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV (2012) 6E) by Estonia, 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 Estonia (Tallinn and Tartu) from 4 to 8 June 2012. The GET was composed of Ms Vita HABJAN, Chief Project Manager for Corruption Prevention, Centre for Prevention and Integrity of Public Service, Commission for the Prevention of Corruption (Slovenia), Mr Rainer HORNUNG, First Prosecutor, Director of the German Judicial Academy (Germany), Mrs Diāna KURPNIECE, Head of the Corruption Prevention Division, Corruption Prevention and Combating Bureau (Latvia) and Mr Marc VAN DER HULST, Directeur d'Administration du Service Juridique de la Chambre des Représentants, Parlement fédéral (Belgium). The GET was supported by Ms Lioubov SAMOKHINA from GRECO's Secretariat.

10. The GET interviewed representatives of Parliament (Select Committee on the Application of Anti-Corruption Act, Legal Affairs Committee and Constitutional Committee) and representatives of the following political parties (including parliamentarians): Estonia's Social Democratic Party, Central Party, Pro Patria and Res Publica Union, Reform Party, Estonia's Conservative People's Party, and the Estonian Green Party. Moreover, the GET held interviews with members of the judiciary (county, circuit courts, administrative courts, the Supreme Court, the Judicial Training Department, the Judges' Examination Committee and the Disciplinary Chamber) and of the Prosecutorial Service (Prosecutor General's Office, district prosecutor's offices, the

Prosecutors' Competition and Evaluation Committee and the Prosecutors' Disciplinary Committee). The GET also met with representatives of the Ministry of Justice and of the Security Police. Finally, the GET spoke with a member of the Board of the Estonian Association of Judges and representatives of the Estonian Bar Association, Transparency International, the media and an expert on government (lobbying) relations.

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

II. CONTEXT[1]

12. For years, Estonia was considered as the least corrupt country in post-communist Europe. Following its accession to the EU, the levels of perceived corruption decreased significantly. In the course of the past eight years, the figures have remained relatively stable.

13. As concerns the overall perception of corruption, according to the 2011 Special Eurobarometer[2], 72% of the Estonian respondents considered corruption to be a major problem in their country (as compared to 82% in 2009). Among the main causes of corruption, 47% named "too close links between politics and business", 31% pointed to "public money not spent in a transparent manner", and 24% claimed that politicians were "not doing enough to fight corruption". According to the Transparency International corruption perception index (CPI), Estonia's position while remaining stably high, has slightly declined dropping down three places to the 29th position (score 6.4).[3] Similarly, the 2012 "Doing Business Report"[4] ranks Estonia as 24th, as opposed to 18th in 2011. Domestic surveys have produced largely comparable results (e.g., pursuant to the survey "Corruption in Estonia: study of three target groups in 2010", 68% of Estonians considered corruption to be a serious problem).

14. As concerns the groups specifically covered by this evaluation round, both domestic and international surveys reserve the lowest level of trust for politicians and political parties. The 2009 Estonia Human Development Report showed that 28% of the population had trust in Parliament, and only 19% – in the political parties.[5] According to the 2011 Eurobarometer survey, state politicians were found to be the second most corrupt category (50%, with average figure in the EU being 57%).[6] Although little evidence exists of corruption among national political leaders, concerns linger about political parties, particularly as regards insufficient transparency and supervision of their financing.

15. Information regarding corruption prevalence among the Estonian judges is rather mixed. According to some sources, the judiciary is widely perceived as independent, professional and efficient.[7] This is supported by surveys, such as the 2009 International Finance Corporation/World Bank Enterprise Survey, pursuant to which 66.5% of firms operating in Estonia perceive the court system to be fair, impartial and uncorrupted.[8] Yet other sources, such as the 2011 Special Eurobarometer, indicate that attitudes towards judicial services have worsened in Estonia more than in all other EU member states (40%, as opposed to 34% in 2009). This may be partly explained by the conviction of five Estonian judges for corruption and gratuity offences between 2007 and 2012. Although this figure does not appear to be high, it represents an important proportion of the country's judiciary. It is to be noted, that back in 2005 doubts were raised whether judicial corruption had received proper attention from Parliament.[9]

16. There is no empirical evidence of corruption as regards prosecutors in Estonia, with the exception of one pending case concerning an assistant prosecutor.

[1] Since information on corruption prevention in Estonia is rather scarce, some of the references included in this report have been made to sources published well before the evaluation visit.
[2] http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf.
[3] http://cpi.transparency.org/cpi2011/.
[4] http://www.doingbusiness.org/data/exploreeconomies/estonia/.
[5] 2009 Estonian Human Development Report, Tallinn, 2010, p. 113.
[6] See footnote No. 2 above, p. 49.
[7] Monitoring the EU Accession Process: Judicial Independence, Country reports, Open Society Institute, 2001, p. 157.
[8] Estonia Country Profile 2009, http://enterprisesurveys.org.
[9] Freedom House. Nations in Transit 2005. Estonia.

17. A number of other issues deserve to be mentioned as part of the contextual framework. In the course of its visit, the GET was frequently reminded of the size of the country, where "everyone knew everyone". References were also made to the strongly partisan nature of the political environment in Estonia, which was allegedly consensus-based. A recent OECD study explains that the Estonian public administration, operating within the context of a small state, has "a hybrid governance structure, combining strong vertical silos and formal, legalistic arrangements with many personal and informal networks".[10] A certain level of corporative culture which is dominant in the society and which is caused amongst other reasons by the similarity of the social background of people occupying the leading positions has allegedly contributed to the on-going climate of tolerance of potential corrupt behaviour.[11]

18. As concerns civil society's involvement in corruption prevention, many individual non-governmental organisations reportedly lack organisational and/or the financial capacity to effectively supervise government and parliament and to push for anti-corruption reforms, and only the largest NGOs have made attempts to work, for example, with political parties. Also, being subject to short-term financing from state or local governments, some NGOs sensed a need for self-censorship.[12]

19. As regards the role of the media, it is widely acknowledged that their main strength lies not in uncovering corruption cases, as the share of investigative journalism in Estonia is relatively minor, but in notifying and shaping the anti-corruption perceptions of the public.[13]

20. Lastly, on 6 June 2012, a revised Anti-Corruption Act was adopted by Parliament. It will enter into force on 1 April 2013, except for the provisions related to the setting up of an electronic register of officials' declarations of interests, which will enter into force on 1 January 2014.

[10] Estonia: Towards a Single Government Approach, OECD Publishing, 2011, pages 5-6.
[11] Corruption crimes handled in Estonian courts in years 2002-2008, http://transparency.ee/cm/files/corruption_crimes_handled_in_estonian_courts_2002-2008.pdf, p. 9.
[12] Freedom House. Nations in Transit 2005. Estonia and National Integrity System Assessment. Estonia. Executive Summary. Transparency International, www.transparency.ee.
[13] National Integrity System Assessment. Estonia. Executive Summary. Transparency International, www.transparency.ee.

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Introduction to the parliamentary system

21. Estonia is a democratic republic with a multi-party system whose Constitution was adopted by referendum on 28 June 1992. The principle of separation and balance of powers is enshrined in article 4 thereof. The legislative power is vested in a unicameral Parliament ("*Riigikogu*"), which passes laws, in principle, by a majority of votes.[14] The right to take legislative initiatives belongs to a member, a faction and a committee of Parliament, the Government and the President of the Republic, the latter however, only as regards amendments to the Constitution. The Parliament is entitled, on the basis of a resolution adopted by a majority of its membership, to address a recommendation to the Government to initiate a desired bill.[15] The Parliament's other key functions include, *inter alia*, the election of the President of the Republic and authorisation for a candidate Prime Minister to form a Government.[16]

22. Parliament consists of one hundred and one members, who are elected every four years via free, general, uniform and direct elections under a proportional representation system (a modified *d'Hondt* method) in twelve multi-mandate electoral districts. Mandates are divided between political parties which receive at least five per cent of the national vote and possibly, individual candidates for whom the number of votes cast exceeds or equals the simple quota calculated for the relevant electoral district.[17] The procedure for the election is provided by the Parliament Election Act of 12 June 2002. The Parliament's work is managed by a President and two Vice-Presidents, on the basis of the Parliament's Rules of Procedure and Internal Rules Act (RPIRA) of 11 February 2003.

23. According to article 62 of the Constitution, deputies are not bound by their mandate or subject to liability for the votes cast or statements made in Parliament or its bodies. Furthermore, the Status of Member of Parliament Act (SMPA) of 14 June 2007 stipulates that a deputy is a representative of the people and elected pursuant to the Constitution and the Parliament Election Act.[18] S/he is independent and performs his/her duties in accordance with the Constitution, acts, public interests and his/her conscience.[19]

24. A deputy's mandate expires following his/her appointment to another state office, entry into force of a court conviction, resignation according to a procedure prescribed by law, a decision by the Supreme Court recognising him/her incapable of performing duties for an extended period of time, and upon his/her death.[20] The authority of a member of Parliament is suspended in instances where s/he is appointed to Government. The mandate is restored following the release from the aforementioned duties.[21]

Transparency of the legislative process

25. Within three working days of the submission of a bill for legislative proceedings, the Parliament's Board, consisting of the Parliament's President and two Vice-Presidents, decides on its acceptance and, if affirmative, assigns it to one of the Standing Committees.[22] Information on the legislative process pertaining to a given bill is available to the general public from the moment a decision to commence a legislative process is made. The contents of a bill, the proposed amendments and all other pertinent materials

[14] Article 73 of the Constitution.
[15] Article 103 of the Constitution.
[16] Article 65, sections 3 and 5 of the Constitution.
[17] Section 62 (2) and (3) of the Parliament Election Act.
[18] Section 1 SMPA.
[19] Section 17 (1) SMPA.
[20] Section 8 (2) SMPA.
[21] Section 5 (1-2) and 7 SMPA.
[22] Section 93 (1-3) RPIRA.

are placed on the Parliament's website,[23] so that interest groups and individuals may send comments to the committee concerned. On 9 February 2012, the Board has approved the guidelines on good practices in the legislative process which are also available on the Parliament's website.[24]

26. Public consultations are conducted via an electronic data base,[25] which is maintained by the Parliament and serves as a repository for bills, accompanying documents, including comments submitted by ministries and other interested parties. To facilitate consultation, a booklet on public consultation good practices was approved by the Government and is made available on its website.[26]
Additionally, different parliamentary committees establish registries (online lists) of partners, in order to have a wider inclusion of interested third parties in a specific committee's work. Having completed a questionnaire,[27] anyone may include him/herself in a list placed on the Parliament's website. Furthermore, pursuant to section 28 of the Public Information Act of 15 November 2000, draft laws developed by ministries and draft governmental regulations, together with explanatory memoranda, when these are sent for approval to government agencies or presentation to Government, are subject to public disclosure. This requirement also extends to draft concepts, development plans, programmes and other projects of general importance before they are submitted to competent bodies for approval or once they are approved or adopted. Documents may not be disclosed in the cases provided for by law. All pertinent documentation, as well as the general public's feedback together with indication of its acceptance by relevant bodies, is also available on the Government's website.[28] Public agencies are under the obligation to give reasoning when accepting or declining the amendments made by interested parties.

27. In accordance with article 72 of the Constitution, parliamentary sessions are open to the public, unless a two-thirds majority decides otherwise. This principle is reiterated by the RPIRA.[29] Voting is also public, except for the elections of the President of the Republic, the Parliament's President and Vice-Presidents and the appointment of the Supreme Court justices, Auditor General, Chancellor of Justice and his/her deputies, Chairman and members of Board of the Bank of Estonia.[30] As a main rule, voting is carried out via an electronic system. Results are disclosed on the Parliament's website, indicating the name of a deputy and his/her vote (for/against/missing/did not vote/abstained). In the case of voting by ballot,[31] votes are counted publicly. Once confirmed by the chair's stroke of the gavel, voting results may not be contested.

28. As concerns parliamentary committees, their sittings may be open to the public if more than half of a committee's members vote in favour thereof.[32] Members of Government may participate in a committee's sitting with the right to speak; representatives of state agencies and other persons may participate when invited by the committee's chair. The taking of minutes is obligatory. They are to reflect the exact time and venue of the sitting, the name and positions of attendees, the sitting's agenda, the resolutions adopted and voting results. Upon request by a speaker, the minutes may reflect his/her opinion expressed during the meeting. The minutes are published on the Parliament's website alongside information on the submissions and results of voting on

[23] http://www.Riigikogu.ee.
[24] http://www.riigikogu.ee/?op=ems&page=dokumentide_detailid&pid=6c4446b4-6f77-4621-aab1-a4c66c738798&.
[25] http://eelnoud.valitsus.ee.
[26] http://www.valitsus.ee/riigikantselei/kaasamine-ja-mojude-hindamine/kaasamise-hea-tava.
[27] See e.g. list of partners of the Constitutional Committee: http://www.riigikogu.ee/index.php?id=174511.
[28] http://eelnoud.valitsus.ee/main#hDyUkpZu.
[29] Section 59 (1) RPIRA.
[30] Section 79 RPIRA.
[31] Ballot papers are used in elections of the President of the Republic and of President and Vice-Presidents of Parliament.
[32] Section 36 (3) RPIRA.

motions. Additionally, according to section 103 RPIRA, in preparation for the second reading of a draft legislation, a committee responsible for the draft shall prepare an explanatory memorandum which sets out information related to the proceeding, including reasons for the acceptance or refusal to accept motions to amend, the initiators or presenters of the draft legislation, the opinion of experts and other persons participating in the proceeding.

29. Legal provisions are in place to guarantee access to information and public consultation. Draft bills and other pertinent documents are systematically placed on web sites by Parliament and relevant government agencies. A set of guidelines on good practices in the legislative process and a booklet on public consultation good practices are available, and the fact that public consultations are conducted in practice is confirmed by the government statistics, according to which around 5% of the proposed amendments are integrated into the bills.[33] In so far as the transparency of parliamentary sessions is concerned, these are generally open to the public and web cast live. By contrast, the committees' meetings are held in public only in case more than a half of its membership votes in favour thereof. Upon invitation by the committee's chair or a respective committee's voting, any experts or guests may be invited to the committee's sittings. Some interlocutors stated that it was not unusual for the lists of invited persons to include those with vested interests and/or links to individual parliamentarians. The absence of complete information (through registration or publication) on all those who may have influenced a concrete proceeding or a deputy participating therein, as well as the rarity of cases of actual withdrawal of deputies from the decision making were mentioned among factors contributing to the lack of transparency of the legislative process in Parliament. While acknowledging that contacts with third parties are important for the effective exercise of a deputy's mandate since they enable the representation of a broad range of interests emanating from the parliamentarian's electorate, the GET, nevertheless, encourages the authorities to seek ways to enhance transparency of parliamentary committee meetings, particularly when these are open for participation by third parties.

30. The GET also notes that lobbying remains an unregulated issue in Estonia.[34] According to various sources, vested interests allegedly exert significant influence on members of Parliament during the law-making process. Areas to which such influence reportedly applies include energy, health and pharmaceuticals sectors, gambling, smoking, alcohol and waste management. The GET recalls, however, that the focus of this evaluation is the standards applicable to members of Parliament and not those who lobby them. In view of the foregoing and in order to ensure greater transparency of the legislative process, **GRECO recommends the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process.**

Remuneration and economic benefits

31. Deputies are expected to work full time and their principal place of employment is the Parliament.[35] Article 75 of the Constitution stipulates that their remuneration and restrictions on the receipt of other employment income is to be provided by law, which may be amended for the next composition of Parliament. Since 1 January 2012, deputies' salaries are connected with the salary rate established by the Salaries of Higher State Servants Act. The highest monthly salary rate (5 200 Euros) serves as a basis for calculating salaries of state servants included in the list and is subject to annual indexation.[36] The salary of a member of Parliament is calculated as a salary base

[33] Freedom House. Nations in Transit 2005. Estonia.
[34] In late 2011, a working group was set up by the Ministry of Justice to analyse various options available. For the moment, the exact outcome of its deliberations remains rather unclear.
[35] Section 22 (1) SMPA.
[36] Previously, salaries of members of Parliament were regulated by section 29 SMPA.

multiplied by a coefficient: for a member of Parliament the coefficient is 0,65; for the Parliament's President – 1,0; for a Vice-President – 0,85; for a committee's chair and a chair of a faction – 0,85; and for a committee's deputy chair and a deputy chair of a faction – 0,75. In comparison, the average gross monthly salary in Estonia (as in September 2011) is 826 Euros, and the average gross annual salary is 9 912 Euros.

32. The receipt of other benefits is regulated by the SMPA. In particular, deputies are entitled to compensation of their work- and housing-related expenses at actual cost. Also, a one-off payment, consisting of not more than six monthly salaries, depending on a deputy's length of service, is provided following the expiration of the deputy's mandate.[37] There is no special taxation regime applicable to parliamentarians.

33. Work-related expenses are compensated on the basis of receipts in the amount of up to 30% of a deputy's salary, pursuant to the procedure established by the Parliament's Board. This procedure provides for compensation of office and communication expenses, and of deputies' individual lessons.[38] The cost of accommodation and travel while on official journeys is also subject to reimbursement.

34. Compensation of housing expenses in the amount of 20% of a deputy's salary is provided upon his/her request, in cases where according to the data entered in the Population register, the deputy resides outside Tallinn or a local government bordering Tallinn.[39] The costs are borne by the Parliament's Chancellery, based upon an agreement with the deputy concerned.

35. Information on salaries is available on the Parliament's website and generally mirrors the aforementioned provisions of the SMPA (the link to the Act is also provided). Although individual salaries are not publicly disclosed, tables containing salaries from previous years are on display, and access to information on both individual salaries and work-related compensations may be provided upon request. The Accounting Service of the Parliament's Chancellery exercises control over compliance of submitted financial documents with the pertinent legal requirements.

Ethical principles and rules of conduct

36. Pursuant to article 61 of the Constitution, a member of Parliament is to take an oath pledging loyalty to the Republic of Estonia and to its constitutional order. The texts of oaths, duly signed by parliamentarians, are stored by the Supreme Court.

37. There is an on-going debate in Estonia on the desirability of developing a code of conduct for members of Parliament. The opinions are divided. According to some, there is no need for such a document, unless the initiative comes from the Parliament itself. Others refer to the scandals surrounding the financing of political parties and argue in favour thereof. In January 2012, the Parliament's Select Committee on the Application of the Anti-Corruption Act (the ACA Select Committee) supported a proposal by Transparency International Estonia to draw up a deputies' code of conduct and suggested the initiation of a drafting process to the Parliament's Board. Also, an informal working group has been established, between factions, to discuss the need for the code and its possible content. It appears, however, that the Parliament's leadership is reluctant to deal with this matter and continues to insist that the Anti-Corruption Act contains all the necessary measures to prevent corruption amongst parliamentarians.

38. The GET regrets that the idea of a code of conduct has not yet been given due attention to by the Parliament's leadership. Such a stand appears to be particularly

---

[37] Section 32 SMPA.
[38] Section 30 SMPA.
[39] Section 31 SMPA.

disconcerting given the relatively low level of public trust in politicians and political parties and bearing in mind the financial scandals tainting the parties' image in Estonia. The GET is convinced, that by adopting a code of conduct, deputies would demonstrate a requisite political will to be guided by clearly stated ethical standards. It is essential therefore that the support for the drafting of the code comes from within the Parliament. The code could address issues which have received little attention so far, such as conflicts of interest, revolving doors, gifts, hospitality and other advantages, outside activities. The adoption of the code, in conjunction with more focused induction courses and the provision of on-going counselling and advice would not only raise deputies' awareness on corruption prevention but also help restore the authority of Parliament and of political parties in Estonia. In view of the foregoing, **GRECO recommends that (i) a Code of Conduct for members of Parliament be elaborated; and (ii) in order for the provisions of the Code to be effectively applied in practice, an efficient mechanism of supervision and sanction, which takes into account the specific nature of the parliamentary mandate, be established.** While such a Code is to be drafted by parliamentarians, the civil society's input is to be welcome.

Conflicts of interest

39. Legal framework for the prevention and resolution of conflicts of interest of parliamentarians is currently provided by: the Constitution, which sets forth some general principles, such as the incompatibility of posts; the SMPA, containing, *inter alia*, rules on accessory activities and duties incompatible with a deputy's mandate; and, to a limited extent, by the Anti-Corruption Act (ACA) of 19 January 1995, which is applicable to officials, including, in principle, members of Parliament,[40] and which regulates conflicts of interest, declarations of economic interests, the receipt of gifts and the reporting of corruption.

40. As concerns the SMPA, it states that, during his/her term of office, a member of Parliament may not occupy a position or perform functions which are in conflict with the principle of separation of powers or may in another manner cause conflicts of interests with his/her duties.[41]

41. As regards the ACA, its key provision dealing with conflicts of interests as contained in section 25 (see paragraph 123 below) is not applicable to members of Parliament since it does not apply to decisions of general application, i.e. parliamentary acts. That said, a number of other measures foreseen by the ACA are applicable to deputies. Firstly, they are obliged to declare their economic interests (see further below). Secondly, they are required to observe procedural restrictions. A procedural restriction is defined as a prohibition to perform acts enabling an official to receive income derived from corrupt practices, except for activities generating income from shareholding, royalties, revenue from patents, interest on deposits or on immovable property subject to commercial lease or use by other persons, fees for printed or electronic publications, other income not presuming the recipient's employment to promote the economic benefit of another person.[42]

42. Thirdly, parliamentarians may not engage in self-dealing or conclude transactions of similar nature or involving conflicts. All transactions concluded in violation of this rules are void (see also further below).[43]

43. Fourthly, parliamentarians are prohibited from committing acts of corruption, entering into relationships involving risks of corruption with natural and legal persons and receiving income derived from corrupt practices. The act of corruption is defined as the

[40] Section 4(2.1) ACA.
[41] Section 22(2) SMPA.
[42] Section 21 ACA.
[43] Section 24 ACA.

use of an official position for self-serving purposes by an official who makes undue or unlawful decisions or performs such acts or who fails in making lawful decisions or performing lawful acts. A relationship involving a risk of corruption means a relationship between an official and a third party which arises or may arise in case the official violates restrictions applied to accessory activities or the procedural restrictions described above. An official is required to notify the agency's head, the Security Police, police or the Prosecutor's Office of a corruption act known to him/her. Failure thereof may trigger the official's dismissal.[44]

44. Violations of the aforementioned rules are punishable by a fine of up to 300 units[45] (1 200 Euros), confiscation of unlawful benefits and imprisonment together with deprivation of the right of employment in the particular office.

45. The GET notes that the current regulations on conflicts of interest are not applicable to members of Parliament not only in the field of law-making, as laws are considered to be acts of general application, but also in case of other types of decisions, in the making of which deputies may be involved. The authorities explain that, although there have been some cases where deputies had recused themselves from discussing certain matters in parliamentary committees, in principle, the notification of conflicts of interest is not possible due to the fact that a member of Parliament "is subject to no person or body". In the opinion of the GET, this is not a correct interpretation of the autonomy of Parliament or its members, particularly as deputies participate in the making of decisions, which are not acts of general application (e.g. recruitment of support staff, public procurement). It is concluded that the lack of application of the conflicts of interest provisions of the ACA with regard to members of Parliament is a serious deficiency which needs to be remedied.

46. The GET further notes that, on 6 June 2012, a revised Anti-Corruption Act was adopted by Parliament[46], which eliminates the definition of conflicts of interest and provides instead for a list of prohibitions, including bans on: 1) demanding, mediating and receiving income derived from corrupt practices; 2) corrupt use of the official position; 3) corrupt use of public resources; 4) corrupt use of influence; and 5) corrupt use of insider information. Officials, including parliamentarians, however, remain subject to procedural restrictions, restrictions on accessory activities and to disclosures of interests. As concerns procedural restrictions, the revised ACA stipulates that an official, including a member of Parliament, will be prohibited from performing acts or making decisions if: 1) the decision is made or the act is performed with respect to the official or a person connected to him/her; 2) the official is aware of an economic or other interest accrued to him/her or a person connected to him/her and which may have an impact on the act or the decision; 3) the official is aware of a risk of corruption.[47] In such instances, the official is prohibited from performing the act, making the decision, or assigning it to his/her subordinates but has to promptly inform his/her superior or a body that appointed him/her thereof. Knowing violation of a procedural restriction will be punishable by a fine of up to 200 units (800 Euros). The same act, if resulting in a damage of more than 32,000 Euros, will be subject to a pecuniary sanction or imprisonment of up to three years, pursuant to the revised Penal Code, which will enter into force on the same day as the revised ACA.[48] The GET is concerned, first of all, that the revised provisions will continue to have a limited application in respect of members of Parliament. Also, it would appear that the new definition of a procedural restriction is so

[44] Sections 5-6 ACA.
[45] A fine unit is the base amount of a fine and is equal to four Euros – see section 47(1) of the Penal Code.
[46] As was previously mentioned, the revised ACA will enter into force on 1 April 2013, except for the provisions related to the setting up of an electronic register of officials' interests, which will enter into force on 1 January 2014.
[47] Section 11, paragraph 1 of the revised ACA. The definition of "connected persons" is contained in section 7 thereof.
[48] Revised section 300.1, paragraph 2 of the Penal Code.

broad that it may be rarely applicable in practice. Furthermore, the new ACA does not explicitly stipulate whether a person or a legal entity with whom an official has a private business relationship should be regarded as a "connected person" for the purposes of the ACA. The GET is firmly persuaded that the procedural restrictions with regard to pecuniary interests of any kind need to be used as one of the principle instruments for preventing conflicts of interest and ensuring accountability of members of Parliament.

47. In view of the analysis presented in paragraphs 45-46 above, **GRECO recommends that (i) the existing conflicts of interest regulations be made applicable to members of Parliament and subject to effective supervision; and (ii) detailed guidelines be developed within Parliament containing practical examples of conflicts of interest which are or may be encountered by members of Parliament, including those arising specifically from pecuniary interests.**

Prohibition or restriction of certain activities

Gifts

48. According to section 26 (2) ACA, an official, including a member of Parliament, may not solicit or accept gifts, or consent to benefits which are made or granted to him/her, or his/her close relatives, if this may influence, directly or indirectly, the impartial performance of his/her duties. This rule also applies to the official's close relatives, including relatives by marriage. Gifts received in violation of the above provision accrue to the official's employer, unless otherwise provided by an international custom or diplomatic etiquette.

49. In the course of the interviews, different opinions were expressed by parliamentarians as to what kinds of benefits were acceptable and under which circumstances. This may be due to the deficiencies found both in the current and in the revised versions of the ACA. Thus, it would appear that both texts allow for a discretional interpretation of situations where gifts may or may not be accepted by officials, including members of Parliament. In the current ACA, reference is made to "gifts that may influence, directly or indirectly the performance of the official's duties", and the revised ACA refers to "benefits associated with official duties". Some interlocutors concurred that the current law was ambivalent, and that its revised version was not improving the situation either. Additionally, they pointed that both versions fail to provide procedural standards on the handling of acceptable courtesy gifts. In so far as Parliament is concerned, there is no practice of reporting or registering gifts. In light of this situation, including the aforementioned legislative imperfections, the elaboration of internal rules and the provision of guidance, notably in order to assist in distinguishing between gifts associated or not associated with official duties, and in circumscribing acceptable courtesy gifts, appear to be important. Also, for these rules to become fully operational, it is advisable that a supervisory structure be set up to ensure compliance with relevant regulations. In view of the foregoing and in order to clarify and facilitate the implementation of relevant provisions of the Anti-Corruption Act, **GRECO recommends that internal rules and guidance be provided within Parliament on the acceptance of gifts, hospitality and other advantages and compliance by parliamentarians with the aforementioned rules be properly monitored.**

Incompatibilities, accessory activities and financial interests

50. Article 63 of the Constitution sets forth the principle of incompatibility of a deputy's mandate with the holding of any other state office, while the SMPA regulates accessory activities and enumerates which duties are incompatible with the deputy's mandate. Thus, as previously mentioned, during his/her term of office, a member of Parliament may not occupy a position or perform functions which are in conflict with the principle of separation of powers or may in another manner cause conflicts of interests

with his/her duties.[49] In particular, there is a prohibition for deputies to exercise the duties of: (i) a public servant within state or local administration, including that of city or rural municipality mayor; (ii) a city council or a rural municipality council; (iii) a deputy of European Parliament or a servant of other states, institutions and bodies of the European Union or international organisations; (iv) a member of the supervisory board of the Bank of Estonia or management boards of legal persons in public law; (v) an advocate, notary, bailiff or sworn translator; and (vi) a head or a member of the management board of a company with state participation or a state-subsidised foundation.[50] In case of incompatibility, the employment or service relationship is automatically terminated. Within one month from the taking of an oath, a deputy is obligated to submit to the Parliament's Board a declaration concerning his/her places of employment and activities,[51] which are not publicly disclosed.

51. There are no specific restrictions on the holding of financial interests or carrying out of business activities by members of Parliament. The authorities stress, nevertheless, that information on the sources of income is publicly available, only the exact amount of the income remains not disclosed.

Contracts with State authorities

52. There are no restrictions on members of Parliament, in his/her private capacity, to enter, either directly or through a business interest, into contracts with state authorities.

Post-employment restrictions

53. There are no post-employment restrictions applicable to members of Parliament. Since the majority of deputies in Estonia are career politicians, it would appear that only few of them move to the private sector once their mandate expires. The GET accepts that a too restrictive post-employment rule in a country the size of Estonia, with a small labour market, could result in a virtually forced unemployment for many deputies. At the same time, a proportionate approach is needed in order to ensure that there is zero tolerance for cases of blatant conflicts of interest. The GET also notes that, pursuant to the currently effective Public Service Act, which is not applicable to members of Parliament, a three year "cooling-off" period is provided for state officials wishing to move to the private law entities, over which they have exercised supervision in the course of the last three years. This period will be reduced to one year by amendments to the Act, which will come into force on the same day as the revised ACA (i.e. on 1 April 2013). In view of the foregoing, **GRECO recommends that (i) a study be carried out in order to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interests; and ii) post-employment restrictions be introduced, if necessary.**

Misuse of confidential information

54. In order to perform their duties, parliamentarians may be granted access to state secrets and to classified foreign information. Such access may be denied by a justified decision of the Prime Minister or a relevant minister if the state secret concerns a specific security issue, or its publication endangers the implementation of selected provisions of the Surveillance Act. To obtain access to classified foreign information, a member of Parliament may need to undergo a security clearance, which is performed by the Parliament's Security Authorities Surveillance Committee. Subsequently, a certificate is issued to the deputy concerned in conformity with the procedure prescribed by the State Secrets and Classified Foreign Information Act of 25 January 2007.[52] Violation of

[49] Section 22(2) SMPA.
[50] Sections 22-28 SMPA.
[51] Section 21 (2) SMPA.
[52] Section 19 SMPA.

confidentiality rules entails criminal liability under sections 241 and 242 of the Penal Code**.** The disclosure of state secrets and of classified information of foreign states is punishable by a fine, or imprisonment of up to five years. The publication of the same information via negligence is penalised by a fine or an imprisonment of up to one year.

Misuse of public resources

55. Currently, there are no rules as regards the misuse of public resources specifically by members of Parliament. Notwithstanding, the authorities indicate that the deputies are deemed to be officials in the meaning of section 288 (1) of the Penal Code of 6 June 2001.[53] and that general offences of embezzlement, accepting bribe or gratuity and violations of procedural restrictions are applicable to them.[54] Furthermore, the revised ACA will introduce a ban on the corrupt use of public resources, which is understood as the use of material and other resources intended for the performance of public duties by an official in violation of his/her official duties in his/her personal interest or in the interest of third persons, if from the point of view of public interest, this results in an unequal or unjustified advantage for him/herself or for the third person.[55]

Declaration of assets, income, liabilities and interests

56. Section 21 (1) SMPA imposes an obligation on members of Parliament to declare their economic interests, pursuant to the procedure prescribed by the ACA.[56] The declaration's purpose is to get an overview of the economic interests of an official, including parliamentarians, which may promote or cause conflicts of public and private interests, the commitment of an act of corruption or the creation of a relationship involving corruption risks.[57] A declaration of economic interests is defined as a document in which an official declares his/her property, proprietary obligations and other circumstances allowing to determine his/her economic interests and financial situation.[58]

57. The declaration covers a deputy's individual assets, as well as joint assets of spouses and includes in particular, information on: immovable property (including structures and parts thereof until their entry in the land register); vehicles entered in the state register; shares and other securities; debts and liabilities, in case the amount of debt exceeds a six months' salary or 3 500 Euros a year; other income, taxable income and dividend income; and bank accounts. In the case of signatures of marital property contracts, within one month from its entry into force (or of amendments thereof), members of Parliament are obliged to submit a copy of the contract entered in the marital property register to a depositary of asset declarations.[59] Declarations are submitted (i) within one month from taking office; and (ii) annually, within one month from the expiry of term for submitting income tax returns. A new declaration is to be filed within a month in case the composition of the property or structure thereof is changed by at least 30% or by over 6 500 Euros.[60]

58. The ACA Select Committee acts as a depository of the deputies' declarations (more information on the Committee is provided below). According to section 12 ACA, the depositary organises their timely collection, verification, storage and, if need be, publication. The depositary may verify the accuracy of a declaration's content and is mandated to do so if an official is suspected of corruption. In the latter case, the

[53] Namely a person who holds office in a state or local government agency or body, or in a legal person in public law, and to whom administrative, supervisory or managerial functions, or functions relating to the organisation of movement of assets, or functions of a representative of state authority have been assigned.
[54] Sections 201, 293, 294 and 300.1 of the Penal Code.
[55] Section 5(2) and 3(1) of the revised ACA.
[56] Section 21 (1) SMPA.
[57] Section 7 ACA.
[58] Section 8 ACA.
[59] Sections 9 and 10 ACA.
[60] Section 13 ACA.

depositary may consult the official's income tax return, data deposited in credit institutions, registers and databases maintained by the state and local authorities. If income derived from corrupt practices or a relationship involving corruption risks is proven, materials are forwarded to an investigating authority. At the end of the verification process, an audit report is prepared, which is communicated to the official, including member of Parliament, concerned.

59. Declarations are published in the official online State Gazette of the Republic of Estonia ("*Riigi Teataja*"), except for personal information of deputies and their close relatives, the deputies' other income, taxable income and dividend income and the contents of marital property contracts.

60. Failure to submit a declaration by the due date constitutes a violation of duties of employment or a breach of duties, and an act discrediting the agency.[61] It is subject to disciplinary liability provided for by law (which has not been established in respect of members of Parliament) or to misdemeanour liability provided for by the ACA. Late submissions or submission of incomplete or false declaration, subject to disclosure, are sanctioned by a fine of up to 300 fine units (1 200 Euros).[62] In the case of failure to submit a declaration by the due date, within one month after the offence has become known, a notice is published by the depositary in the online State Gazette.[63]

61. The GET notes that the revised ACA will bring a number of improvements into the system of disclosure of interests. Thus, the content of declarations will be better defined, and an electronic register will become operational as of 1 January 2014, which will replace the current practice of submitting declarations on paper. Also, the law will address the practice of using property (e.g. real estate, vehicles) belonging to third parties, an occurrence which appears to be prevalent. Pursuant to the new Act, if used for more than two months, such property will become subject to disclosure. At the same time, the GET is concerned that access to declarations will be restricted to a period of mere three years whereas the depositing period will have the duration of seven years.[64]

Supervision

62. As was already indicated above, compliance by parliamentarians with conflicts of interest regulations is currently not being subject to any supervision. The ACA Select Committee acts as a depositary of declarations of economic interests, whereas the Parliament's Board collects declarations on the deputies' accessory employment and other activities. The ACA Select Committee, whose main goal is to perform tasks arising from the Anti-Corruption Act and to contribute to the uniform application of anti-corruption measures, was set up in 1995 as a temporary structure and was given its present status in 1999. Following the most recent elections, it consists of eight deputies (two per each political party represented in Parliament) and is supported by a Secretariat. The Committee is competent to pass resolutions if at least one third of its members are present, by a majority of votes.

Declarations of economic interests

63. As stated above, the verification of information included in the declarations of economic interests, their storage and publication are entrusted to the ACA Select Committee. In the event the Committee detects corruption and crimes or misdemeanours, it forwards relevant materials to an investigative body or a body conducting extra-judicial proceedings. Discovery of inaccurate or misleading information may be a ground for further investigation concerning violations of anti-bribery or conflicts

[61] Section 18 (2) ACA.
[62] See sections 26.1(2) and 26.2 ACA.
[63] Section 18(3) ACA.
[64] See sections 16(2) and 16(5) of the revised ACA.

of interest rules or other standards of conduct. Pursuant to section 16 (7) ACA, all depositaries of declarations are required to report on the performance of their duties to the Committee, at its request. Failure to collect, deposit or verify declarations or the unsatisfactory performance of these duties is punishable by a fine of up to 300 fine units (1 200 Euros).[65] Moreover, citizens possessing information on the failure by an official, including a parliamentarian, to declare his/her assets in an honest and accurate manner may request that their suspicions be verified by the official's direct depositary or by the ACA Select Committee.[66] In case this information proves even partially correct, the declaration together with the proof is published in the media.

64. The current system of supervision of economic interests' declarations does not appear to be satisfactory, and the flaws identified by the GET are applicable to all the three groups under review. What has earned a lot of criticism is that under the current ACA, declarations are merely collected but not thoroughly scrutinised. As regards parliamentarians, less than ten declarations are being examined per year. There are no rules on what has to be scrutinised, and the scrutiny itself is limited to checks of whether the form has been correctly filled out and to a formal cross-examination with a couple of public databases.[67] This apparent lack of control only partially stems from the Committee's limited resources (two non-specialised administrative staff members[68]); rather it is explained by the conviction that the publication of a declaration is the primary purpose.[69] Given the circumstances, there are no documented cases of members of parliament being fined for false or incomplete declarations.

65. It is worth recalling that the lack of efficiency of the ACA Select Committee was already addressed by GRECO in the context of the Second Evaluation Round Report (see recommendation ix). The GET is strongly convinced that the public disclosure of declarations cannot free the ACA Select Committee from its duty to carry out a thorough scrutiny of those declarations of which it is the depositary. The GET also warns against the "outsourcing" of this important controlling function to civil society and the media, as it is somewhat unrealistic to think that the media can always be a non-partisan watchdog. Bearing in mind that, under the revised ACA, the Committee would acquire the right to scrutinise any declaration filed by an official, this puts an even greater responsibility and creates more expectations as regards the outcomes of its work. The Committee therefore will have to adopt a more proactive and rigorous approach, abandon purely formalistic handling of declarations and replace it by a system where these declarations are thoroughly scrutinised, thus showing an example to other depositaries. **GRECO recommends therefore that the authorities of Estonia take determined measures to ensure a more in-depth examination of economic interests' declarations submitted by members of Parliament pursuant to the Anti-Corruption Act, amongst others by strengthening operational and administrative capacities of the Parliament's Select Committee on the**

---

[65] Section 26.6 ACA.
[66] Section 16 (6) ACA.
[67] As a result of checks (comparison with information submitted in the previous year) conducted in 2009 and 2010, 10 deputies, respectively, were asked to submit new declarations, and in 2011, 33 deputies had to do so. In 2010, 6 declarations were cross-checked against the Land Registry Journal resulting in the identification of 2 declarations containing inaccurate data; additionally, one declaration was found to be inaccurate but the authorities concluded this was not intentional. Also, one declaration was cross-examined with the Land Registry Journal and the Central Commercial Register. In 2011, 8 declarations were cross-examined with the Land Registry Journal and one also with the Central Commercial Register. It is further reported that a thorough examination of 2 more declarations was carried out. Moreover, following submission of annual declarations, due to changes in the composition of property, new declarations were filed: by two deputies in 2009, three deputies in 2010 and three deputies in 2011.
[68] Subsequent to the visit, the authorities also indicated that the ACA Select Committee is supported by the Parliament's Chancellery (Legal Affairs and Research Department).
[69] According to the 2004-2007 Anti-corruption Strategy of Estonia entitled "An Honest State", the deterrent effect of economic interests' declarations is two-fold: firstly, the process of declaring has a disciplinary effect in itself; secondly, this is an opportunity for the public to check those declarations which are subject to publication. The Strategy calls for maintaining the process of declaring economic interests even though it is admitted that the declarations themselves have not been pivotal in detecting cases of actual corruption.

Implementation of the Anti-Corruption Act. It is also important that the outcomes of checks conducted by the ACA Select Committee and of the bodies reporting to it be shared with the public on a regular basis.

Additional employment and other activities

66. Except for the information that approximately 15-20% of parliamentarians exercise additional activities, the GET has failed to collect other meaningful data as regards the observance by deputies of restrictions on accessory employment imposed by the SMPA. No supervision in this field appears to be currently exercised. The GET was told that a document had been prepared by the Legal Affairs and Research Department of the Parliament's Chancellery in order to help the Parliament's Board to evaluate and decide whether a particular activity is incompatible with the deputy's status. Having noted that the declarations on additional employment will be made redundant by the revised ACA, which will introduce a single declaration merging information from the declarations of economic interests and those on accessory activities, the GET is of the opinion that a separate recommendation on this matter is dispensable.

Enforcement measures and immunity

67. The authorities indicate that the following misdemeanours and criminal offences apply to situations of conflicts of interests involving members of Parliament:

- a violation of the rules on the obligation to submit an economic interests declaration which is punishable under section 26.1 (2) ACA;
- submission of false information to a person, agency or committee verifying declarations of economic interests which is punishable under section 26.2 ACA;
- a violation of restrictions on employment or activities or procedural restrictions established by law which is punishable under section 26.3 ACA
- failure to notify a corruption act which is punishable under section 26.4 ACA;
- a corruption act entailing the receipt of income or gains derived from corrupt or illegal practices which is punishable under section 26.5 ACA;
- a knowing violation to a large extent of a procedural restriction established by the ACA which is punishable under section 300.1 PC;[70] and
- a violation of restrictions on economic activities and assets of political parties which is punishable under 402.1 PC.

68. Misdemeanour investigations against parliamentarians are carried out by the Police and Border Guard Board, who are subordinated to the Ministry of the Interior. The proceedings are governed by the Misdemeanour Procedure Code of 22 May 2002. Sanctions foreseen for misdemeanours are pecuniary fines up to 300 fine units (approx. 1 200 Euros) that may be imposed by a court or an extra-judicial body.[71]

69. Pursuant to article 76 of the Constitution, a member of Parliament enjoys immunity. Thus, criminal charges may only be brought against him/her on proposal by the Chancellor of Justice and with the consent of the majority of Parliament. If necessary, the Chancellor of Justice may examine the criminal file upon granting consent to the procedural act.[72] The detailed rules regarding the lifting of immunities are contained in chapter 14 of the Criminal Procedure Code, which sets forth a special procedure for the preparation of a statement of charges and for performance of procedural acts, and to a limited extent also in the RPIRA.[73]

[70] It is punishable by a fine or an imprisonment of up to one year.
[71] Section 47 PC.
[72] Section 377 of the Criminal Procedure Code.
[73] For example, with regard to proceedings concerning a proposal by the Chancellor of Justice to grant consent to the preparation of a statement of charges with regard to a parliamentarian contained in section 379 (1) CCP.

70. A deputy may be detained as a suspect, and preventive measures and search and seizure of property may be conducted in his/her regard only following a request by the Chief Public Prosecutor and with the consent by the Chancellor of Justice. The consent by the latter is unnecessary in cases where a deputy is apprehended *in flagrante delicto*. The Chief Public Prosecutor and the President of the Parliament, however, are to be notified thereof.

71. A resolution by Parliament to grant consent to the preparation of a statement of charges does not suspend performance of the deputy's duties. Following receipt of the relevant persons' consent, criminal proceedings are conducted according to the general rules.[74]

72. In the last three years, there were no cases of parliamentarians being charged for corruption offences. As concerns irregularities pertaining to declarations of economic interests, the authorities contend that, in the absence of deliberate attempts to submit false information by members of Parliament, it was deemed unreasonable to initiate misdemeanour proceedings by informing the police.

Training and awareness

73. At the beginning of the Parliament's term, introductory trainings are held for new deputies on the following topics: Parliament's tasks, the status of a member of Parliament, Parliament's working bodies and work arrangements, the voting system, salaries and compensations, services available to deputies. Lectures are provided by the management of the Parliament's Chancellery and by heads of departments. Advice on ethical issues may be obtained by individual deputies from the ACA Select Committee and from the Parliament's Board. The Chancellery, whose primary objective is to create organisational and economic conditions for the successful work of the Parliament's Board, deputies, committees and factions, provides general guidance and assistance to parliamentarians.

74. As concerns awareness of the general public on the conduct expected from parliamentarians, the authorities indicate that all laws are available on the Internet. Furthermore, information on the procedures established by the Parliament's Board and on the activities pursued by the ACA Select Committee may be found on the Parliament's website.

75. The information gathered by the GET strongly suggests that the Estonian authorities tend to give insufficient attention to corruption prevention through increased awareness-raising. This seems to be the case of parliamentarians whose appreciation of ethical issues does not appear to be satisfactory and who would benefit from systematic awareness training. The GET's attention was drawn, in particular, to insufficient guidance provided to the newly elected parliamentarians on how to perform their duties. Also, recalling the above issued comments and recommendations, the GET has not been persuaded of the deputies' knowledge of the intricacies of the ACA pertaining to gifts, hospitality and other advantages and the disclosure of interests. **GRECO therefore recommends (i) the establishment of a specific source of confidential counselling to provide parliamentarians with advice on ethical questions and possible conflicts of interest in relation to their legal duties; and (ii) the provision of regular awareness raising activities for members of Parliament (all deputies but especially the new ones) covering issues, such as conflicts of interest, acceptance of gifts, hospitality and other advantages, outside employment, disclosure of interests and other obligations related to corruption prevention.** It is critical that educational and awareness materials based on practical examples be developed in support of the above training programmes.

[74] Section 381 CCP.

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

Categories of courts and jurisdiction levels

76. The foundations of the judicial system are laid down in the Constitution.[75] Pursuant to article 146 thereof, justice shall be administered solely by the courts which are independent and act in accordance with the Constitution and the laws.[76] The court system comprises three levels: (i) county and administrative courts; (ii) circuit courts; and (iii) the Supreme Court. The creation of specialised courts may be provided by the law, the formation of emergency courts is prohibited. In addition to the Constitution, the judicial system is regulated by the Courts Act (CA) of 19 June 2002.

77. The county courts and the administrative courts are courts of first instance. The four county courts are responsible for hearing all criminal, misdemeanour and civil cases, and the two administrative courts – all administrative cases. The county and the administrative courts are divided into court houses. As of January 2012, there were 138 judges in the county courts and 25 judges in the administrative courts. Judges are generally specialised in adjudicating on civil, administrative or criminal cases. This principle, however, may not be respected in the very small court houses.

78. The administration of justice at the level of county courts involves the participation of lay judges, pursuant to the codes of procedure. In the administration of justice, a lay judge has equal rights with a judge.[77]

79. The circuit courts are second instance courts and review judgments of the county and administrative courts on the basis of appeals. There are two such courts with a total of 38 judges.

80. The Supreme Court is the third instance court. It performs functions of: (i) the highest court of general jurisdiction, (ii) the supreme administrative court; and (iii) the constitutional court. The Supreme Court is composed of 19 justices.

81. A range of developments have affected the Estonian judicial system since the country gained independence in 1991. Thus, all judges who sat on the bench during the communist times had to re-apply for their posts. Out of 156 applicants, ten judges (or 6,4%) were not re-appointed.[78] In 2007, the Court *en banc* comprising all Estonian judges approved, for the first time, a set of principles for the development of the national court system. These included transforming courts into an independent branch of power and achieving full separation of powers, withdrawing the courts' administration from the executive and establishing an independent administrative supervisory body, as part of the unified judicial system.[79] In March 2008, the Ministry of Justice established a working group to prepare amendments to the CA. These were presented to Parliament in 2009 but the draft was withdrawn from the legislative proceeding in March 2011, upon termination of the Parliament's term of authority. As from 2011, the new government has focused on issues, such as making the judicial proceedings less expensive and more efficient (in particular, by introducing various IT tools), lowering state fees and increasing

[75] Articles 146-153.
[76] As previously mentioned, Article 4 of the Constitution provides that the activities of Parliament, of the President of the Republic, of the Government of the Republic and of the courts shall be organised on the principle of separation and balance of powers.
[77] Section 102 CA.
[78] Monitoring the EU Accession Process: Judicial Independence, Country reports, Open Society Institute, 2001, p. 177.
[79] European Judicial Systems. Edition 2012 (data 2010). Efficiency and quality of justice. European Commission for the Efficiency of Justice.

the availability of free legal aid, ensuring a more effective administration of courts and quality management.

Independence of the judiciary and the administration of courts

82. The principle of independence of judges is enshrined in the Constitution. In addition to article 146, pertinent safeguards are contained in articles 147 and 153 and include the appointment of judges for life; the removal from office on the grounds and in line with the procedure prescribed by law and only pursuant to a court decision; prohibition to hold any other elected or appointed position; the prescription by law of the legal status and of guarantees of independence of judges; the principle of judicial immunity. Sections 2 and 3 CA largely reiterate the aforementioned provisions. The Criminal Procedure Code, moreover, safeguards the principle of free assessment of evidence.[80]

83. Pursuant to section 45(1) CA, supervisory control over the performance of duties by judges lies with the presidents of courts. Moreover, as concerns the first instance court judges, they are additionally supervised by presidents of relevant circuit courts. The performance of duties by the presidents of first and second instance courts is supervised by the Minister of Justice who may demand explanations concerning the administration of justice pursuant to specific requirements.[81]

84. Neither individuals nor institutions may give directives to judges in individual cases. Only presidents of courts, in the exercise of their supervisory duties, may instruct judges to ensure the timely conduct of proceedings. Thus, if a judge fails to perform a necessary procedural act without good reason (e.g. fails to schedule a session in due time), a president of court is to decide on a measure which will provide an opportunity to finalise the proceedings within reasonable time.[82] In general, a president of court may establish reasonable term for a judge to perform a procedural act, provide other organisational guidelines, redistribute cases, taking into account the division of tasks within the court, and in exceptional cases, deviate from the plan, if justified by the peculiarities of the case, the specialisation of the judge and the workload of other judges.

85. Pursuant to the CA, the administration of courts has been split up. The courts of first and second instance are governed by the Ministry of Justice, in co-operation with the Council for the Administration of Courts (see further below).[83] The Ministry is responsible for the courts' budget, accounting, IT, housing, and training of clerks, under the condition that it does not interfere with the administration of justice.[84] Budgets are prepared in consultation with courts' presidents and directors and pursuant to the preliminary opinion by the Council on the principles of the formation and amendment of annual budgets of courts. Budgets may be reviewed during a budgetary year, with good reason, following consultation with presidents and directors of courts.[85] The Ministry of Justice furthermore collects statistics and prepares reports on the functioning of courts.[86]

86. The Supreme Court, as a constitutional institution, is totally independent of the executive and autonomous in all administrative and organisational matters. Its budget is

---

[80] Section 61 of the Criminal Procedure Code stipulates that no evidence has a predetermined weight and that a court shall evaluate all evidence in the aggregate, according to the judges' conscience.
[81] Section 45(2) CA.
[82] Section 45, sub-section 1.1 CA.
[83] Section 39 CA.
[84] Section 39, sub-section 4.1 CA.
[85] Section 43 CA.
[86] Section 46 CA. The performance of courts is evaluated on the basis of the following indicators: length of proceedings, pending cases and backlogs, productivity of judges and court staff - See European Judicial Systems. Edition 2012 (data 2010). Efficiency and quality of justice. European Commission for the Efficiency of Justice.

determined directly by the State Budget's Act,[87] following consultations with the Ministry of Finance. The Supreme Court Chief Justice presents a review on the administration of courts, administration of justice and uniform application of law to Parliament on an annual basis.[88]

87. Judicial independence and the impartiality of judges are fundamental principles in a State governed by the rule of law; they benefit the citizens and society at large as they protect judicial decision-making from improper influence and are ultimately a guarantee of fair court trials. The judiciary in Estonia is widely regarded as independent, relatively transparent and accountable. While the GET largely concurs with this assessment, it cannot disregard legal and institutional limits that may appear as diminishing the level of judicial independence. Thus, the Ministry of Justice's overall control over the budget and the budgetary process, as well as its right to re-allocate funding amongst courts during the budgetary year is perceived by some as posing a threat to judicial independence. Although there is no evidence that the Ministry has been abusing its powers in practice, an impression could arise that it may exert pressure on courts by influencing the amount of funding they receive, in particular, since presidents of first and second instance courts are appointed by the Minister of Justice, following approval by the Council for the Administration of Courts, and the performance of their duties is supervised by the Minister.[89] In view of the foregoing, the GET renders its full support to the objectives of the national court system, as announced in 2007 by the Court *en banc*, namely to achieve in law and in practice the principles of separation and of balance of powers.

Consultative and decision-making bodies

88. Consultative and decision-making bodies of judges include the Council for the Administration of Courts, the Judge's Examination Committee and the Disciplinary Chamber of the Supreme Court.

89. The Council for the Administration of Courts (Council) is composed of the Supreme Court Chief Justice, five judges elected for three years by the Court *en banc*, two members of Parliament, a sworn advocate appointed by the Bar Association, the Chief Public Prosecutor and the Chancellor of Justice. The Minister of Justice participates in the Council with the right to speak. The Council grants approval, *inter alia*, as regards the determination of the territorial jurisdiction and the structure of courts, the number of judges in courts, the appointment and premature dismissal of presidents of courts, the number of lay judges and of candidates for the judicial office. The Council furthermore provides a preliminary opinion on the principles of formation or amendment of the annual budget of first and second instance courts, prepares opinions on candidates for a vacant post of a Supreme Court judge and on the release of a judge from office due to health reasons, discusses other issues at the initiative of the Supreme Court Chief Justice or the Minister of Justice.[90] Clerical support to the Council is provided by the Ministry of Justice. It would appear that, over the years, the Council's profile has gained in importance and the creation of this institution has enabled the judiciary to bring up and discuss important issues.

---

[87] As concerns first and second instance courts, their budget is presented as part of the Ministry of Justice's budget – See Monitoring the EU Accession Process: Judicial Independence, Country reports, Open Society Institute, 2001, p. 167.
[88] Section 27(3) CA.
[89] Presidents of first instance courts are appointed by the Minister of Justice for a period of five years from among the judges of the court and having considered the opinion of the full court. The same procedure is used for the appointment of presidents of second instance courts for a seven-year period. The Minister, however, is not vested with a right of command or disciplinary authority over the judges – See Sections 12(1), 20(1), 24(1), 39(3) and 45(2) CA.
[90] Section 41 CA.

90. The Judges' Examination Committee is responsible for the appointment of judges. It is formed for the period of five years and composed of two first instance court judges elected by the Court *en banc*, two circuit court judges, two Supreme Court justices, one jurist designated by the University of Tartu Law Faculty, a representative of the Ministry of Justice, a sworn advocate designated by the Bar Association and a public prosecutor. For the purposes of an examination, a panel consisting of at least five members, including three judges, is set up by the Committee's chair.[91]

91. The Disciplinary Chamber of the Supreme Court is the authority in charge of the disciplinary proceedings against judges (see further below).

Recruitment, career and conditions of service

Recruitment requirements

92. Candidates for a judicial post must conform to the requirements set out in the CA. Thus, an Estonian national may be appointed as a judge if s/he has satisfied the minimum requirements which are: conferral of a Master's degree (which must be officially certified), or a corresponding qualification for the purposes of sub-section 28(22) of the Education Act or a corresponding foreign qualification, proficiency of the Estonian language at the C1 level provided for by the Language Act or a corresponding level, high moral character, and abilities and personal characteristics necessary for working as a judge.[92]

93. Applicants who are barred from access to the judgeship include persons convicted of a criminal offence, removed from the office of judge, notary or bailiff, expelled from the Estonian Bar Association, released from the public service for a disciplinary offence, declared bankrupt, and those whose right to exercise the profession of auditor or patent agent has been withdrawn, except pursuant to own application.[93]

94. An applicant who satisfies the above requirements may participate in an open call for applications which is published in the Official Journal ("*Ametlikud Teadaanded")* by the Ministry of Justice. Following an assessment of his/her legal knowledge and an interview with the Judges' Examination Committee, the applicant may become a candidate for judicial office.[94] A candidate for judicial office is a remunerated official of a judicial institution appointed by a president of court, upon submission by the Judges' Examination Committee, to complete a two-year preparatory service for the office of judge. A person who has worked as a sworn advocate or prosecutor, except an assistant prosecutor, for two years immediately prior to passing a judge's exam, or a person who has previously worked as a judge, provided that no more than ten years have elapsed since his/her release from office, are exempt from the preparatory service.[95] Persons who are experienced and recognised lawyers may also be exempted by the Committee.[96]

Appointment procedure and career advancement[97]

95. Judges are appointed on the basis of a public competition announced in the Official Journal. Vacancies in the lower courts are announced by the Ministry of Justice

[91] Section 69 CA.
[92] Section 47(1) CA.
[93] Section 47(2) CA.
[94] Section 61 CA.
[95] Section 50(2) CA.
[96] The committee may also shorten the preparatory service by up to one year in respect of a person who has worked as an advocate or prosecutor, consultant of court, law clerk or judge for at least two years - see section 64 CA.
[97] Access to higher posts within the judiciary is open to both persons already holding the post of judge and those from outside the judiciary.

and in the Supreme Court - by the Chief Justice. All applications are submitted to the Supreme Court's Chief Justice.[98]

96. A candidate for judicial office who has completed (or has been exempted from) the preparatory training and who has passed a judge's exam may be appointed as county or administrative court judge. An experienced and recognised lawyer who has passed a judge's exam (or has been exempted there from in case s/he has worked as a judge directly before appointment) may be appointed as a circuit court judge. An experienced and recognised lawyer may be appointed as a Supreme Court justice.[99]

97. The suitability of a candidate's personal characteristics is assessed on the basis of an interview, a security check, and any other information and enquiries carried out by the Judge's Examination Committee.[100] The security check is performed by the Security Police, in accordance with the Security Authorities Act. In the case of a positive assessment, a candidate may be appointed as judge within nine months from the moment the Security Police forwards relevant information to the Judges' Examination Committee. The Committee submits its decision and accompanying documents to the Supreme Court *en banc* and notifies the examinee thereof. The Supreme Court *en banc* makes a proposal to the President of the Republic.

98. Judges are appointed to office for life. Judges of first and second instance courts are appointed by the President of the Republic, on proposal by the Supreme Court *en banc*. The Supreme Court *en banc* is to consider first the opinion of the court for which the person runs as a candidate. The Supreme Court justices are appointed by Parliament, upon submission by the Supreme Court Chief Justice. The Chief Justice is to consider first the opinion of the Supreme Court *en banc* and the Council for the Administration of Courts. The Supreme Court Chief Justice is appointed by Parliament, upon proposal by the President of the Republic, for a non-renewable term of nine years.[101] A decision on the appointment as a judge is subject to appeal in the Supreme Court's Constitutional Review Chamber. There are no promotion procedures that would be separate from the application of an ordinary appointment procedure. This means that a judge will have to apply for a position with a higher rank through public competition process as referred to above.

99. The GET notes that the selection and appointment procedures are predominantly led by the judiciary. The Judges' Examination Committee and the Supreme Court appear to play the role of guarantors of due process, assuring the collegiality of the decision-making process and shielding it from undue influence. Overall, the initial appointments to the post of judge are based on clear and professional criteria, the only debatable aspect being the personal characteristics of a judge. Due to the size of Estonia and its lawyers' community, background information on the applicants is generally well-known in advance. The GET notes, however, that the principle of independent and impartial review of any administrative decisions appears not to be fully respected in the case of appeal proceedings concerning the appointment of a judge. Thus, the Supreme Court *en banc* consisting of 19 justices makes proposals for the appointment of the first and second instance court judges, while the Constitutional Review Chamber of the Supreme Court composed of nine justices serves as the appeal instance. This creates a problem of "structural impartiality" addressed in several decisions of the European Court of Human Rights in respect of other Council of Europe member states. As concerns the appointment

---

[98] The above procedure does not apply to cases of transfer of judges to another court or to the service at the Supreme Court or at the Ministry of Justice – see sections 53, 57 and 58 CA.
[99] See sections 50(1), 51 and 52 CA.
[100] A security check is obligatory, except for candidates who already hold a valid permit to access state secrets classified as top secret. It entails completing a form, which is used to apply for access to state secrets, and signing a consent form, which permits relevant agencies to collect background information on the candidate – see sections 54 (1-3) and 61.1 CA.
[101] Section 27(1) and 27(9) CA.

of judges to higher positions within the judiciary, the information gathered on-site strongly suggests the lack of objective criteria, upon which such decisions are made. In this connection, interlocutors met by the GET referred to a measure of subjectivity and favouritism and the absence of cases where a promotion was challenged in court, with one exception. **GRECO therefore recommends that (i) decisions on appointment to the post of first and second instance court judge be subject to independent appeal procedure; and (ii) objective criteria for the professional advancement of judges be introduced with the aim of enhancing its uniformity, predictability and transparency.** Such criteria could be used as a benchmark in any eventual appeal proceedings. Furthermore, the objective criteria could potentially involve results of periodical quality assessments of judges' performance, should such a system be introduced by Estonia as suggested in paragraph 101 below.

Evaluation of a judge's performance

100. As was already mentioned, supervisory control over the performance of duties by a judge is exercised by the president of court. During the visit, the GET was told that a system of quality assessment of a judge's work was in place and carried out by means of informal annual interviews, practiced particularly during the first years following a judge's appointment. In the absence of performance targets being defined for individual judges, their productivity is assessed, as a rule, based on the number of cases decided on and on the reversal rate on appeal, as well as some other personal statistics. The introduction of a more formalised review system was planned as part of the 2008 judicial reform. It was allegedly viewed by some judges as an attempt to infringe on their judicial independence.

101. The GET is convinced that an effective system of periodical performance reviews allows not only for the monitoring of a judge's performance and its progression over time but also for an early detection of problems encountered in the fulfilment of the judge's duties. Thus, a high workload and backlog of cases which are reportedly confronted by many of the Estonian judges may be and should be addressed at an earlier stage. Furthermore, as was already suggested, information from the periodical reviews may be used for substantiating an opinion/decision on the eventual advancement of a judge to a higher rank. The GET is particularly concerned that, other than judicial review, there appears to be no system of efficient case management within courts. In view of the foregoing, **GRECO recommends that the Estonian authorities consider introducing a system of periodical quality assessments of a judge's professional performance, based on standardised and objective criteria, with due regard being paid to the principle of judicial independence.** Such a system could also be seen as a step towards a more transparent advancement within the judiciary.

Transfer of a judge

102. The transfer of a judge to another post may only occur at the request or with the consent of the judge. The Supreme Court *en banc* may appoint a judge to another court of the same or lower instance with the consent of a judge and on proposal by the Minister of Justice. The Supreme Court *en banc* may also appoint a first instance court judge with his/her consent to permanent service in another court house in the same court. In the interests of the administration of justice, a president of court may permanently appoint a judge without his/her consent to another court house within the same court. In such cases, the president of the court is to consider the opinion of the full court.[102] At his/her request and with the consent of a president of court, a judge may furthermore be transferred to the Supreme Court or to the Ministry of Justice, with temporary suspension from service. A judge may also be elected or appointed to an international court institution or an international civil mission, which entails the

[102] Section 57 CA.

suspension of the authority and of service relationship of the judge.[103] A decision concerning the transfer may be appealed to the administrative court.

Termination of service and dismissal from office

103. Termination of an active judicial term occurs as a result of a judge having reached the maximum retirement age, which is 67 years, unless the maximum age of the judge is increased pursuant to a specific procedure.[104] In accordance with the Constitution, the grounds and procedure for the dismissal of a judge are to be provided for by law, and the judges are to be removed only pursuant to a court decision.[105] Grounds for the dismissal include: a request by the judge; the attainment of 68 years of age; the unsuitability for office within three years of appointment; health problems hindering the work as a judge; liquidation of a court or reduction in the number of judges; the impossibility to return to a former position following service in the Supreme Court, the Ministry of Justice, an international court institution or an international civil mission and the lack of will to be transferred to another court; the appointment or election to the position or office contrary to the restrictions imposed on judges; the revelation of facts precluding the appointment as a judge.[106] Additionally, a judge is removed from office in the case of a conviction by a court for a criminal offence or a decision by the Disciplinary Chamber of the Supreme Court on his/her removal from office.[107]

104. Judges of first and second instance courts are dismissed from office by the President of the Republic, on proposal by the Supreme Court Chief Justice. The Supreme Court Chief Justice is released by Parliament, on proposal by the President of the Republic, except when the Chief Justice is unable to perform his/her duties for six consecutive months and is released from office following a decision by the Supreme Court *en banc,* on a reasoned request by the President of the Republic.[108] The other justices of the Supreme Court are to be released by Parliament, on proposal by the Supreme Court Chief Justice. A decision on the dismissal is subject to appeal.

105. Judges in Estonia are subject to the three-year probationary period.[109] During this term, the president of the court submits, on an annual basis, his/her opinion on a judge to the Judges' Examination Committee. In the case of a negative assessment, the Committee and the Supreme Court *en banc* may decide on the launching of disciplinary proceedings with a view to releasing a judge from office due to unsuitability.[110] The rationale for introducing such a lengthy probationary period has been the relatively low level of qualifications of candidates applying for judgeship in the early 1990s, as well as the desirability of better criteria in determining the suitability of individuals for the office of judge. The GET is satisfied that a decision on the release of a judge from office due to unsuitability is to be made by the Supreme Court *en banc* based on objective criteria (e.g. low efficiency, poor quality of decisions, complaints from parties to the proceedings, commission of indecent acts) and following thorough assessment of all information characterising the judge's work. Such a decision may be challenged by the judge concerned. The GET also notes that, so far, only one judge has been released from office during the probationary period which was due to the commission of an indecent act.

[103] Sections 58 and 58.1 CA.
[104] Sections 48 and 99.1 CA.
[105] Article 147 of the Constitution.
[106] Section 99 CA.
[107] Section 101 CA.
[108] Section 27(6) CA.
[109] The GET also notes that such a system has not been put in place in the prosecution service.
[110] Section 100 CA.

Salaries and benefits

106. Judges' salaries and benefits are regulated by sections 76-86 CA. Salaries are calculated pursuant to the Salaries of State Public Servants Appointed by Parliament or President of the Republic Act. The average monthly salary of a first instance court judge is 2 666,00 Euros, of a second instance court judge – 2999,43 Euros, and of a Supreme Court justice – 3 665,97 Euros. Seniority bonus is offered in the amount of 5% of a judge's salary starting from the fifth year of service, 10% – from the tenth year of service, and 15% – from the fifteenth year of service.

107. Depending on the number of judges in a court, presidents of first and second instance courts receive a functional allowance ranging between 15% and 35% of a judge's salary. Upon proposal by the president of the court and with the consent of the Council for the Administration of Courts, the Minister of Justice may determine an allowance for a manager of a court house in the amount ranging, depending on the number of judges, between 5% and 10% of the judge's salary. Judges supervising candidates for judicial office, candidates for assistant judge and student trainees are entitled to an allowance equal to 5% of a judge's salary for each supervised person.

108. Together with the additional remuneration, the salary of a judge may not exceed that of a higher court judge. Similarly, the salary of the Supreme Court justice, together with additional allowances, may not exceed that of the Supreme Court Chief Justice.

109. As of July 2013, judges' salaries will be regulated by the Salaries of Higher State Servants Act, which will provide for the different salary rates. As in the cases of members of Parliament, the salary of a judge is to be calculated as a base salary, i.e. 5 200 Euros, multiplied by a factor. For the salary of the Supreme Court Chief Justice, the factor shall be 1,0; for the Supreme Court justices – 0,85; for a second instance court judge – 0,75; and for a first instance court judge – 0,65.

110. A judge's pension comprises the old-age pension, the superannuated pension (for judges with at least 30 years of professional experience), the incapacity pension and the survivor's pension for the judge's family members.[111] A one-time benefit is to be provided to a judge's family members in case the judge is killed as a result of a criminal attack while s/he was performing his/her duties.[112]

Lay judges

111. The criteria for appointments as a lay judge stipulate that the candidate must be an Estonian national with full legal capacity between 25 and 70 years of age, residing in Estonia, proficient in the Estonian language at an advanced level, with suitable moral characteristics. The grounds for rejection are similar to those applicable to judges, and are complemented by a prohibition to appoint those serving in a court, prosecutor's office, the police, armed forces, members of Government, Parliament, rural municipality or city government or acting as President of the Republic or county governor.[113]

112. Candidates are elected by local government councils. The number of candidates is determined by the president of a county court in respect of each local government within his/her jurisdiction whilst ensuring its proportionality to the ratio of the number of residents in the local government' territory and the number of residents in the territorial jurisdiction of the court.[114] The list of candidates is published and may be contested by any citizen to the specifically designated committee within a county court.[115] The number

[111] Sections 78-81 CA.
[112] Section 83 CA.
[113] Section 103 CA.
[114] Section 106 CA.
[115] Section 107 CA.

of lay judges in each county court is determined by the Ministry of Justice, with the consent of the Council for the Administration of Courts and after due consideration of the opinion of the county court *en banc*.[116]

113. Lay judges are appointed for not more than two consecutive terms of four years by the above committee, which is composed of the president of a county court, one judge elected by the court *en banc* and one member per each local government council elected from among its members. The appointment procedure entails the consideration of a candidate's suitability, and if any, the reasoned objections filed against him/her. Their appointments should be guided by the principle that lay judges shall be of different sex, age, social status and professional group. Lay judges are obliged to take an oath of office.

114. The remuneration of a lay judge per each day of participation in the administration of justice is calculated as the salary rate of the highest state public servant multiplied by a coefficient of 0,024. Expenses related to the participation in the administration of justice are subject to reimbursement, and a pension is provided in case where a lay judge is subject to a criminal attack.[117]

Case management and court procedure

Assignment of cases

115. All complaints, petitions and protests are received, checked and registered on the day of their arrival in the Court Information System. This is a database that was set up by the Ministry of Justice with a view to structuring the courts' work, collecting statistics, systematising decisions and making them available to other courts and the public.[118] The assignment of cases is carried out pursuant to a court's "division of tasks plan". The assignment is computer-based but takes into account the judges' workload. In the Supreme Court, acceptance for proceedings is decided by a panel consisting of at least three justices. A matter is accepted if the hearing thereof is requested by at least one justice.[119]

116. While adjudicating on civil and administrative matters, the courts may render each other assistance in the performance of procedural acts. Assistance may be requested in cases where the performance of a procedural act by another court would facilitate the hearing of a matter, save the time of the court or of parties concerned, or reduce procedural expenses.[120]

The principle of hearing cases without undue delay

117. Pursuant to different acts (Constitution, codes of procedure, the European Convention on Human Rights), a judge is bound to adjudicate a matter within a reasonable time. The Code of Ethics of the Estonian judges also stipulates that a judge is to resolve cases within reasonable time. Violation of this requirement may bring about disciplinary proceedings against a judge. The authorities furthermore indicate that a request to accelerate a proceeding can be made if a matter has been in court for at least nine months and the court has failed to take the necessary steps without good reason.[121] It is also possible to terminate criminal proceedings in case pre-trial and court proceedings have exceeded the reasonable time requirement.[122]

[116] Section 14 CA.
[117] Sections 112 and 113 CA.
[118] Section 34 CA.
[119] Section 26(2) CA.
[120] Section 15 CA and section 14 of the Code of Administrative Procedures.
[121] Section 274.1 of the Criminal Procedure Code.
[122] Pursuant to sections 205.2 and 274 of the Criminal Procedure Code.

118. In the course of its visit, the GET has learnt that the excessive length of proceedings has been a serious problem confronting the judiciary.[123] In order to address this issue, as from 2008, "protocols of collective intentions" were concluded between the Ministry of Justice and presidents of first and second instance courts, with a view to ensuring that by the end of the year, there were only a fixed percentage of cases with the overall length of proceedings exceeding two years. In 2011, the Supreme Court published a report, which affirmed that while average statistics on the duration of a single proceeding was not unduly excessive, in effect, these did not count whether a case was sent back on appeal to a lower court for re-adjudication. In such instances the case was counted as a new judicial procedure, whereas for the parties involved, it remained the same on-going case. Recently, an instruction was issued by the Council for the Administration of Courts to elaborate a manual of good practices in court quality management. It is supposed to provide for objective criteria on the containment of judicial proceedings to ensure a reasonable time requirement. The GET understands that a series of measures are being designed to ensure Estonia's greater adherence to the principle of hearing cases without undue delay. The GET therefore, encourages the authorities to pursue those efforts with the utmost vigour.

The principle of public hearing

119. The principle of public hearing is provided for in article 24 of the Constitution. Exceptions may only be made to protect a state or business secret, morals or the private life and family life of a person or where the interests of a minor, a victim or justice so require. Judgments are to be pronounced publicly, except where the interests of a minor, a spouse or a victim require otherwise. Identical provisions are contained in the Codes of Criminal, Civil and Administrative Procedure[124] and are complimented by a provision allowing for a restricted public hearing in order to protect classified information of foreign states, and in case the security of the court is in danger.[125]

Ethical principles and rules of conduct

120. Ethical principles and core values of the judicial system are included in the CA and in the Code of Ethics of the Estonian Judges (CEEJ), adopted on 13 February 2002 by the Court *en banc*. In accordance with section 70 CA, a judge is to perform his/her duties in an impartial manner, without having a vested interest in the case, must comply with service interests also outside work and refrain from acts which may prejudice the court's reputation. This provision also applies to lay judges.

121. The CEEJ prescribes the following conduct for a judge: preserving the reputation of integrity and independence of the judiciary, exercising the power vested in a judge in the best possible way, arranging life and activities, including legal activities, so that the threat of possible conflicts of interest is minimal, behaving in a manner compatible with the dignity of the judicial office, being a paragon of a law-abiding person observing the legal order.[126] A judge is furthermore obliged to point out to a colleague his/her indisputably indecent behaviour and any violations of the Code and endeavour to put an end to such violations. If need be, a judge is to inform the full court and its president thereof.[127] Requirements of professional ethics are to be interpreted on the basis of law, decisions of the Supreme Court's Disciplinary Chamber, the established practice among

[123] Also, the European Court of Human Rights held on several occasions in the past that Estonia was in breach of the right to a fair trial due to the excessively long judicial procedures - see e.g. *Treial v. Estonia*, Application no. 48129/99, Strasbourg, 2 December 2003; *Shchiglitsov v. Estonia*, Application no. 35062/03, Strasbourg, 18 January 2007.
[124] Sections 11 and 12 of the Criminal Procedure Code, sections 37-42 of the Code of Civil Procedure and section 77 of the Administrative Procedure Code.
[125] Section 12(2) CPC.
[126] Sections 1-3,6, 8 CEEJ.
[127] Section 9 CEEJ.

the judiciary, as well as the opinions of senior colleagues and the conscience of a judge. Behaviour not covered by the Code is to be guided by the aforementioned principles.[128] The GET acknowledges that the CEEJ may be qualified as a comprehensive document, presenting in a coherent manner the standards of the judicial integrity and conduct.

Conflicts of interest

122. The legal framework for the prevention and resolution of conflicts of interest is provided by relevant provisions of (1) the procedural codes, as regards the disqualification of judges from isolated cases; (2) the Courts Act, which contains, *inter alia*, rules on the accessory activities of judges; (3) the Anti-Corruption Act, since judges are deemed to be officials in the meaning of the Act; and (4) the Code of Ethics of the Estonian Judges.

123. The definition of conflicts of interest is provided in section 25 ACA, which stipulates that conflicts of interest occur if an official, including a judge, in the course of his/her duties, is required to make or participate in the making of a decision which significantly influences his/her economic interests or that of his/her close relatives or legal persons, in which the official or his/her close relatives are partners, shareholders, members of management or supervisory boards or audit committees. An official whose duty is to participate in the making of decisions is to notify promptly thereof a body concerned, his/her immediate superior or a person or body with the employment or appointment authority thereof and to forego the making of the decision. An official who is competent to make a decision on his/her own is to remove him/herself from the process and to notify his/her immediate superior thereof. Alongside members of Parliament, judges are also obliged to abide by the procedural restrictions and abstain from committing acts of corruption, as referred to by the aforementioned provisions of the ACA (see paragraphs 41-44 above).

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

124. According to the Constitution, a judge may not hold any other elected or appointed office, except in the cases prescribed by law.[129] Section 49 CA clarifies that a judge may not undertake additional employment, except for that of teaching or research, so long as this does not undermine the performance of his/her duties or the independent administration of justice. Moreover, a judge may not be a member of Parliament, political party, rural municipality or city council, a founder, managing partner, member of a management board or supervisory board of a company, director of a branch of a foreign company, trustee in bankruptcy, member of a bankruptcy committee or a compulsory administrator of immovable property, or arbitrator in a dispute. Above-mentioned conflicts of interest are to be notified to a president of court and subject to disciplinary liability.

125. Furthermore, misdemeanour liability has been established for officials, including judges, for violations of the restrictions on additional employment and activities, and of procedural restrictions under section 26.3 ACA, and punishable by a fine of up to 300 fine units (approx. 1 200 Euros).

[128] Section 10 CEEJ.
[129] Article 147 of the Constitution.

Recusal and routine withdrawal

126. The grounds for a judge's removal from a case are provided in the codes of civil, administrative and criminal procedure.[130] They include situations, *inter alia*, where a judge, his/her spouse or cohabitee, close relatives or close relatives of the judge's spouse or cohabitee is a party to the proceedings, where the judge has acted as a representative or adviser to one of the parties or conducted pre-trial proceedings or participated in the adoption of a decision which has been subsequently annulled by a higher court. A judge must also withdraw him/herself in cases where there are other circumstances which put in doubt his/her impartiality.[131] If a judge has recused him/herself from a proceeding in criminal matters and cannot be replaced within the same court, a president of a circuit court refers the matter for hearing to another county court within the territorial jurisdiction of the circuit court, subject to the approval by the Supreme Court Chief Justice. The period of limitation for challenging a biased judge is not specified in the law. The authorities submit that, in order for a petition not to turn into a deliberate elongation of proceedings, it has to be submitted immediately after the basis for removing a judge has become evident. Nevertheless, if such evidence were to become known at a later stage of the process, a possibility for challenging a biased judge would still be maintained.

127. The GET observes that parties to a judicial proceeding have the right to challenge the impartiality of a judge and that this right is being exercised in practice. That said, from the interviews held on-site, the GET concluded that judges would only consider withdrawing from a case when formally challenged by one of the parties but not on their own initiative, since self-recusal was perceived by many of them as dishonourable. Nevertheless, the GET is satisfied that statistics shared with it subsequent to the visit clearly indicate that the practice of judges' self-recusal has been rather widespread. In light of these circumstances, a recommendation on this issue is dispensable.

Gifts

128. There are no detailed regulations on the acceptance of gifts specifically by judges. The authorities refer to the aforementioned section 26 ACA, which prohibits the solicitation and acceptance of gifts and benefits by an official (including judges), if this may undermine, directly or indirectly, the impartial performance of the official's duties (see paragraph 45 above). The prohibition of gifts is also included in the Code of Ethics of the Estonian Judges.[132] It stipulates that a judge may not ask for or accept presents, bequests, loans or other favours in relation to what s/he has done, must do or avoid doing in the exercise of his/her duties. This requirement applies to the judge's family, court staff and persons under his/her influence, discretion or power. The GET took note of the opinion expressed by Transparency International Estonia representatives, who stated that the cultural background in the country was generally supportive of the judicial integrity and there was no tradition of making gifts to judges. Interviews held with the judges appear to affirm this statement.

Post-employment restrictions

129. There are no post-employment restrictions applicable to judges, except for those which continue binding a judge upon release from office due to his/her age.[133] Solitary cases where judges resign from office in order to assume work in the private sector are rare and not seen as a threat to the judicial independence.

---

[130] Sections 23-30 of the Civil Procedure Code, section 13 of the Administrative Procedure Code and sections 49-50 of the Criminal Procedure Code.

[131] Section 23(7) of the Civil Procedure Code and Sections 49(6) and 49.1(1) of the Criminal Procedure Code.

[132] Section 26 CEEJ.

[133] Since judges are appointed for life, the employment restrictions contained in section CA are applicable also following their release from office due to age.

Third party contacts, confidential information

130. As concerns the communication between a judge and a third party on a specific case outside the official procedure, the authorities refer to sections 5 and 6 ACA, which contains a prohibition for the officials (including judges) to enter into relationships with natural and legal persons involving corruption risks (also see paragraph 43 above). Furthermore, pursuant to the Code of Ethics of the Estonian Judges, a judge must refrain from political and business lunches and get-togethers with participants in a proceeding, if this may prejudice his/her impartiality and give rise to conflicts of interest. In personal relations with legal professionals practicing in court, a judge is to avoid situations which could give rise to doubts of favouritism or impartiality, or the appearance thereof. Personal contacts of a judge may not affect his/her work.[134]

131. As regards the duty of confidentiality, a judge is bound to keep confidential information which became known to him/her in the course of the proceeding held *in camera*.[135] The duty is of an indefinite term and remains valid also after the service relationship has been terminated. The treatment of confidential information is carried out pursuant to the Penal Code (PC) and the CA. The PC prohibits, *inter alia*, the disclosure and publication of state secrets and of classified information belonging to foreign states;[136] the unlawful disclosure of information related to pre-trial proceedings in criminal matters and to surveillance activities carried out in order to prevent or combat a criminal offence;[137] and the violation of a confidentiality requirement imposed by a court ruling.[138] In judicial proceedings and in pre-trial proceedings in criminal matters, confidential information may be disclosed only following permission granted by the Supreme Court *en banc*. The misuse of confidential information may be regarded as a disciplinary offence amenable to disciplinary penalties. The duty of confidentiality and of confidentiality of deliberations also applies to lay judges.

Declaration of assets, income, liabilities and interests

132. Judges, as officials, are bound to submit declarations of economic interests, pursuant to the rules also applicable to members of Parliament and described above (see paragraphs 56-61 above). First and second instance court judges present their statements to the Ministry of Justice, while the Chief Justice and justices of the Supreme Court, as well as presidents of first and second instance courts file their declarations with the Parliament's Anti-Corruption Select Committee.[139] Judges' declarations are made public in the on-line State Gazette, except for personal data, information on the income, taxable and dividend income and contents of the judges' marital property contracts. Late submission or the filing of incomplete or false declaration is sanctioned by a fine of up to 300 fine units (approx. 1 200 Euros).[140] The rules on declarations are enforced in the course of misdemeanour proceedings, and the depositary may propose that disciplinary proceedings be brought against the official concerned, depending on the seriousness of the breach of official duties.

Supervision

Ethical principles and conflicts of interests

133. Although some elements of a corruption prevention policy within the Estonian judiciary are currently in place, namely the Code of Ethics of the Estonian Judges and

[134] Sections 20 and 23 CEEJ.
[135] Section 71 CA.
[136] Sections 241 and 242 PC.
[137] Section 316.1 PC.
[138] Section 323.1 PC.
[139] Section 14 (2) ACA.
[140] See sections 26.1(2) and 26.2 ACA.

disciplinary proceedings, a focused policy for systematic prevention and management of corruption risks does not exist. Thus, it would appear that insufficient attention has been given to integrity and conflicts of interest by the supervisory authorities within the different court layers. Even though many interlocutors gave examples of potential professional judicial misconduct (especially, the delaying of cases), it was made clear to the GET that disciplinary proceedings were initiated only once soft measures, such as informal persuasion of a judge concerned, have been exhausted. Also, although the obligation to report misdemeanours and misconduct provided for by the ACA and the Code of Ethics of the Estonian Judges was often emphasised, when given concrete examples, judges admitted that they would be hesitant to report them to a superior but would rather settle the matter with the wrongdoer, and only after the act was committed the second or third time, they would report the matter to their superior. Additionally, the GET regrets that monitoring compliance by judges with ethical principles and, more specifically, with the Code of Ethics of the Estonian Judges has not been assigned to a designated authority within the judiciary. The GET would like to recall the importance of the proper supervision of rules pertaining to conflicts of interest. In view of the foregoing, **GRECO recommends that (i) a deliberate policy for preventing and managing conflicts of interest and corruption risks be developed within the judiciary; and (ii) a system be put in place to ensure compliance by judges with the aforementioned policy, including the Code of Ethics of the Estonian judges**.

Additional employment and activities

134. The taking up of an additional employment by a judge is authorised by the president of court.[141] The GET is satisfied that supervision over accessory activities, namely teaching and research, carried out by judges appears to be exercised in an adequate manner.

Declarations of economic interests

135. As stated above, two institutions act as the depositaries of the judges' economic interests' declarations: the Ministry of Justice collects declarations of the first and second instance court judges, and the Parliament's ACA Select Committee fulfils the same function vis-à-vis the declarations of the Supreme Court justices. Pursuant to section 12 ACA, the depositary organises the timely collection, verification, storage and publication of declarations. However, unless the official concerned, including a judge, is suspected of corruption, the depository is not obliged to verify the accuracy of the declarations' content.

136. The GET has already expressed misgivings as to the philosophy and approach pursued by the Parliament's ACA Select Committee in respect of the supervision of declarations of economic interests of members of Parliament (see paragraphs 64-65 above). These considerations apply *mutatis mutandis* to the supervision of declarations of the Supreme Court justices filed with the same body. As concerns the declarations of first and second instance court judges, the control performed by the Ministry of Justice is similarly inadequate. No in-depth analysis of the information contained in the declarations is currently being performed, under the pretext that these are subject to public disclosure. Out of all declarations presented to the Ministry, only around 20 are checked for compliance with information contained in the public registers, and just one official has been assigned to perform these checks, in addition to the core duties.[142] The GET is convinced that, being superficial and formalistic, such supervision cannot serve as an effective deterrent against potential corruption and conflicts of interest among the judiciary. Recognising the need for a proper balance between judicial independence and

[141] Section 49 CA.
[142] When asked by the GET, the official explained that the average time spent on a review of a single declaration was one or two minutes maximum.

judicial accountability, **GRECO recommends that additional measures be put in place to ensure an effective supervision of economic interests' declarations filed by judges pursuant to the Anti-Corruption Act.**

Enforcement measures and immunity

137. Judges are subject to disciplinary liability which is regulated by sections 87-98 CA when they have engaged in a wrongful act consisting in failure to perform or inappropriate performance of official duties. An indecent act of a judge is also considered as a disciplinary offence. Penalties include reprimand, fine in the amount of up to one month's salary, a reduction in salary by not more than 30% and removal from office. The period of limitation is one year from the commission of the offence and six months from the discovery thereof.

138. The right to initiate disciplinary proceedings is vested with the Supreme Court Chief Justice and the Chancellor of Justice, in respect of all judges; a circuit court president, in respect of all first instance court judges within his/her territorial jurisdiction; a president of court, in respect of judges in the same court; and the Supreme Court *en banc*, as regards the Supreme Court Chief Justice.

139. Cases are heard by the Supreme Court's Disciplinary Chamber which is composed of five judges representing, respectively, the Supreme Court, the circuit courts and the first instance courts. The Supreme Court *en banc* appoints, for the term of three years, the Chamber's President and its other members who are the Supreme Court justices. The remaining judges are elected by the Court *en banc*. To adjudicate on a disciplinary matter, the President forms a five-member panel consisting of three Supreme Court justices, one circuit court judge and one first instance court judge. The decisions are taken by the majority of votes. Within 30 days of the pronouncement of a decision, it may be appealed to the Supreme Court *en banc*. A criminal or misdemeanour punishment imposed in respect of the same act does not preclude the imposition of a disciplinary sanction.

140. During the hearing or before the commencement of disciplinary proceedings, in cases where significant damage has been made to a court's reputation, the Disciplinary Chamber may temporarily remove a judge from service. Within ten days from becoming aware of the ruling, the judge may file an appeal to the Supreme Court *en banc*.

141. The disciplinary sanction is entered into a judge's service record, and, in case the judge does not commit a new disciplinary offence, it expires within one year following entry into force. A disciplinary punishment may be cancelled by the Disciplinary Chamber before the prescribed time.

142. Additionally, the authorities submit that the following misdemeanours and criminal offences apply to situations of conflicts of interest:

- a violation of the rules on the obligation to submit an economic interests declaration which is punishable under section 26.1 (2) ACA;
- submission of false information to a person, agency or committee verifying declarations of economic interests which is punishable under section 26.2 ACA;
- a violation of restrictions on employment or activities or procedural restrictions established by law which is punishable under section 26.3 ACA
- failure to notify a corruption act and punishable under section 26.4 ACA;
- a corruption act entailing the receipt of income or gains derived from corrupt or illegal practices which is punishable under section 26.5 ACA;
- a knowing violation to a large extent of a procedural restriction established by the ACA which is punishable under section 300.1 PC.[143]

[143] Punishable by a fine or an imprisonment of up to one year.

143. During their term in office, a special criminal procedure applies to judges.[144] Thus, criminal charges may only be brought against first and second instance judges when it has been proposed by the Supreme Court and with the consent of the President of the Republic, and against justices and the Chief Justice of the Supreme Court – when it has been proposed by the Chancellor of Justice, with the consent of majority of Parliament. Furthermore, it is only following a request by the Chief Public Prosecutor, with the consent of the Chancellor of Justice that the Chief Justice and justices of the Supreme Court may be detained as suspects, and that preventive measures and search and seizure of property may be applied in their regard.[145] In respect of other judges, similar measures may be taken at the request of the Chief Public Prosecutor, with the consent of the President of the Republic. In cases where a judge is apprehended *in flagrante delicto*, consent of the aforementioned persons is not required.

144. A resolution granting consent to the pressing of criminal charges issued by Parliament or by the President of the Republic automatically suspends the performance of a judge's duties, until the entry into force of a respective court judgment. Following receipt of the consent, criminal proceedings are conducted pursuant to the general rules.[146]

145. As concerns lay judges, during their term of office, criminal charges may only be brought against them with the consent of the respective county court president.[147]

146. Misdemeanour proceedings are carried out by the Police and Boarder Guard Board, who are subordinated to the Ministry of the Interior, and under special circumstances, by the courts. The proceedings are governed by the Code of Misdemeanour Procedure. A case may be initiated on the basis of an application or based on the information gathered by the institution.

147. The following statistics are available on the proceedings instituted against judges. Between 2007 and 2012, five judges were convicted of bribery and gratuity offences. In 2008, four disciplinary proceedings were initiated for professional inadequacy (against one judge the proceedings were initiated on two occasions). In three cases, judges were found guilty. In one case proceedings were terminated due to the judge's resignation from office. Sanctions imposed consisted of two reprimands and one fine.[148] In 2010, the total number of disciplinary proceedings was five (one breach of professional ethics and four cases of professional inadequacy). [149] As a result, one judge was acquitted and two penalties involving a reduction in salary and a reprimand, respectively, were imposed. In two other cases the proceedings had to be terminated after the judges concerned had resigned from office.[150] The authorities indicate that, between 2009 and 2011, there were no violations of rules pertaining to the declarations of economic interests submitted by judges.

148. It is noteworthy that, in less than a decade five Estonian judges representing every first instance court, with one exception, were convicted of bribery and gratuity offences and had to serve prison terms. Furthermore, several more judges had resigned after disciplinary proceedings were instituted against them for professional inadequacy and breach of judicial ethics. Given the size of the judicial community in Estonia, those numbers appear to be significant and could well be perceived as a source of concern.

---

[144] Article 153 of the Constitution and section 3 (3-4) CA.
[145] Section 377 of the Criminal Procedure Code.
[146] Section 381 (3-4) of the Criminal Procedure Code.
[147] Section 111 (4) CA.
[148] European Judicial Systems. Edition 2010 (data 2008). European Commission for the Efficiency of Justice, Council of Europe Publishing, pp. 223 and 226.
[149] European Judicial Systems. Edition 2012 (data 2010). Efficiency and quality of justice. European Commission for the Efficiency of Justice.
[150] European Judicial Systems. Edition 2012 (data 2010). Efficiency and quality of justice. European Commission for the Efficiency of Justice.

Training and awareness

149. According to section 74 CA, a judge is required to develop, on a regular basis, knowledge and skills of his/her speciality and participate in training courses. The Training Council, established pursuant to section 44 CA, is responsible for the judges' training. It is composed of two representatives, respectively, of the first instance courts, the circuit courts and the Supreme Court, and of one representative, respectively, of the Prosecutor's Office, the Ministry of Justice and the University of Tartu. The Council is supported by the Judicial Training Department under the Supreme Court, which ascertains the judges' training needs, prepares annual training and examination programmes, analyses their results, and develops methodological materials and studies. Taking into account the needs and the state budget, by 1 October of each year, the Council approves an annual training programme, which is implemented by the Judicial Training Department and financed from the Court's budget. In 2010, the Council adopted the Judicial Training Strategy for 2012-2015, focusing in particular, on the implications of the European Convention on Human Rights, the case law of the European Court of Human Right and the EU law.[151] The authorities indicate that training courses are available to all judges. These focus, *inter alia*, on the judicial ethics. Advice as regards the expected conduct, may be obtained by judges from the presidents of courts, as well as from the Ministry of Justice.

150. Pursuant to various laws, including the CA, the Public Information Act, as well as the procedural acts, information on the judiciary is widely available to the public. The rules and the conduct expected of judges are communicated in a number of ways. For example, the laws and court judgments are placed on the Internet sites,[152] statistical information on the disciplinary penalties may be requested from the Supreme Court, the Disciplinary Chamber's decisions are available on the Supreme Court's website for a period of one year since their entry into force, and the data entered in the Punishments Register is available to the public, with exceptions provided for by law. Courts are also obliged to keep an "electronic file" of a court case in the Courts Information System, and every citizen may access his/her court case file, receive and impart court documentation via a public e-File portal.

151. The Judicial Training Department organises an important number of training courses for both nominee and experienced judges covering a wide range of themes. Pursuant to the Department's instruction, a judge is encouraged to spend 10-12 days per year on his/her in-service training. However, it would appear that courses focusing more specifically on conflicts of interest and ethical issues do not feature prominently on the judges' training agenda. The existing professional development programmes are not mandatory and structured rather around the fields of law and specialisation of judges, (i.e. criminal, civil and administrative law). The GET is convinced that it is essential that all judges be regularly trained on ethical conduct. The GET also notes that, until now no survey has been made amongst judges in order to get a clear picture of the ethical dilemmas and conflicts of interest situations encountered in practice and that such a survey could help inform any future training. **GRECO therefore recommends that dedicated and on-going training programmes be elaborated for judges focusing on judicial ethics, conflicts of interest (including recusal and withdrawal), rules concerning gifts, hospitality and other advantages, declarations of interests and other corruption awareness and prevention measures.**

[151] European Judicial Systems. Edition 2012 (data 2010). Efficiency and quality of justice. European Commission for the Efficiency of Justice.
[152] The authorities refer to the official online State Gazette's ("*Riigi Teataja*") database, as well as a web site which contains practical information for lawyers, general information and news: www.kohus.ee.

152. Furthermore, many interlocutors pointed to the relatively low level of managerial skills of superior judges, particularly, presidents of courts and heads of court houses. Allegedly, this is partly explained by the traditions of the legal education in Estonia, focusing on the knowledge of law rather than the administrative skills. The GET was informed that management training for presidents of courts was planned as part of the 2011 training programme for judges and that the state of affairs has somewhat improved. The GET is persuaded that proper managerial skills are an important prerequisite for designing and thoroughly implementing an anti-corruption policy in a court or court house, including an efficient case management, early detection and resolution of conflicts of interest, providing advice and guidance on ethical dilemmas, reminding the duties pertaining to declaration of additional employment, economic interests and other obligations arising from the Anti-Corruption Act. Furthermore, an internal control and supervision, with due regard being paid to the judges' independence, can only produce results and supplement external supervision (disciplinary proceedings) when exercised by well-trained court/court house managers. In light of the foregoing, GRECO encourages the Estonian authorities to take further measures in order to strengthen managerial skills of presidents of courts and heads of court houses.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

153. The tasks, functions and operation principles of the Prosecutorial Service, as well as the duties, rights and guarantees applicable to prosecutors are defined in the Prosecutorial Service' Act of 22 April 1998 (PSA). According to this law, the Prosecutorial Service is a government agency within the Ministry of Justice which participates in the planning of surveillance necessary to combat and detect crime, directs pre-trial criminal procedure and ensures the legality and efficiency thereof, represents public prosecution in court, and performs other duties assigned to it by the law.[153]

154. The Prosecutorial Service is a hierarchically organised structure, headed by the Prosecutor General.[154] It consists of two levels: 1) the Prosecutor General's Office, which is a superior structure; and 2) the four subordinate district prosecutor's offices (Northern, Southern, Western and Viru). The Prosecutor General's Office comprises the departments of Prosecution, Supervision and Administration. In addition to the Prosecutor General, it is composed of two leading public prosecutors, fourteen public prosecutors and nine assistant prosecutors. The district prosecutor's offices are headed by the chief prosecutors and comprise specialised prosecutors (two, respectively, in the Northern and Viru districts, and one, respectively, in the Western and Southern districts), senior prosecutors, district prosecutors and assistant prosecutors. The total number of prosecutors in Estonia is 199. Out of these, 18 posts currently remain vacant.

155. Guarantees of independence are contained in the PSA and in the Criminal Procedure Code (CPC). In accordance with the PSA, in implementing its functions, the Prosecutorial Service is independent and is to act pursuant to the law.[155] Individual prosecutors are also independent and are to perform their duties according to the law and their conscience.[156] The above provisions are reiterated by the CPC, which stipulates that in criminal proceedings, the authority of the Prosecutorial Service is exercised independently by a prosecutor who is governed solely by the law.[157] The Prosecutorial Service is supervised by the Ministry of Justice; the latter's authority, however does not extend to pre-trial criminal proceedings, public prosecution in court and planning of surveillance.[158]

156. Annual reports on the performance of duties are presented by the Prosecutorial Service to the Parliament's Constitutional Committee. Moreover, *ad hoc* reports may be submitted on issues which are uncovered as the result of the Service's activities and which have significant effect or require an action. A consolidated activity report is presented to the Minister of Justice on an annual basis.

157. As concerns the independence of the Prosecutorial Service, the GET recalls Recommendation Rec(2000)19 of the Committee of Ministers on the role of public prosecutors in the criminal justice system, which allows for a plurality of models, including the subordination of the prosecution service to the executive branch. From that perspective, the degree of autonomy of the Prosecutorial Service in Estonia appears to be satisfactory. The nature and scope of powers of the Prosecutorial Service are clearly established by law. Also, while the Ministry of Justice exercises supervisory control, it does not extend to the specific planning of an individual pre-trial criminal proceeding and is mainly limited to issuing general criminal policy guidelines.

---

[153] Section 1(1) PSA.
[154] Section 3(1) PSA.
[155] Section 1.1 PSA.
[156] Section 2(2) PSA.
[157] Section 30(2) of the Criminal Procedure Code.
[158] Section 9(1) PSA.

Consultative and decision-making bodies

158. Consultative and decision-making bodies include the Prosecutors' Assembly, the Prosecutors' Competition and Evaluation Committee and the Prosecutors' Disciplinary Committee. The Prosecutors' Assembly is a meeting of all Estonian prosecutors, which is convened at least once a year and directed by the Prosecutor General. Amongst others, the Assembly elects two members of the Prosecutors' Competition and Evaluation Committee, two members of the Prosecutor's Disciplinary Committee, hears reports by the Minister of Justice and the Prosecutor General, examines issues relevant to the prosecutor's offices and the prosecution service as a whole.[159]

159. The Prosecutors' Competition and Evaluation Committee[160] is in charge of assessing persons applying for the posts of prosecutors filled in by way of a public competition. The Committee is composed of the Prosecutor General (who acts as its president), one prosecutor from the Prosecutor General's Office, two prosecutors from the district prosecutor's offices, one judge elected by the Court *en banc*, a jurist designated by the University of Tartu Law Faculty and an official designated by the Minister of Justice. The term of authority of the Committee's members (except for the Prosecutor General and the Ministry of Justice's official) is three years. The Committee has a quorum if at least five of its members, including the president, are present.

160. The Prosecutors' Disciplinary Committee is entrusted with hearing disciplinary cases against prosecutors (see further below).

Recruitment, career and conditions of service

Recruitment requirements

161. The requirements for candidate prosecutors are laid down in section 15 PSA. Assistant prosecutors, district prosecutors and specialised prosecutors are appointed on the basis of a public competition announced by the Prosecutor General in the Official Journal. In order to be appointed as an assistant prosecutor, applicants must be an Estonian national with full legal capacity who has attained at least 21 years of age, with a university degree, proficient in the Estonian language, of a high moral character, with relevant abilities and personal characteristics. Appointed as a district prosecutor may be a person who has been employed, for one year, as a prosecutor, judge, police officer, sworn advocate or, for three years, as their senior clerk, or in any other position requiring in-depth knowledge of penal law and procedure. Appointed as a specialised prosecutor may be a person already employed as a prosecutor, except an assistant prosecutor.

162. Access to the profession is denied for persons convicted of a criminal offence, released from the public service for a disciplinary offence, expelled from the Bar Association or from the profession of a notary, closely related by blood/marriage to the superior prosecutor, and those unable to perform prosecutor's duties due to health problems.

163. Applicants for the prosecutor's post submit to the Prosecutors' Competition and Evaluation Committee a duly filled in form together with an economic interests' declaration, which should be valid as of the first day of the month preceding application. To verify information included in the form, the Prosecutor General and designated officials from the Prosecutor General's Office may contact local government agencies, legal and natural persons and conduct interviews with the applicant concerned.[161]

[159] Section 13 PSA.
[160] Section 43 PSA.
[161] Section 15.1 PSA. The applicant must be promptly informed of the inquiries made in his/her regard and to be presented with materials gathered during the verification process.

Suitability of applicants is assessed on the basis of requirements and methods developed by the Ministry of Justice, including by way of examination.[162]

164. The Prosecutor General, leading public prosecutors,[163] public prosecutors, chief prosecutors and senior prosecutors may be appointed without a competition.[164] Appointed as a Prosecutor General may be a person who is an experienced and recognised lawyer; as a leading public prosecutor or a public prosecutor – a person with over two years of experience in a position requiring a university law degree; and as a chief prosecutor or a senior prosecutor – a person who has worked as a judge, prosecutor, police officer, sworn advocate or his/her senior clerk for three years before the appointment.[165]

Appointment procedure and promotion to a higher rank

165. All prosecutors, with the exception of the Prosecutor General and the chief prosecutors, are appointed to office for an unspecified term. The Prosecutor General and chief prosecutors are appointed for a renewable five-year term.[166] The Prosecutor General is appointed by the Government on the basis of a proposal made by the Minister of Justice, after considering the opinion of the Parliament's Legal Affairs Committee. Leading public prosecutors, public prosecutors and chief prosecutors are appointed by the Minister of Justice on proposal by the Prosecutor General. Senior prosecutors are appointed by the Prosecutor General on proposal by the leading prosecutors. Specialised prosecutors and district prosecutors are appointed by the Prosecutor General on recommendation by the Prosecutors' Competition and Evaluation Committee. A person may be appointed as the Prosecutor General or a chief prosecutor in case s/he gives a written consent thereto. A negative decision on the appointment needs to be justified.[167] The process and the results of an appointment procedure may be contested in the administrative court. As the promotion of prosecutors is not prescribed by law, the above-mentioned procedure applies.

166. The GET notes that the selection and appointment of the three (lower) categories of prosecutors is carried out via an open competition and decided upon by the Committee composed predominantly of members of the profession. The assessment and choice of candidates appears to be based on uniform and transparent criteria developed by the Ministry of Justice. As concerns the appointment of other (higher) categories of prosecutors, it may be conducted without a competition. As regards the promotion of prosecutors to the next rank, as in the case of judges, the GET has misgivings that such decisions– particularly in the absence of a competition – may not have as their basis objective criteria. **GRECO therefore recommends that objective and transparent criteria be introduced for the promotion of prosecutors with the aim of enhancing its uniformity, predictability and transparency.** As in respect of judges, such criteria could also be used in the possible appeal proceedings. Furthermore, the objective criteria could potentially involve results of periodical quality assessments of prosecutors' performance, should such a system be introduced by Estonia as suggested in paragraph 167 below.

[162] Sections 44 Section and 18(1-2) PSA.
[163] Leading public prosecutors are heads of departments within the Prosecutor General's Office and may, *inter alia*, give orders to district prosecutor's offices – see section 4.1(1) PSA.
[164] Section 18 (3) PSA.
[165] For the latter, the clerkship period or probation period as an assistant prosecutor are not to be included in the period of employment as prosecutor. Section 15(5,6,8) PSA.
[166] Section 17(1-2) PSA.
[167] Section 16 PSA.

Evaluation of a prosecutor's performance

167. The Prosecutor General exercises supervisory control over the Prosecutor General's Office, while the chief prosecutors perform the same function vis-à-vis respective district prosecutor's offices.[168] During the visit, the GET was informed that a prosecutor's work is evaluated by his/her superior by means of informal interviews, which take into account relevant monthly and annual statistics and which serve, amongst others, as a basis for distributing bonuses. In the opinion of the GET, the existing practice may not be qualified as a genuine quality assessment due to the absence of quality performance criteria established for individual prosecutors and the prosecution service as a whole. The added value of the periodical performance reviews was already explained by the GET in the paragraph dedicated to judges. In the similar vein, the GET is convinced that the establishment of formal quality assessment reviews within the Prosecutorial Service would not only allow for the proper monitoring and evaluation of a prosecutor's performance, but also contribute to creating a more objective and transparent promotion process, free from any possible undue influence. Consequently, **GRECO recommends that the authorities of Estonia consider introducing a system of periodical quality assessments of the prosecutors' performance, based on standardised and objective criteria, with due regard being paid to the prosecutors' autonomy.**

Transfer of a prosecutor

168. A specialised or a district prosecutor, upon his/her consent, may be transferred to the same position in another office by the Prosecutor General. On the basis of his/her written application and without public competition, a chief prosecutor, a public prosecutor or a leading public prosecutor may be transferred to a position of a lower prosecutor by the Minister of Justice. The same procedure may be applied by the Prosecutor General in respect of a specialised prosecutor or a district prosecutor.[169] With their consent, prosecutors may furthermore be delegated to the Prosecutor General's Office or the Ministry of Justice, employed by international organisations, international civil missions, institutions of applied higher education for public defence.[170] The transfer may be contested in the same way as the appointments described above.

Termination of service and dismissal from office

169. A prosecutor is to be dismissed from his/her position in the following cases: upon his/her request; following the attainment of 65 years of age; if s/he is declared bankrupt; for a disciplinary offence; following the expiration of term of office as a Prosecutor General or a chief prosecutor.[171] The Prosecutor General or a chief prosecutor whose term of office has expired may be appointed as a public prosecutor, a specialised prosecutor or a district prosecutor without public competition by the Ministry of Justice. In the case of a lack of consent to be appointed to one of the aforementioned posts or the absence of vacant posts, the Prosecutor General or chief prosecutors are to be released from service.[172] A dismissal/release may be challenged in the same way as provided above.

Salaries and benefits

170. Salaries and benefits of prosecutors are governed by section 22 PSA, as well as by Government's and Ministry of Justice's regulations and directives. The salary of a prosecutor is to be determined for at least one year and fall within one of the eight salary

[168] Section 9 (2) PSA.
[169] Section 16.1 PSA.
[170] Sections 52, 52.1 and 52.2 PSA.
[171] Sections 45,47, 48-50 PSA.
[172] Section 50 PSA.

grades.[173] The minimum monthly salary of a district prosecutor (grade 2) is currently 2 025 Euros, and that of a Prosecutor General (grade 8) is 3 300 Euros. Additional remuneration may be provided for the performance of extra duties and effective work by the Prosecutor General, and for the Prosecutor General him/herself – by the Minister of Justice. For prosecutors transferred/appointed to the Viru district office, an additional remuneration of up to 1 000 Euros per month may be approved for a period of up to four years.

171. Prosecutors are entitled to an old-age pension (as a main rule, following at least twenty-five years of service) and an incapacity pension. Allowances are also granted in case of property damage or an attack against a prosecutor resulting in the health damage, incapacity or death.[174]

172. Prosecutors are awarded bonuses in the amount of up to 20% of their salaries twice per year. The allocation of bonuses depends, to a large extent, on the outcome of informal interviews held between prosecutors and their superiors and take into account monthly and annual statistics. In the course of the visit, contradictory information was received. Some interlocutors stated that a written justification of the bonus allocation to a particular prosecutor was unnecessary. The GET is firmly convinced that the existing bonus system, not based on transparent and objective criteria, renders prosecutors vulnerable to possible undue influence. Bearing in mind the specificities of the prosecutors' work, particularly, that different categories of prosecutors may be entrusted with different sets of tasks, the GET has doubts as regards the feasibility of designing a fair bonus system within the prosecutorial service. In view of the foregoing, GRECO encourages the authorities to ensure that the remuneration of prosecutors be based on transparent and objective criteria.

Case management and procedure

173. Pursuant to section 8 PSA, it is the Prosecutor General who determines the division of duties within the Prosecutor General's Office, following consultation with subordinate prosecutors. In the district prosecutor's offices, the division of tasks is agreed upon in the same manner by the chief prosecutor. Duties are divided according to the type of criminal offence, offender or other general criteria, and prescribe a substitution procedure. Once approved, the plan may be amended only with good reason.

174. As concerns the handling of individual cases, a prosecutor supervising a subordinate colleague may demand explanations and information from him/her.[175] In criminal proceedings, a higher ranking prosecutor may, by his/her written order, revoke an unlawful or unjustified ruling, order or demand made by his/her subordinate. Also, the opinion of a higher ranking prosecutor on the interpretation of a provision of law and its implementation, declared in a ruling, is mandatory for a subordinate prosecutor in the proceedings concerned.[176] The Prosecutor General or a chief prosecutor furthermore may substitute, with good reason, a subordinate prosecutor or assign his/her tasks to another prosecutor, not subordinate to him/her.[177] A substitution order is provided in writing, setting out the extent of the substitution and its justification.

175. Criminal proceedings may be terminated in case both pre-trial and court proceedings have exceeded the reasonable time requirement. In such instances, disciplinary proceedings may be initiated against the prosecutor concerned. Additional safeguards against undue delay are contained in the Criminal Procedure Code (CPC),

[173] Differentiated salary rates may be established within the salary grades – See section 22 (3.1) PSA.
[174] Sections 24 and 26 PSA.
[175] Section 9(3) PSA.
[176] Section 213(6) of the Criminal Procedure Code.
[177] Section 10 PSA.

which restricts the possibility of keeping a suspect or an accused under arrest for more than six months. The period of limitation also applies.

176. The GET is satisfied that the internal transparency of the Prosecutorial Service appears to be adequate and guaranteed by the appropriate provisions of the PSA and of the CPC. Prosecutors enjoy sufficient independence while making decisions. Each revocation by a superior prosecutor of a decision made by his/her subordinate is to be provided in writing and to be duly motivated. Prosecutors may be held accountable for their decisions, and the appropriate oversight of their conduct is statutorily based.

Ethical principles and rules of conduct

177. Ethical rules are contained in the Ethics Code of the Prosecutorial Service (ECPS), adopted by the Prosecutors' Assembly on 23 December 2003. The Code consists of five chapters, amongst them a chapter on the general rules of behaviour, a chapter on pre-trial and judicial proceedings (composed of two sub-headings entitled "Honour and dignity" and "Independence") and a chapter on relations with colleagues and the public (containing three sub-headings "Communication", "Membership" and "Actions"). Pursuant to section 7 (2) ECPS, in case of doubt of the conduct to be pursued, a prosecutor is to turn for advice to his/her direct superior or a senior colleague. Interpretation of the Code lies with the Prosecutors' Disciplinary Committee, which is also using it as a basis for evaluating prosecutors' behaviour in the course of disciplinary proceedings. According to the authorities, non-compliance with the ECPS may trigger disciplinary proceedings against the prosecutor concerned. The GET has, moreover, learnt that it has become a tradition for the Prosecutor General to hold induction meetings with the newly appointed colleagues. A meeting has the duration of an hour and touches upon, amongst other issues, the ethical conduct of prosecutors.

178. Except for the abovementioned section 2 (2) PSA, which safeguards prosecutors' individual independence, the PSA does not contain any other provisions dealing with the prosecutors' ethical values. As concerns the ECPS, it represents a short statement of general principles which fails to take sufficient account of corruption risks, including conflicts of interests and acceptance of gifts, hospitality and other advantages. In this connection, the GET would like to cite the findings of regular national surveys "Roles and attitudes in the public service" conducted by the Government Office at regular intervals. These indicate in particular, that while officials in Estonia are generally aware of ethics-related requirements, they tend to resolve ethically challenging situations intuitively rather than on the basis of existing Codes of Ethics or a consistent analysis. Also, the surveys indicate that it may be challenging for officials to manage ethical role conflicts and they are not aware of or able to use a Code of Ethics.[178] The GET furthermore notes that no authority has been specifically designated to monitor compliance of prosecutors with the ethical principles governing their profession and, more concretely, with the Ethics Code of the Prosecutorial Service. As concerns the Prosecutors' Disciplinary Committee, it has only been vested with the right to interpret the Code's provisions and to use it as a basis for evaluating prosecutors' behaviour in the course of disciplinary proceedings. Lastly, despite the existence of the Code of Ethics and a possibility to bring prosecutors guilty of misconduct to disciplinarily liability, a more comprehensive corruption prevention policy within the Prosecutorial Service remains to be elaborated and duly implemented. In view of the foregoing, **GRECO recommends that (i) the Ethics Code of the Prosecutorial Service be complemented in such a way as to offer guidance by way of explanatory comments and/or practical examples, particularly with regard to conflicts of interest and related areas; and (ii) a deliberate policy for preventing and managing conflicts of interest and corruption risks within the Prosecutorial Service be developed and a system to**

[178] Anti-corruption Strategy 2008-2012, Tallinn 2008, p. 27.

ensure compliance by prosecutors with the aforementioned policy, including the Code of Ethics of the Prosecutorial Service, be put in place.

Conflicts of interest

179. The legal framework for the prevention and resolution of conflicts of interest of prosecutors is provided for by relevant provisions of (1) the Criminal Procedure Code, as regards disqualification of prosecutors from isolated cases; (2) the Prosecutorial Service Act, which contains, *inter alia*, rules on accessory activities of prosecutors; (3) the Anti-Corruption Act, since prosecutors, alongside judges, are deemed to be officials in the meaning of the Act (see paragraphs 122-123 above); and (4) the Ethics Code of the Prosecutorial Service. The latter stipulates in particular, that a prosecutor is to avoid conflicts of interest in his/her work resulting from family, social and other matters.[179]

Prohibition or restriction of certain activities

Incompatibilities and accessory activities

180. A prosecutor may not undertake additional employment, except for that of teaching or research.[180] Moreover, a prosecutor may not be a founder, managing partner, member of the management board or supervisory board of a commercial undertaking, director of a branch of a foreign commercial undertaking, or a member of a political party. If additional employment is sought, this must be declared to the prosecutor's superior. Violations of the aforementioned requirements are subject to disciplinary liability.

181. Furthermore, in accordance with the aforementioned section 26.3 ACA, misdemeanour liability applies to prosecutors, as officials, for violation of the restrictions on additional employment and activities, and of procedural restrictions established by the ACA. It entails a fine of up to 300 fine units (approx. 1 200 Euros).

Recusal and routine withdrawal

182. The legal basis for the removal of a prosecutor from a criminal proceeding is provided for in section 49, sub-paragraphs 1 and 6 of the Criminal Procedure Code and is identical to that applicable in respect of judges. The fact that a prosecutor has previously participated in the same proceeding in his/her status as prosecutor, does not constitute a basis for his/her removal.[181] In instances where a prosecutor fails to remove him/herself from a case, his/her participation in the proceeding may be challenged by a suspect, accused, victim, civil defendant, third person or counsel.[182] The authorities stress that the CPC covers all possible situations for the prosecutors to withdraw from criminal proceedings in cases of potential conflicts of interest. They also indicate that, in 2012, three complaints have been submitted by parties requiring the removal of prosecutors from the specific proceedings.

Gifts

183. There are no detailed rules on the acceptance of gifts specifically by prosecutors. As in the case of judges, the authorities refer to section 26 ACA, which prohibits the solicitation and acceptance of gifts and benefits by an official and his/her close relatives, if this may undermine, directly or indirectly, the impartial performance of the official's duties. The GET wishes to stress that, in comparison with the Code of Ethics of the Estonian Judges, which incorporates an explicit ban on the acceptance of presents and

[179] Section 4(2) ECPS.
[180] Section 30 PSA.
[181] Section 52 of the Criminal Procedure Code.
[182] Ibid., section 53.

favours in any form by a judge, his/her family members and persons under the judge's discretion, power or influence, the Ethics Code of the Prosecutorial Service does not include such a prohibition or any reference to gifts. Furthermore, no guidelines have been developed within the Prosecutorial Service as regards the standards for handling courtesy gifts (e.g. by setting up a minimum value threshold), or the reporting procedure. The GET recalls that, according to the national surveys referred to above, gifts remain one of the most common forms of corruption in Estonia.[183] **GRECO**, **therefore**, **recommends that guidelines be developed within the Prosecutor's Office to clarify the standards for acceptable courtesy gifts and the procedure for their reporting.**

Post-employment restrictions

184. There are no regulations that would prohibit prosecutors from being employed in certain posts/functions or engaging in other paid or non-paid activities, following their resignation from office. The GET reiterates the concern it has expressed as regards the lack of regulation in respect of judges, namely that the prosecutors – as well as judges – may be exposed to conflicts of interest in view of potential future outside employment opportunities or may accept outside employment, subsequent to taking an improper advantage of their office. The GET therefore encourages the authorities to reflect on the necessity of introducing adequate post-employment restrictions in respect of prosecutors.

Third party contacts, confidential information

185. As concerns the communication between a prosecutor and a third party on a specific case outside the official procedure, as in respect of judges, the authorities refer to sections 5 and 6 ACA, prohibiting the relationships involving risks of corruption and the income derived from corrupt practices. As regards the disclosure of confidential information, in addition to the aforementioned provisions of the Penal Code (see paragraph 131 above), regulation is also provided by the Prosecutorial Service Act, which imposes an obligation of professional secrecy on prosecutors,[184] and the Ethics Code of the Prosecutorial Service. The breach of confidentiality rules entails penal or disciplinary liability.

Declaration of assets, income, liabilities and interests

186. Prosecutors are deemed to be officials for the purposes of the ACA, and are to submit declarations of economic interests in accordance with the procedure also prescribed for judges and members of Parliament. The Prosecutor General, leading public prosecutors and chief prosecutors file their declarations with the Parliament's ACA Select Committee, whereas prosecutors of other categories present their declarations to the Prosecutor General's Office. Declarations submitted by the Prosecutor General are published in the on-line State Gazette, except for personal details and information on the income, including taxable and dividend income. Declarations of other categories of prosecutors are confidential.

187. The rules on declarations are enforced either in the course of misdemeanour or disciplinary proceedings. Failure to submit declarations not subject to disclosure, on time without good reason, or the knowing submission of incomplete or false information is punishable by a fine of up to 200 fine units (800 Euros).[185] In respect of declarations subject to public disclosure (i.e. that submitted by the Prosecutor General), the fine imposed is up to 300 fine units (1 200 Euros).[186] Additionally, in case of failure by the Prosecutor General to submit his/her declaration on time, within one month after the offence has become known, a notice is published in the Official Gazette. The depositary

[183] Summary of the study "Corruption in Estonia: Study of three target groups in 2010".
[184] Section 28 PSA.
[185] Section 26.1 (1) ACA.
[186] Section 26.1(2) ACA.

of declarations may also propose the launching of disciplinary proceedings against the prosecutor concerned.

188. The GET notes that the revised ACA does not include an explicit obligation for prosecutors to disclose their interests. Thus, section 13 (9) of the new law stipulates that, in so far as officials of government agencies are concerned, it is up to the agency's head to establish such an obligation in respect of his/her officials.[187] During the on-site visit the GET was reassured that, pursuant to the Prosecutor General's order, all prosecutors will be subject to interests' disclosure and that, moreover, declarations of all categories of prosecutors will become public. Nonetheless, the GET is concerned that the desired uniformity in the application of the new law could be undermined by discretionary decisions within the Prosecutorial Service. **GRECO, therefore, recommends that coherent requirements be made applicable to all the categories of prosecutors as concerns the disclosure of their interests, pursuant to the revised Anti-Corruption Act.**

Supervision

Additional employment and accessory activities

189. As mentioned above, a prosecutor is obliged to notify his/her superior or head of a prosecutor's office when taking-up additional employment opportunities. It would appear that supervision over the compliance by prosecutors with limitations imposed on their additional employment by the PSA is carried out in an adequate manner.

Declarations of economic interests

190. As indicated above, declarations of economic interests are filed with the Prosecutor General's Office, except for declarations of the Prosecutor General, leading public prosecutors and chief prosecutors, which are submitted to the Parliament's ACA Select Committee. The GET recalls its concerns as regards the supervision of declarations of economic interests of members of Parliament and of the Supreme Court justices. These apply *mutatis mutandis* to the supervision of declarations filed with the ACA Select Committee by the Prosecutor General, leading public prosecutors and chief prosecutors. As to the supervision of declarations submitted by other categories of prosecutors, only very formal checks are being made by the Prosecutor General's Office. Thus, out of all the declarations presented, only about five are being examined per year, mostly by checking whether the property listed in the public registers corresponds to the one described in the declarations. The GET refers to its earlier statements regarding the inadequacy of such supervision. **GRECO recommends therefore that additional measures be put in place to ensure the effective supervision of economic interests' declarations submitted by prosecutors pursuant to the Anti-Corruption Act.**

Enforcement measures and immunity

191. Disciplinary liability has been provided for a disciplinary offence consisting in: (i) the wrongful non-performance or unsatisfactory performance of duties; or (ii) an indecent act – a wrongful act which is in conflict with the generally recognised moral standards or which discredits the prosecutor or the Prosecutorial Service, regardless of whether committed in the performance of duties or not.[188] Non-compliance with the Ethics Code of the Prosecutorial Service, according to the authorities, may also trigger disciplinary liability. Disciplinary penalties are reprimand, fine of up to one month's

[187] By contrast, section 4(2)12 of the currently effective ACA makes a specific reference to "the Prosecutor General and prosecutors" as those obliged to submit declarations of interests.
[188] Section 31 PSA.

salary, reduction in salary by up to 25% for a period of up to one year, and dismissal from service. The period of limitation is six months from the commission of the offence.

192. Disciplinary proceedings are initiated if the elements of a disciplinary offence become evident, at the request of an interested person or at the initiative of: (1) the Minister of Justice – against the Prosecutor General, leading public prosecutor or chief prosecutor; (2) the Prosecutor General – against all categories of prosecutors; and (3) a chief prosecutor – against prosecutors of district offices subordinate to him/her.[189] For the time of the preliminary process, the authority in charge thereof may suspend a prosecutor concerned from office.

193. Disciplinary cases are heard by the Prosecutors' Disciplinary Committee or the Minister of Justice. The Prosecutors' Disciplinary Committee is elected for three years and is composed of two prosecutors from the Prosecutor General's Office, two prosecutors from the district prosecutor's offices and one judge elected by the Court *en banc*. Disciplinary proceedings are carried out by the Ministry of Justice pursuant to own regulations.[190]

194. Following the hearing, the Disciplinary Committee may propose to the Minister of Justice or the Prosecutor General to impose or not to impose a penalty on the prosecutor concerned.[191] Disciplinary sanctions are imposed: (i) by the Minister of Justice – in respect of a prosecutor appointed by the Government of the Republic or the Ministry of Justice; (2) by the Prosecutor General – in respect of other categories of prosecutors.[192] In the case of a disciplinary decision to release the Prosecutor General from service, the Minister of Justice makes a proposal to the Government, which is to decide on the proposal within one month, having considered the opinion of the Parliament's Legal Affairs Committee.[193] The imposition of a disciplinary penalty may be contested in an administrative court.[194]

195. Additionally, the following misdemeanours and criminal offences are relevant to situations of conflicts of interest of prosecutors:[195]

- a violation of the rules on the obligation to submit an economic interests declaration which is punishable under section 26.1 (2) ACA;
- submission of false information to a person, agency or committee verifying declarations of economic interests which is punishable under section 26.2 ACA;
- a violation of restrictions on employment or activities or procedural restrictions established by law which is punishable under section 26.3 ACA
- failure to notify a corruption act which is punishable under section 26.4 ACA;
- a corruption act entailing the receipt of income or gains derived from corrupt or illegal practices which is punishable under section 26.5 ACA;
- a knowing violation to a large extent of a procedural restriction established by the ACA which is punishable under section 300.1 PC.[196]

196. Prosecutors are not subject to special criminal proceedings.

197. As previously mentioned, misdemeanour proceedings are carried out by the Police and Boarder Guard Board, subordinated to the Ministry of the Interior, and under special circumstances, by the courts. The proceedings are governed by the Code of

[189] Section 32 PSA.
[190] Section 36 PSA.
[191] Section 40 PSA.
[192] The Chief Public Prosecutor may not impose the penalty of dismissal from office on prosecutors appointed to office by the Ministry of Justice – See Section 42 (1,2) PSA.
[193] Section 42 (4) PSA.
[194] Section 42(5) PSA.
[195] For more details, see also above under "Corruption prevention in respect of members of Parliament".
[196] It is punishable by a fine or imprisonment of up to one year.

Misdemeanour Procedure, and a case may be initiated on the basis of an application or information gathered by the institution.

198. According to statistical information provided by the authorities, in 2011 a criminal proceeding was launched against an assistant prosecutor concerning a bribery offence. Between 2007 and 2012, five prosecutors were brought to disciplinary responsibility. Out of these, one prosecutor was subject to a disciplinary sanction, three prosecutors were pardoned as the breaches in question were not deemed to be serious and one case was dismissed. None of the cases, however, pertained to conflicts of interest or economic interests' declarations.

Training and awareness

199. Pursuant to section 2 (3) of the Ethics Code of the Prosecutorial Service (ECPS), a prosecutor is to take good care of his/her professional competence, share his/her professional knowledge and experience with colleagues and, if necessary, participate as a lecturer in professional events. The authorities indicate that, in the beginning of their service, assistant prosecutors receive training on the ECPS and on the values of the prosecutor's service. Additionally, various trainings are held, including on the issue of the prosecutor's service ethics. Advice as regards professional conduct may be sought from the Prosecutor General's Office and the Ministry of Justice.

200. As concerns the general awareness of the conduct expected of prosecutors and of the prosecutors' compliance with these rules, information is made available in the following ways: laws and court decisions are placed on the relevant Internet sites; upon request, decisions of the Prosecutors' Disciplinary Committee may be obtained from the Prosecutor General's Office; the decisions of the Committee are published on the Prosecutor General's Office's Intranet; the data entered in the Punishments Register is publicly available, except in the cases provided for by law; and the declarations of economic interests of the Prosecutor General are disclosed in the on-line State Gazette, albeit in a reduced format.

201. The GET was provided with programmes of sample training events organised for members of the Prosecutorial Service in 2010 and 2011. Similar deficiencies can be identified in the area of training and advice on questions pertaining to ethics and conflicts of interest, as was the case of judges presented above. Thus, the existing training on ethical issues has not been provided on a regular and continuous basis and does not address in detail questions pertaining to conflicts of interest, rules governing gifts and declarations of economic interests. Similarly, it would appear that the training currently available, is not sufficiently informed by practical experiences and dilemmas faced by prosecutors in their everyday work, such as surveys conducted amongst prosecutors in order to gauge ethical challenges and conflicts of interest situations arising in practice. In view of the foregoing, **GRECO recommends that dedicated and on-going training programmes, supported by relevant materials, for prosecutors be developed focusing on professional ethics, conflicts of interest (including recusal and withdrawal), rules concerning gifts, hospitality and other advantages, declarations of interests and other corruption awareness and prevention measures.**

VI. RECOMMENDATIONS AND FOLLOW-UP

202. In view of the findings of the present report, GRECO addresses the following recommendations to Estonia:

Regarding members of Parliament

i. **the introduction of rules on how members of Parliament engage with lobbyists and other third parties who seek to influence the legislative process** (paragraph 30);

ii. **that (i) a Code of Conduct for members of Parliament be elaborated; and (ii) in order for the provisions of the Code to be effectively applied in practice, an efficient mechanism of supervision and sanction, which takes into account the specific nature of the parliamentary mandate, be established** (paragraph 38);

iii. **that (i) the existing conflicts of interest regulations be made applicable to members of Parliament and subject to effective supervision; and (ii) detailed guidelines be developed within Parliament containing practical examples of conflicts of interest which are or may be encountered by members of Parliament, including those arising specifically from pecuniary interests** (paragraph 47);

iv. **in order to clarify and facilitate the implementation of relevant provisions of the Anti-Corruption Act, that internal rules and guidance be provided within Parliament on the acceptance of gifts, hospitality and other advantages and compliance by parliamentarians with the aforementioned rules be properly monitored** (paragraph 49);

v. **that (i) a study be carried out in order to identify post-employment restrictions for members of Parliament which might be required to avert conflicts of interests and ii) post-employment restrictions be regulated, if necessary** (paragraph 53);

vi. **that the authorities of Estonia take determined measures to ensure a more in-depth examination of economic interests' declarations submitted by members of Parliament pursuant to the Anti-Corruption Act, amongst others by strengthening operational and administrative capacities of the Parliament's Select Committee on the Implementation of the Anti-Corruption Act** (paragraph 65);

vii. **(i) the establishment of a specific source of confidential counselling to provide parliamentarians with advice on ethical questions and possible conflicts of interest in relation to their legal duties; and (ii) the provision of regular awareness raising activities for members of Parliament (all deputies but especially the new ones) covering issues, such as conflicts of interest, acceptance of gifts, hospitality and other advantages, outside employment, disclosure of interests and other obligations related to corruption prevention** (paragraph 75);

Regarding judges

viii. **that (i) decisions on appointment to the post of first and second instance court judge be subject to independent appeal procedure; and (ii) objective criteria for the professional advancement of judges be**

introduced with the aim of enhancing its uniformity, predictability and transparency (paragraph 99);

ix. **that the Estonian authorities consider introducing a system of periodical quality assessments of a judge's professional performance, based on standardised and objective criteria, with due regard being paid to the principle of judicial independence** (paragraph 101);

x. **that (i) a deliberate policy for preventing and managing conflicts of interest and corruption risks be developed within the judiciary; and (ii) the system be put in place to ensure compliance by judges with the aforementioned policy, including the Code of Ethics of the Estonian judges** (paragraph 133);

xi. **that additional measures be put in place to ensure an effective supervision of economic interests' declarations filed by judges pursuant to the Anti-Corruption Act** (paragraph 136);

xii. **that dedicated and on-going training programmes be elaborated for judges focusing on judicial ethics, conflicts of interest (including recusal and withdrawal), rules concerning gifts, hospitality and other advantages, declarations of interests and other corruption awareness and prevention measures** (paragraph 151);

Regarding prosecutors

xiii. **that objective and transparent criteria be introduced for the promotion of prosecutors with the aim of enhancing its uniformity, predictability and transparency** (paragraph 166);

xiv. **that the authorities of Estonia consider introducing a system of periodical quality assessments of the prosecutors' performance, based on standardised and objective criteria, with due regard being paid to the prosecutors' autonomy** (paragraph 167);

xv. **that (i) the Ethics Code of the Prosecutorial Service be complemented in such a way as to offer guidance by way of explanatory comments and/or practical examples, particularly with regard to conflicts of interest and related areas; and (ii) a deliberate policy for preventing and managing conflicts of interest and corruption risks within the Prosecutorial Service be developed and a system to ensure compliance by prosecutors with the aforementioned policy, including the Code of Ethics of the Prosecutorial Service be put in place** (paragraph 178);

xvi. **that guidelines be developed within the Prosecutor's Office to clarify the standards for acceptable courtesy gifts and the procedure for their reporting** (paragraph 183);

xvii. **that uniform requirements be made applicable to all the categories of prosecutors as concerns the disclosure of their interests, pursuant to the revised Anti-Corruption Act** (paragraph 188);

xviii. **that additional measures be put in place to ensure the effective supervision of economic interests' declarations submitted by prosecutors pursuant to the Anti-Corruption Act** (paragraph 190);

xix. that dedicated and on-going training programmes, supported by relevant materials, for prosecutors be developed focusing on professional ethics, conflicts of interest (including recusal and withdrawal), rules concerning gifts, hospitality and other advantages, declarations of interests and other corruption awareness and prevention measures (paragraph 201).

203. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Estonia to submit a report on the measures taken to implement the above-mentioned recommendations by 30 June 2014. These measures will be assessed by GRECO through its specific compliance procedure.

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

About GRECO

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

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

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