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EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE (CDDG)

REPORT BY THE SECRETARY GENERAL ON THE STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW

For discussion

Secretariat Memorandum
prepared by the
Directorate General of Democracy
Democratic Governance Department

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Introduction

The European Committee on Democracy and Governance, under its terms of reference 2018-2019, is tasked with steering *"the Council of Europe's intergovernmental work in the field of democracy and democratic governance and advise the Committee of Ministers in its field of competence, taking due account of relevant transversal perspectives. The overall aim of the CDDG is to contribute to strengthening democratic institutions, public administration reform, decentralisation, good governance, in particular participation, public ethics, and e-governance, e-democracy and e-voting, at all levels."* In doing so, the Committee shall have *"regard to the Secretary General's reports on the State of Democracy, Human Rights and the Rule of Law"*.

On 18 May 2018, the Secretary General of the Council of Europe, Mr Thorbjørn Jagland, presented his fifth annual report on the state of democracy, human rights and the rule of law in Europe. This fifth report deals with the ["Role of Institutions, Threats to Institutions"](#).

In line with previous editions, the fifth report looks at the key building blocks of democratic security: efficient, impartial and independent judiciaries; freedom of expression; freedom of assembly and freedom of association; democratic institutions; and inclusive societies. The report finds many good examples of Council of Europe member states carrying out reforms in line with their obligations and to the direct benefit of their citizens.

In his introduction, the Secretary General underlines that it also brings into sharp relief the challenges facing the Council of Europe and its member states. Whilst human rights, democracy and the rule of law depend on the institutions that give them form, the report finds nascent trends of attempts to subvert checks and balances on power while there have also been *"attempts to undermine institutions at the European level, namely the Council of Europe and the European Court of Human Rights themselves, and at the level of member states"*.

In relation to democratic institutions, the report's findings state that *"there is an increasingly aggressive use of technology to influence electoral processes and outcomes and which threatens to undermine public trust in the electoral system. ... Corruption – sometimes pervasive – continues to be a problem and member states' compliance with the Council of Europe's Group of States against Corruption (GRECO) recommendations is slowing down."*

The report further provides a series of recommendations in the light of this year's findings to which the Council of Europe, with its member states, should pay special attention. These include, among others, to:

- *"step up the implementation of the recommendations set out in GRECO's evaluation rounds and its compliance reports;"* and to
- *"protect the integrity of the democratic process by identifying and implementing effective responses to multiple threats that interfere with our electoral processes and manipulate voter behaviour, notably through the use of technologies and social media;"*.

It presents proposals for action in relation also to new challenges *"stemming in particular from the effect of rapid advances of technology on democratic institutions and human rights."* Among the topics that will require particular attention in the future it lists *"Abuse of data, misuse of the internet, ethical and legal challenges related to bioethics and artificial intelligence"*.

In relation to the CDDG's terms of reference and the functioning of democratic institutions, the introduction to Chapter 4 of the Secretary General's 2018 report on "Democratic Institutions" (appended hereto) specifies that it will focus on:

- *"the capacity of Council of Europe member states to hold free and fair elections and the functioning of their democratic institutions."*

In relation to decentralisation and good governance, it:

- *"confirms the trends identified in the previous reports and strongly urges member states to respond to the recommendations already made",* including
- *"the need to fully implement their commitments under the European Charter of Local Self-Government (ETS No. 122), notably with regard to the allocation of financial resources corresponding to the share of responsibilities."*

It further underlines that *"To continue enjoying legitimacy and credibility in the eyes of the electorate, democratic institutions must comply with ethical standards and be free from corruption"* and stresses that *"Stepping up the fight against corruption and restoring trust in the transparency, efficiency and effectiveness of democratic institutions must be a priority for all European democracies, as well as for European institutions."* (p.65).

The Committee is invited to examine the relevant sections and to hold an exchange on current issues and challenges for democratic society as outlined in the Secretary General's report and how these relate to the CDDG's terms of reference and the 12 Principles of Good Democratic Governance.

Action required

The CDDG is requested to take note of the information presented in the Report by the Secretary General on the state of democracy, human rights and the rule of law in Europe: ["Role of Institutions, Threats to Institutions"](#) and to hold an exchange on its implications for the CDDG's work now as well as in the future.

APPENDIX

Chapter 4 of the 2018 edition of the Secretary General's report on the State of Democracy, Human Rights and Rule of Law

INTRODUCTION

Chapter 4 – Democratic institutions

Democracies are built through strong democratic institutions at central, regional and local level. Democracy cannot be imposed from the outside; it must be embraced by the domestic political leadership and the electorate, and supported and protected by fully functioning institutions. However, we have learned through bitter historical experience that deliberate, grave and persistent defiance of fundamental democratic norms, human rights and the rule of law by one country, or a group of countries, will not only harm these states and their citizens, but may have negative consequences for the stability and security of their neighbours, the entire continent and the international community as a whole.

It was this historical experience which led to the setting up of the post-Second World War international legal order, based on commonly agreed international norms of conduct and international institutions. These institutions were never meant to substitute national governments in discharging responsibilities towards citizens, but were created to provide a framework for international dialogue and co-operation. They also provide assistance, supervision and, where necessary, the pressure required to ensure internationally agreed standards are observed at national level.

These standards and norms not only apply to interaction between states, preventing and managing conflicts, but also to the relationship between national governments and individuals under their jurisdiction, protecting the latter's rights and freedoms against the misuse or arbitrary use of state power. At the global level, international standards regulating the relationship between the state and the individual have been codified in the Universal Declaration of Human Rights by the United Nations and at the European level by the Council of Europe in the European Convention on Human Rights and its protocols.

In this year's report, the chapter on the functioning of democratic institutions will focus in particular on the capacity of Council of Europe member states

to hold free and fair elections and the functioning of their democratic institutions.

For the two other key parameters of this chapter, decentralisation and good governance, the report confirms the trends identified in the previous reports and strongly urges the member states to respond to the recommendations already made. These concern in particular the need to fully implement their commitments under the European Charter of Local Self-Government (ETS No. 122), notably with regard to the allocation of financial resources corresponding to the share of responsibilities.

Stable democracies are those which have strong institutional checks on power. This means free and fair elections which allow citizens to choose their representatives and parliaments able to scrutinise and shape legislation, with opposition parties able to hold government to account. An effective separation of powers is required in order to prevent conflicts of interest between the executive, legislative and judicial branches of the state. All democratic institutions must uphold the rule of law, including international law and, notably in Europe, the European Convention on Human Rights. Europe's constitutional, parliamentary democracies depend on these checks and balances in order to restrain abuses of power and to protect the pluralism which characterises our societies.

To continue enjoying legitimacy and credibility in the eyes of the electorate, democratic institutions must comply with ethical standards and be free from corruption. Failure to do so emboldens populists seeking to exploit people's disenchantment with the "corrupt elite". The perception of corruption or misconduct also negatively affects voter turnout and conditions citizens' judgment regarding incumbent leaders and political institutions. Stepping up the fight against corruption and restoring trust in the transparency, efficiency and effectiveness of democratic institutions must be a priority for all European democracies, as well as for European institutions.

As in other chapters of this year's report, special attention is paid to the role of the Council of Europe in accompanying and assisting its member states in their compliance with relevant Council of Europe standards. Among the highlighted issues is the record of member states in the implementation of GRECO's recommendations on transparency of party funding, questions arising from the recourse to forms of direct democracy, and concerns regarding the ways in which some member states are tackling rule of law questions, notably the fight against corruption and respect for the separation of powers.

We look at positive examples of progress resulting from consultation and co-operation, but also at cases where compliance with standards is under scrutiny and a matter of concern, requiring further action from the authorities along the lines advocated by the Council of Europe and its respective bodies, in order to ensure that democratic institutions and processes are fully functional.

FREE AND FAIR ELECTIONS

Chapter 4 – Democratic institutions

Political parties are the fundamental channel for citizens to express and catalyse their political will through elections. Party funding and election campaigns are a necessity, of course, but they should be transparent and regulated to prevent corruption. Indeed, when corruption infiltrates the political system, citizens' trust collapses with immediate and negative consequences on free and fair elections, democracy in general and the enjoyment of human rights and the rule of law.

Ensuring transparent party funding is not the responsibility of government alone. It requires firm commitment and substantial input from all those involved in political activity, including parties and candidates, whether in government or the opposition.

A comprehensive approach to dealing with transparency of party financing is needed. A system that fails to ensure that sources of income and accounts are properly disclosed makes it much harder to monitor the application of the law and apply sanctions. A full range of legal sanctions serves little purpose if the supervisory body is not empowered to apply them. At the same time, that body's authority may be totally illusory if it is unable to "penetrate the fog" surrounding the financing of a particular party or electoral campaign, and if the sources of this income are not made public. Full disclosure of accounts is, therefore, the precondition for the effective application of the law by any supervisory body.

MEASUREMENT CRITERIA

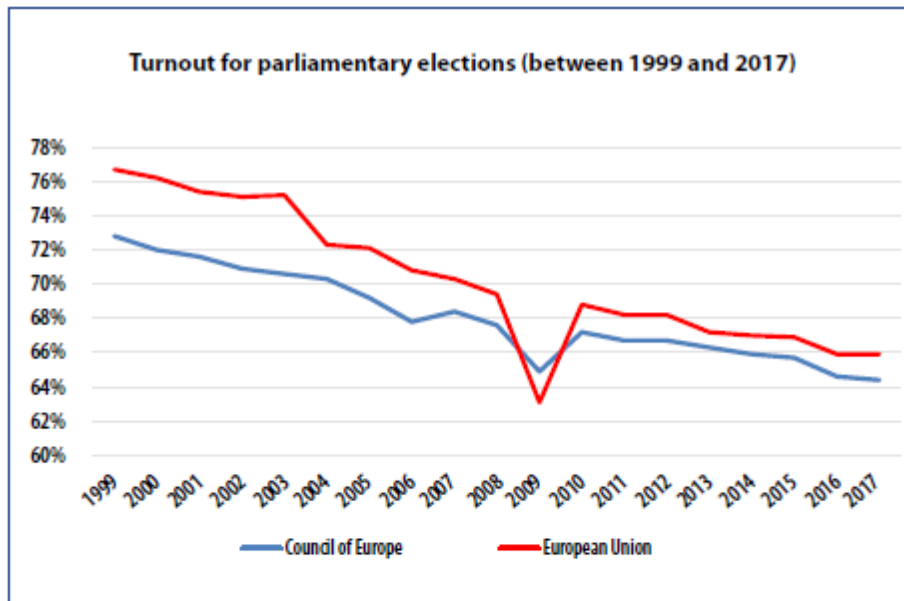
Under Article 3 of the Protocol to the Convention (ETS No. 9), Council of Europe member states undertake to guarantee free and democratic elections, at reasonable intervals, by secret ballot, under conditions which ensure the free expression of the opinion of all people in the choice of the legislature. The Venice Commission's Code of Good Practice in Electoral Matters complemented these principles. Furthermore, Committee of Ministers Recommendation Rec(2003)4

on common rules against corruption in the funding of political parties and electoral campaigns²²⁶ is the main reference document in this area.

In order to be recognised as complying with the provisions of Article 3 of the Protocol to the Convention, the organisation of a poll must meet the following criteria.

- ▶ **Universal suffrage:** all adult citizens have the right to vote and stand for election; electoral registers are public, permanent and regularly updated, the registration process of electoral candidates is guided by an administrative or judicial procedure with clear rules and no excessive requirements.
- ▶ **Equal suffrage:** each voter has the same number of votes, seats are evenly distributed between constituencies and equality of opportunity is guaranteed for parties and candidates alike through the electoral campaign, media coverage and the funding of parties and campaigns.
- ▶ **Free suffrage:** voters can freely form an opinion, they are offered a genuine choice at the ballot box and they can vote freely, without threats of violence at the polls, and the counting of results takes place in a transparent way.
- ▶ **Secret suffrage:** voting is individual; no link can be established between the content of the vote and the identity of the voter who cast it.
- ▶ **Direct suffrage:** at least one chamber of the national legislature, subnational legislative bodies – if any – and local councils are elected directly.
- ▶ **Elections are conducted at regular intervals.**

²²⁶ Committee of Ministers Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns (<https://bit.ly/2GHnGU5>).



- ▶ Electoral law: fundamental elements of the electoral law are not open to amendment less than one year before an election.
- ▶ The body organising elections is impartial and independent.
- ▶ National and international observers may observe the whole electoral process.
- ▶ There is an effective remedy system.

FINDINGS

■ The 2017 electoral observation mission reports of the Parliamentary Assembly, along with other international observation missions show that the elections held in Europe are broadly in line with democratic standards and generally respect the principles defined in the Venice Commission's Code of Good Practice in Electoral Matters.

■ At the same time, public confidence in the electoral process is falling, as shown by continually decreasing voter turnout. If the trend is not reversed, the general turnout could fall below 50% in the next 15 years.

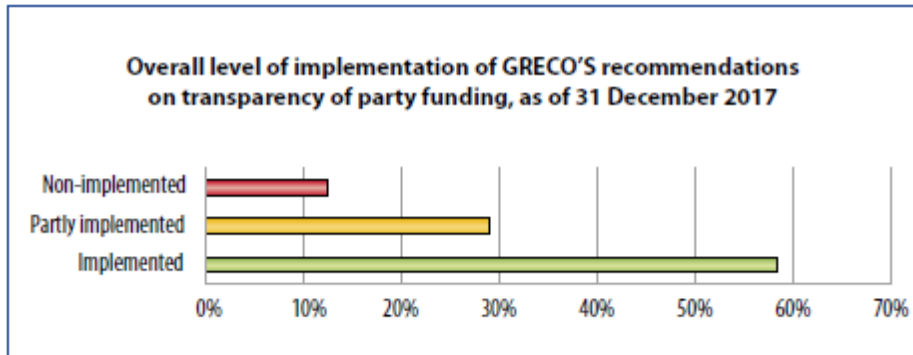
■ Substantial flaws in member states' legislation throughout Europe were noted with regard to the transparency of party funding. A large number of member states have had problems complying with GRECO's recommendations in this area and many of

them have been subject to a non-compliance procedure. On a positive note, regarding the key issues of (i) ensuring public access to party accounts, (ii) effective independence of the body responsible for overseeing political accounts; and (iii) adequate sanctioning systems, member states have, since the beginning of GRECO's 3rd evaluation round in 2007, managed to achieve results and carry out reforms to align their electoral systems with GRECO recommendations.

■ In certain countries, new legislative initiatives reversed reforms previously undertaken to comply with GRECO recommendations, leading GRECO to reassess the legislation. Greece, for instance, was subject to a re-assessment of transparency of party funding in 2017.²²⁷ Other countries continue to feature in a non-compliance procedure: Switzerland, for instance, where none of GRECO's recommendations regarding transparency of party funding have been implemented²²⁸ (a popular initiative "For greater transparency in the financing of public life" is, however, underway); Belgium, where there has been little progress in preventing corruption among members of

227. GRECO compliance report with respect to Greece (GrecoRC4(2017)20), adopted 18 October 2017, published 1 March 2018 (<https://bit.ly/2Jqc4GM>).

228. GRECO evaluation report with respect to Switzerland (GrecoEval4Rep(2016)5), adopted 2 December 2016, published 15 March 2017 (<https://rm.coe.int/16806fceda>).



parliament;²²⁹ or Spain, where compliance with GRECO recommendations in the 4th evaluation round remains "globally unsatisfactory" and a stepped-up measure in the non-compliance procedure has been taken.²³⁰

On the positive side, considerable progress has been made in all member states in defining what exactly constitutes parties' sphere of activity, the presentation and publication of their accounts, the independence of the relevant supervisory bodies, the focus of that supervision and the flexibility of the sanctions available. In Cyprus, the new obligation for political parties and candidates for election to draft and submit specific reports relating to election

campaigns is a very positive step. In Norway, amendments to the Political Parties Act have established new supervisory arrangements. In Sweden, in 2018, new legislation on transparency of party funding was adopted, obliging more entities (regional and local branches of parties, entities connected to parties) to report political financing and banning anonymous donations to political parties, their organisations and candidates, as GRECO recommended.

The chart above shows the level of compliance with GRECO's recommendations in the 3rd evaluation round on the transparency of party funding only as of 31 December 2017.

229. GRECO compliance report with respect to Belgium (GrecoRC4(2016)9), adopted 21 October 2016, published 11 January 2017 (<https://rm.coe.int/16806ee291>).

230. GRECO compliance report with respect to Spain (GrecoRC4(2016)1), adopted 1 July 2016, published 10 October 2016 (<https://rm.coe.int/16806ca04a>).

Disinformation, hacking and computational propaganda in elections

The freedom and fairness of elections, being a central element of the democratic process, are jeopardised by broad and increasingly aggressive attacks against all societal players from governments down to individuals.

Disinformation is one of the most important forms of attack: it is disseminated through websites that deliberately publish hoaxes, propaganda and misleading information or disinformation purporting to be real news – often misusing social media to drive web traffic and amplify their effect. Disinformation websites intentionally mislead their readers for political, financial or other gain.

Trolls post disruptive comments on social media, make mischief by starting arguments, producing incendiary or off-topic postings in an online discussion with the intention of provoking emotional responses, or otherwise breaking up the flow of a focused discussion. So-called troll factories can host several hundred people, employed as professional trolls who post thousands of comments, in different European languages, on relevant internet sites daily. Social bots disseminate propaganda through countless automated messages on social media such as Twitter or Facebook. These messages are disguised as personal comments, and serve many purposes, including to feign fame (bots can simulate large numbers of followers), to spam other users (advertising bots produce pop up ads on online chats), to discredit others (for example by signing up under a false identity), and to influence public opinion (by simulating trends through countless messages of similar content). An intended effect of social bots is to limit free speech, because real or important messages are drowned in a deluge of automated bot messages.

A powerful method for influencing people (voters or consumers, for example) is the use of big data (shorthand for the aggregated digital traces every internet user leaves with regard to activities either online or offline) in combination with psychometrics or psychographics. Specialised companies have developed approaches combining behavioural science, big data analysis and targeted advertising, which can be efficiently used to influence voter behaviour during election campaigns.

The different aspects of hacking are of special interest in this context for a variety of reasons. For the most direct interference with the electoral process, hackers could break into voting machines or other vital elements of the election system. The other form of hacking that can have a tangible influence in an election is the hacking of specific sites, especially in combination with the subsequent dissemination of content found on these sites or e-mail accounts.

It is still too early to know how efficient these techniques are in influencing the behaviour of voters, however there is good reason to believe that their impact is set to grow. Already in 2014, the World Economic Forum considered the rapid spread of misinformation online as one of the top 10 perils to society. The use of these techniques could be decisive in majority voting systems, especially in electoral districts where elections are won by small margins.

Governments and civil society, thanks to media reports, reports of security services and debate in the general public are increasingly taking measures to fight back. The rapid development of new technologies, and the ill-intentioned use of them, will require new and creative answers in the near future.

Countering computational propaganda should be understood as an important challenge for our member states. So far, no targeted pan-European standards exist that provide member states with effective protection.

In the past, the Council of Europe has demonstrated an exceptional ability to produce early, effective responses to technological challenges, breaking new ground in international law and significantly influencing the bulk of subsequent international and national initiatives.

It is essential to maintain and strengthen the role of the organisation in this regard, because it provides a very broad geographical scope for co-operation, going beyond the 47 member states, and ensures that any responses to new challenges will respect the democratic and human rights standards guaranteed by the European Convention on Human Rights.

FUNCTIONING OF DEMOCRATIC INSTITUTIONS

Chapter 4 – Democratic institutions

National parliaments are the institutions which embody diversity of opinion within a society. Their role is to manage and defuse tensions and to maintain balance between competing claims. This in turn creates a sense of fair process, social cohesion and solidarity.

Effective public participation and transparent decision making increase public trust, and improve the quality of policy and legislative decisions which, in turn, makes them easier to implement. Abusive or excessive recourse to some forms of participative democracy, such as popular referendums or consultations, can jeopardise the proper functioning of democracy. As the Venice Commission has pointed out,²³¹ there is a strong risk that referendums might be turned into plebiscites or manipulated to force decisions that should be taken through a process of inclusive political negotiation and based on detailed legal analysis.

Enjoying a large majority does not absolve a ruling party or coalition from the obligation to engage in an inclusive political process, particularly when tackling fundamental reforms, and to respect and accommodate minority views and interests.

To enjoy legitimacy and credibility in the eyes of the electorate, democratic institutions must comply with ethical standards and be free from corruption and undue influence. Failure to do so can affect the good functioning of democracy and strengthen populism in society. It can also lead to people's disenchantment with politics and lower electoral turnout, which in turns undermines the political legitimacy of electoral results.

The proper functioning of democratic institutions can only be effectively secured in a democracy which fully respects the rule of law, even in times of war or public emergencies. Responses to emergency situations can be an important challenge to the principle of the separation of powers, due to the concentration of exceptional powers in the hands of the executive

branch. This is why emergency legislation requires the particularly vigilant application of constitutional checks and balances and the respect of due process and freedom of expression, as provided for by the Court and its case law.

MEASUREMENT CRITERIA

- ▶ The principle of separation of powers is enshrined in domestic law and duly applied in practice.
- ▶ The parliamentary role of the opposition is regulated and respected. Political forces and individuals representing the opposition are able to participate meaningfully in the work of the parliament, without fear of harassment or undue interference from the executive or the courts.
- ▶ Parliamentary immunity is an integral part of the European constitutional tradition. It is not meant to place members of parliament above the law, but rather to provide certain guarantees so that they can effectively fulfil their democratic mandate, without fear of harassment or undue interference from the executive or the judiciary.
- ▶ An inclusive political process is applied. Open and transparent public decision-making processes lead to effective and genuine involvement of those directly affected by the policy and legislative decisions.
- ▶ Clear and predictable rules on parliamentary immunity, including procedures explaining how it may be lifted, are prescribed by law and applied. Such procedures are transparent and respect the principle of the presumption of innocence.
- ▶ Parliaments have a code of conduct for their members and a transparent system for the declaration of interests.
- ▶ Legislation on the financing of political parties and election campaigns is apt to deter corruption and is effectively applied in practice.
- ▶ Different forms of political participation are in place and are used.

²³¹ Compilation of Venice Commission Opinions and Reports Concerning Referendums (CDL-PI(2017)001) ([www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2017\)001-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2017)001-e)), page 18.

- Derogations from certain international commitments are possible only in exceptional situations, where parliamentary control and judicial review are guaranteed.

FINDINGS

Direct consultations

At national level, the trend, already noticed in the last two years, towards a diversification of forms of political participation, continued in 2017, with the recourse to forms of direct democracy or consultations. Sometimes this polarised opinions, such as in the constitutional referendum in Turkey – held during the state of emergency – and the controversial referendum in Catalonia – held outside the constitutional framework. In 2017, the Hungarian Government organised a series of national consultations in the form of surveys asking people's opinions on subjects of importance to them. These included one on the plan to relocate refugees and asylum seekers and one with the title "Stop Brussels".

State of emergency

Of the three Council of Europe member states which, for different reasons, had put in place derogations from the European Convention on Human Rights under its Article 15 due to a state of emergency, only France brought its derogation to an end (on 1 November 2017), while Ukraine and Turkey have continued to renew theirs.

Majority-minority relations

As regards the interaction between parliamentary majorities and the opposition, a positive development took place in "the former Yugoslav Republic of Macedonia", where the political crisis that started in 2014 and had dominated political life since, came to an end.²³² The political climate, however, remains tense. Political parties are widely perceived in the country as having taken control of the state institutions.²³³ In Albania, the polarised political climate between the main political parties and the parliamentary boycott by the main opposition party has resulted in considerable delays in the implementation of important

reforms, including with regard to the judiciary.²³⁴ In Montenegro, the boycott of parliament by the opposition has had a negative impact on the reform process and the credibility of institutions.²³⁵ In the Russian Federation, the Central Electoral Commission excluded the opposition figure Alexei Navalny from running in the March 2018 presidential election.

France saw the landslide electoral victory of a new civic political movement, *En marche!*, which obtained a clear-cut victory in both presidential and parliamentary elections. This development shows that the call for renewal of political forces and political figures expressed by the electorate does not necessarily result in support for populist parties.

Rule of law and corruption

Corruption continued to be a serious problem across member states. Calls for reform and anti-corruption efforts have resulted in street protests and demonstrations in several countries. The wide media coverage of the Panama Papers and the Laundromat scandals has alerted European public opinion to the prevalence of corruption, highlighting the involvement of high-level political figures and undermining trust in the political system.

In December 2017, the Secretary General sent a letter to the President of Romania, Klaus Iohannis, urging the authorities to seek the expertise of the Council of Europe Venice Commission regarding the legislative reforms on the judiciary adopted by the Romanian Parliament, concerning the Superior Council of Magistracy, the status of judges and prosecutors and the judicial organisation.

The monitoring work conducted by GRECO indicates that a gap remains between the legal framework and its effective implementation. The information gathered during GRECO's 4th monitoring cycle, devoted to the issue of the prevention of corruption in respect of members of parliament, judges and prosecutors, showed that parliamentarians were, on average, the least trusted of the three groups.

Despite the prominence of the issue of corruption in the media and public debate, member states' compliance with GRECO recommendations is slowing down. While the implementation rate of GRECO's recommendations for the first two rounds was very high, it has been slowly decreasing in the last two cycles. In March 2017, while the 4th cycle still continued, GRECO initiated the 5th cycle, devoted to preventing corruption and promoting integrity in central governments (top executive functions) and law-enforcement agencies.

232. PACE Resolution 2203 (2018) on the progress of the Assembly's monitoring procedure (January-December 2017) and the periodic review of the honouring of obligations by Estonia, Greece, Hungary and Ireland.

233. European Commission (2017), "The former Yugoslav Republic of Macedonia", Assessment and recommendations of the Senior Experts' Group on systemic rule of law issues, September 2017.

234. PACE Resolution 2203 (2018) on the progress of the Assembly's monitoring procedure, op. cit.

235. Ibid.

Main principles, specific rules and guidelines on the holding of referendums

The Code of Good Practice on Referendums, adopted by the Council for Democratic Elections and the Venice Commission,²³⁶ lays down clear and comprehensive guidelines on the organisation of referendums and is recognised by the Committee of Ministers as a reference document for the Council of Europe. Given that the calls for and recourse to public consultations and referendums in the member states have increased in the recent years, it is important to recall the main guiding principles of the code.

Rule of law

The use of referendums must comply with the legal system as a whole and with procedural rules. In particular, referendums cannot be held if the constitution or a statute in conformity with the constitution does not provide for them, for example where the text submitted to a referendum is a matter falling within the exclusive jurisdiction of the parliament. Referendums within federated or regional entities must comply with the law of the central state.

Respect for fundamental rights

Democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties. Restrictions on these freedoms must have a basis in law, be in the public interest and comply with the principle of proportionality.²³⁷

Rank and stability of referendum law

Laws governing referendums should have at least the rank of a statute. The fundamental aspects of referendum law – which govern, in particular, the composition of electoral commissions or any other body responsible for organising referendums, franchise and electoral registers, the procedural and substantive validity of texts put to a referendum and the effects of the referendum – should not be open to amendment less than one year before a referendum, or should be written in the constitution or at a level superior to ordinary law.

Procedural guarantees

An impartial body must be in charge of organising the referendum. Political parties or supporters and opponents of the proposal put to the vote must be equally represented on electoral commissions or must be able to observe the work of the impartial body. Equality between political parties may be construed strictly or on a proportional basis. The bodies appointing members of commissions must not be free to dismiss them at will. It is desirable that commissions take decisions by a qualified majority or by consensus.

Substantive validity of texts submitted to a referendum

Texts put to a referendum must comply with all superior law (principle of the hierarchy of norms). They must not be contrary to international law or to the Council of Europe's statutory principles (democracy, human rights and the rule of law).

Procedural validity of texts submitted to a referendum

Questions put to the vote must respect three principles of unity: "unity of form" (the same question must not combine a specifically worded draft amendment with a generally worded proposal or a question of principle); "unity of content" (except in the case of total revision of a text such as a constitution or a law, there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse a whole provisions without an intrinsic link); and "unity of hierarchical level" (it is recommended that the same question should not apply simultaneously to legislation of different hierarchical levels).

²³⁶ Venice Commission (2006), Code of Good Practice on Referendums (CDL-AD(2007)008) (www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282007%29008-e).

²³⁷ In particular, street demonstrations to support or oppose the text submitted to a referendum may be subject to authorisation: such authorisation may only be refused on the basis of overriding public interest, in accordance with the general rules applicable to public demonstrations.

Parallelism in procedures and rules governing the referendum

When a referendum is legally binding, a text that has been rejected in a referendum may not be adopted by a procedure without referendum until after a certain period of time (a few years at most). During the same period of time, a provision that has been accepted in a referendum may not be revised by another method. When a text is adopted by referendum at the request of a section of the electorate, it should be possible to organise another referendum on the same issue at the request of a section of the electorate, after the expiry, where applicable, of a reasonable period of time.

Opinion of parliament

The parliament's opinion is necessary when the referendum is requested by the executive. Electors must be informed of parliament's position. Consulting parliament must not give rise to delaying tactics. The law must set a deadline for parliament to give its opinion, and a deadline for the popular vote to take place, if the opinion is not given in time. In the case of regional or local referendums, the regional or local assembly shall take over the role played by parliament at the national level.

Effects of referendums

It must be clearly specified in the constitution or by law whether referendums are legally binding or consultative. Where a legally binding referendum concerns a question of principle or a generally worded proposal, it is up to parliament to implement the people's decision. The subsequent procedure should be laid down in specific constitutional or legislative rules. It should be possible to appeal before the courts in the event that parliament fails to act.

Duty of neutrality

Administrative authorities must observe their duty of neutrality, which is one of the means of ensuring that voters can form an opinion freely. Contrary to the case of elections, it is not necessary to prohibit completely intervention by the authorities in support of or against the proposal submitted to a referendum. However, the public authorities (national, regional and local) must not influence the outcome of the vote by excessive, one-sided campaigning. In order to guarantee equality of opportunity, the authorities shall not use public funds for campaigning purposes.

Effective system of appeal

The appeal body should be either an electoral commission or a court. In any case, final appeal to a court must be possible. The procedure must be simple and devoid of formalism, in particular where the admissibility of appeals is concerned. The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). The law must specifically designate the competent body in each case. The appeal body must have authority to annul the referendum where irregularities may have affected the outcome. All voters must be entitled to appeal.

DECENTRALISATION

Chapter 4 – Democratic institutions

To enable local and regional government institutions to deliver the best possible services to their citizens, they must have the necessary competences, financial resources and qualified staff. They also need to be resilient in order to cope with the various threats to democratic institutions by ensuring openness, transparency, accountability and integrity, and by fighting corruption.

According to polls, populations in all European countries tend to trust local governments more than central governments. At the same time, subnational authorities are apportioned significant public funds. The proximity to citizens, the large number of authorisations, permits and facilities granted and the lesser media scrutiny over local activity make it necessary to create adequate checks and balances in order to minimise corruption at local and regional levels.

Decentralisation must go hand in hand with the creation of the proper checks and balances in the form of popular oversight, legality and financial supervision. Such supervision has to follow the provisions of Article 8 of the European Charter on Local Self-Government (ETS No. 122) in order to ensure transparency and accountability without unduly interfering in the activity of local elected bodies. Several countries are looking to improve supervision mechanisms. In Ukraine, the question of legality supervision is one of the most disputed issues of the decentralisation reform, as the former mechanism was abolished in June 2016 with the adoption of constitutional amendments on justice but a new mechanism, provided for in the constitutional amendments on decentralisation, had not yet been set in place. The Council of Europe is leading the debates on this issue.

MEASUREMENT CRITERIA

The European Charter on Local Self-Government is the only international treaty in the field of local self-government. It has a total number of 30 substantial paragraphs, each creating an obligation for the states who accept them. The main obligations that states enter into when ratifying the charter form a set of indicators in this area.

- ▶ The principle of local self-government is recognised in the constitution or at least in law.
 - ▶ Local authorities regulate and manage a substantial part of public affairs; local authorities are freely elected.
 - ▶ Basic competences are provided for in the constitution or in law; local authorities can exercise any initiative which is not excluded from their competences; public responsibilities are exercised by authorities that are closest to citizens; powers given to local authorities are full and exclusive or delegated powers; local authorities can adapt their exercises to local conditions; local authorities are consulted on decisions affecting them.
 - ▶ Local boundaries are not changed without the prior consultation of concerned authorities, if possible by referendum.
 - ▶ Administrative supervision is only exercised according to law.
 - ▶ Local authorities have adequate resources of their own and of which they can dispose freely; financial resources are commensurate with responsibilities and sufficiently buoyant; there are some own resources and a financial equalisation mechanism.
 - ▶ Local authorities can form consortia and associate for tasks of common interest.
 - ▶ Local authorities have the right of recourse to judicial remedy.
- The Additional Protocol to the Charter of Local Self-Government (CETS No. 207) defines the right to participate in the affairs of a local authority.
- As GRECO does not monitor compliance of local and regional authorities with ethical standards, the Council of Europe has developed and made use of other instruments for strengthening ethics in subnational governments:
- ▶ Committee of Ministers Recommendation No. R (98) 12 on supervision of local authorities' action;

- The Handbook of public ethics at local level, adopted at a high-level conference in 2004, which presents a very extensive and structured list of recommendations in the light of the very best of European practice in fostering public ethics. This handbook has been used to develop and implement in many countries (such as Greece, Moldova, Romania, Spain, Ukraine) a benchmark of public ethics at local level, which has helped local authorities to evaluate and improve their policies aimed at fostering public ethics in general and fighting corruption in particular.

■ In 2018, both the Recommendation No. R (98) 12 and the handbook are to be revised.

FINDINGS

■ Many countries have undertaken public administration reforms leading to increased decentralisation. This trend continued in 2017 (albeit with a slower pace than before) as illustrated by the Slovak Republic²³⁸ and Serbia,²³⁹ where local, regional and district authorities discharge competences previously belonging to central government. On the other hand, reform processes in Italy²⁴⁰ for example, have been delayed recently, and further decentralisation of public administration in Switzerland²⁴¹ has stalled. Ukraine continues its decentralisation and local government reform.²⁴² Slovenia's Strategy on Development of Local Self-Government 2020 focuses on elections, financing and transparent decision making.²⁴³

■ Several states are working on implementing territorial consolidation reforms of their various tiers of government and strengthening the horizontal co-operation on those levels. Consisting either in amalgamation into larger communities or in arrangements for intermunicipal co-operation, these efforts are aimed at ensuring capacity or efficiency in the delivery of public services. Such programmes have

been implemented in Armenia, France,²⁴⁴ Iceland,²⁴⁵ Norway, Switzerland, the Slovak Republic and Ukraine. Other countries also feel committed to implementing territorial reforms, but are confronted with additional challenges; in the Republic of Moldova, for example, political instability has made such reforms difficult to start, and in Croatia²⁴⁶ the highly complex administrative and territorial structure makes effective management difficult.

■ There have been initiatives devolving, in an asymmetric manner, further competences to regional authorities. In France, elections to the Corsican Assembly resulted in the creation of a single territorial collectivity. In Italy, non-binding referendums organised on 22 October 2017 in Lombardy and Veneto called for further decentralisation, in particular fiscal, to these regions.

■ The inadequacy of resources available to local and regional authorities in the exercise of their powers remains, according to Congress monitoring, a recurring problem in most of the member states and has been exacerbated by inadequate equalisation systems, for example in Croatia, Cyprus,²⁴⁷ Greece²⁴⁸ and France.²⁴⁹

■ The perception of local government integrity depends on the allocation and use of public funds. This is the administrative tier where citizens and public servants have the closest interaction and where the impact of corruption is most visible.²⁵⁰ The example of Greece illustrates a good practice: each municipal council keeps an updated code of conduct for its elected representatives. In Finland, municipalities are listed according to their budget deficit, to ensure transparency of public spending.²⁵¹ In Germany and Hungary, government agencies have implemented integrity pacts, monitored by Transparency International, with bidders for procurement contracts agreeing to refrain from corrupt practices.²⁵²

238. Congress Recommendation 387 (2016) on local and regional democracy in the Slovak Republic (<https://goo.gl/oXoVZM>).

239. Congress Recommendation 403 (2017) on local and regional democracy in Serbia (<https://rm.coe.int/local-and-regional-democracy-in-serbia-168074fb82>).

240. Congress Recommendation 404 (2017) on local and regional democracy in Italy (<https://rm.coe.int/local-and-regional-democracy-in-italy-monitoring-committee-rapports-1680759b3b>).

241. Congress Recommendation 407 (2017) on local and regional democracy in Switzerland (<https://rm.coe.int/local-and-regional-democracy-in-switzerland-monitoring-committee-rapport-1680750d61>).

242. Centre of Expertise for Local Government Reform: Annual Activity Report 2017 (www.coe.int/en/web/good-governance/centre-of-expertise).

243. European Committee on Democracy and Governance (CDDG) (2017), 'Implementation of the Twelve Principles of Good Governance' (CDDG(2017)28), 5 December 2017 (<https://rm.coe.int/implementation-of-the-twelve-principles-of-good-democratic-governance/168076e9c2>).

244. Congress Recommendation 384 (2016) on local and regional democracy in France (<https://rm.coe.int/1680718de2>).

245. Congress Recommendation 402 (2017) on local democracy in Iceland (<https://rm.coe.int/16806fc29b>).

246. Congress Recommendation 391 (2016) on local and regional democracy in Croatia (<https://rm.coe.int/168071a157>).

247. Congress Recommendation 389 (2016) on local democracy in Cyprus (<https://rm.coe.int/16807188dc>).

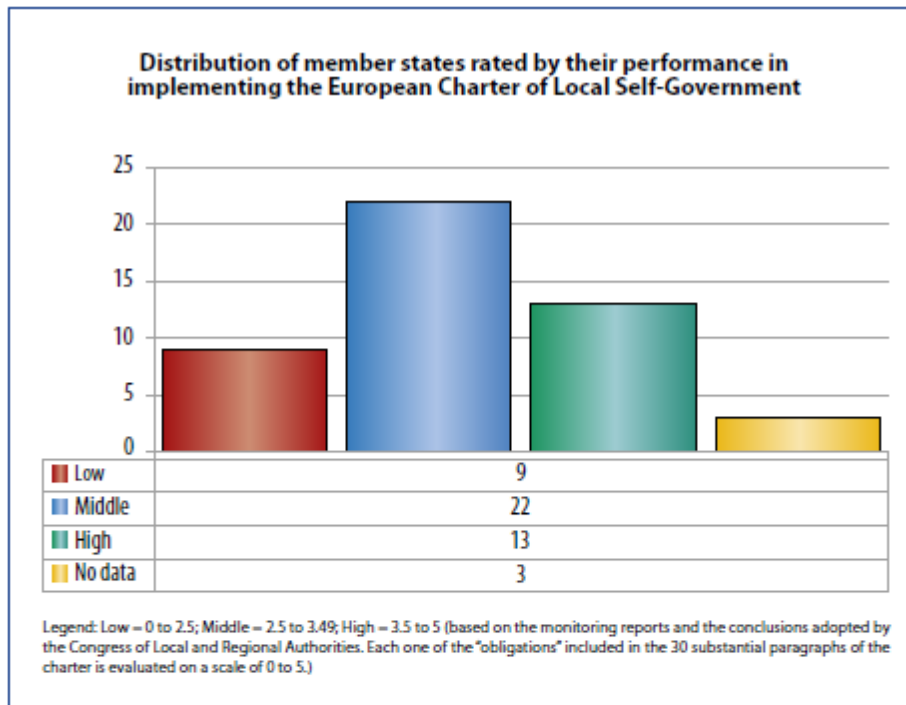
248. Bureau of the Congress (2017), Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2014-2016) (CG/BUR08(2016)INF78), 30 November 2016 (<https://rm.coe.int/16806c5b4e>).

249. Congress Recommendation 384 (2016), op. cit.

250. Transparency International, Strengthening local government integrity (www.transparency.org/whatwedo/activity/strengthening_local_government_integrity).

251. CDDG (2017), 'Implementation of the Twelve Principles of Good Governance', op. cit.

252. Congress Recommendation 405 (2017) on making public procurement transparent at local and regional level (<https://rm.coe.int/168075fbda>).



Engagement of citizens and civil society has recently been receiving more attention from governments: Slovenia and Germany have used the new Council of Europe Guidelines for civil participation in political decision making, adopted by the Committee of Ministers in September 2017, the first in the drafting of a handbook for municipalities and the second in a pilot project on open government. Participation

is key to the design and implementation of public administration reform in "the former Yugoslav Republic of Macedonia"²⁵³ Iceland and Switzerland also ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority in 2017, bringing the number of contracting parties to 16, while six countries have signed but not yet ratified the protocol.

²⁵³. CDDG, 8th Meeting Report of the CDDG (CDDG(2017)29) (www.coe.int/en/web/good-governance/8th-cddg-session).

GOOD GOVERNANCE

Chapter 4 – Democratic institutions

A democratically secure society requires both effective democracy and good governance at all levels. Good governance enhances the performance of public administration and the delivery of services which meet citizens' legitimate needs and expectations. Thus, it helps to strengthen democratic institutions from inside and to increase citizens' trust. This is all the more important in times when democratic institutions and society are under threat.

MEASUREMENT CRITERIA

— The 12 principles of good democratic governance²⁵⁴ provide indicators as to the performance of public institutions. The following principles are of particular relevance.²⁵⁵

- ▶ Efficiency and effectiveness: results meet agreed objectives making the best possible use of resources; performance-management systems and evaluation methods are in place; audits are carried out regularly.
- ▶ Sound financial management: charges meet the cost of service provided; budget plans are prepared in consultation with the general public or civil society; consolidated accounts are published.
- ▶ Competence and capacity: public officials are encouraged to improve their professional skills and performance; practical measures and procedures seek to transform skills into capacity and improved results.
- ▶ Fair representation and participation: citizens are at the centre of public activity and have a voice in decision making; there is always a genuine attempt to mediate between various legitimate interests; decisions are taken according to the will of the many while the rights of the few are respected.
- ▶ Openness and transparency: decisions are taken and enforced in accordance with rules and regulations; the public has access to all information which is not classified for well-specified reasons; information on decisions, policies, implementation and results is made public.
- ▶ Accountability: all decision makers take responsibility for their decisions; decisions are reasoned, subject to scrutiny and remedies exist for maladministration or wrongful decisions.
- ▶ Ethical Conduct: the public good takes precedence over individual interests; effective measures exist to prevent and combat corruption.
- ▶ Responsiveness: objectives, rules, structures and procedures seek to meet citizens' legitimate needs and expectations; public services are delivered; requests and complaints are dealt with in a reasonable time frame.
- ▶ Sustainability and long-term orientation: long-term effects and objectives are duly taken into account in policy making, thereby aiming to ensure sustainability of policies in the long run.
- ▶ Innovation and openness to change: new, efficient solutions to problems and improved results are sought; modern methods of service delivery are tested and applied; and a climate favourable to change is created.

254. 12 Principles of Good Governance and European Label of Governance Excellence (ELoGE) (www.coe.int/en/web/good-governance/12-principles-and-elope).

255. The principles covering the fair conduct of elections, human rights, cultural diversity and social cohesion, and rule of law are covered in other chapters of this report.

■ The 20 guiding principles for the fight against corruption²⁵⁶ provide indicators as to the performance of institutions preventing corruption, raising public awareness and promoting ethical behaviour. They, in particular, require to:

- ▶ ensure that the organisation, functioning and decision-making processes of public administrations take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness (principle 9);
- ▶ ensure that the rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promote further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct (principle 10);
- ▶ encourage the adoption, by elected representatives, of codes of conduct and promote rules for the financing of political parties and election campaigns which deter corruption (principle 15).

FINDINGS

■ Public administration reforms are being pursued in a significant number of member states with a view to streamlining public administration and enhancing competency, capacity and efficiency. Member states focus, *inter alia*, on human resource management, in Albania and Serbia for example, or on the reform of the professional training system of civil servants, as in Ukraine.²⁵⁷

■ Member states are continuing their efforts to enhance financial management and long-term financial sustainability. Measures centred mostly on consolidated budgets, accompanied by specific supervisory measures, in Greece for instance, and the introduction of ceilings for expenses at all levels of governance, as in Denmark. Some member states reported measures at the level of local government, for example the introduction of a task-based financing system in Hungary.²⁵⁸

■ Finland and Greece have taken measures to enhance the participation of both women and men

in decision making.²⁵⁹ Denmark has set up Vulnerable Community Boards.²⁶⁰ The newly adopted Guidelines for civil participation in political decision making of the Council of Europe²⁶¹ have been introduced in a pilot project for open government initiatives and practices in Germany, in conjunction with the piloting of national e-government initiatives.²⁶²

■ One ratification is still missing for the entry into force of the Council of Europe Convention on Access to Official Documents (CETS No. 205), yet openness is making progress in member states. In this respect, the Freedom of Information Act in Norway contributed to democratic participation, confidence in public authorities and control by the public.²⁶³

■ Openness, along with transparency, is closely connected to accountability. In Montenegro, the parliament published an Action Plan for Strengthening the Legislative and Oversight Role of the Parliament to facilitate scrutiny of government action.²⁶⁴ Local authorities ("comuns") in Andorra organised meetings with the residents to evaluate projects that have been implemented, while in Greece special meetings are held in local communities every year to assess the achievements of mayors and heads of the regions.²⁶⁵

■ The use of information and communication technologies and digitalisation remain a major focal point, primarily with a view to simplified, more resource-efficient public administration and services. This may include greater flexibility and accessibility of services for citizens or business, as in the case of the Simplex Programme in Portugal.²⁶⁶ In "the former Yugoslav Republic of Macedonia", the Electronic National Registry of Citizens is a key project that will help the electoral process and will create the basis for the development of an increasing number of e-services.

■ Measures adopted by member states include the adoption of codes of ethics for officials and employees in public administration, as in the Czech Republic and

²⁵⁶ Committee of Ministers Resolution (97) 24 on the 20 guiding principles for the fight against corruption (<https://rm.coe.int/16806cc17c>).

²⁵⁷ See <https://rm.coe.int/centre-of-expertise-for-local-government-reform-draft-annual-activity-1680767f6e>.

²⁵⁸ CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.

²⁵⁹ Council of Europe Gender Equality Commission (GEC) (2017), "Balanced participation of women and men in decision-making – Analytical Report – 2016 Data"; CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.

²⁶⁰ CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.

²⁶¹ Committee of Ministers Guidelines for civil participation in political decision making (CM(2017)83-final), 27 September 2017 (https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807509dd).

²⁶² CDDG (2017), CDDG Activities in 2016-2017: Report to the Committee of Ministers (CDDG(2017)21) (<https://rm.coe.int/cddg-activities-in-2016-2017-report-to-the-committee-of-ministers/168076867e>).

²⁶³ CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.

²⁶⁴ See www.skupstina.me/images/documents/action-plan/action_plan_in_2015.pdf.

²⁶⁵ CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.

²⁶⁶ Ibid.

Serbia,²⁶⁷ or a tightening of regulations in relation to conflicts of interest. Member states will not reap the full benefits of such measures, however, unless they are accompanied by steps to ensure their effective implementation and the enforcement of applicable regulations and legislation. This can include campaigns and training to raise awareness of public officials' key duties, to clarify their roles and highlight tools and measures to reduce the risk of corruption, as demonstrated in Denmark and Norway, for example, two countries that score well in these fields.²⁶⁸ Such initiatives also highlight the importance of a broader approach to integrity in public administration.

GRECO highlighted the need for parliamentarians to give consideration to the elaboration of a code

of conduct, to have provisions and regulations on the prevention of conflicts of interest and to establish systems for asset declarations. It also identified good practices in several member states, such as the system of electronic asset declaration for members of parliament and other officials to the Civil Service Bureau in Georgia. GRECO also underlined that the mere existence of codes of conduct, provisions and regulations on the prevention of conflicts of interest as such is not enough. Training or access to advice and monitoring were needed as well. In this respect, the work of specialised anti-corruption bodies such as the National Anti-corruption Authority in Italy, the Commission for the Prevention of Corruption in Slovenia or the Corruption Prevention and Combating Bureau in Latvia²⁶⁹ is to be welcomed.

267. CDDG (2017), "Implementation of the Twelve Principles of Good Governance", op. cit.
268. Ibid.

269. PACE (2017), "Promoting integrity in governance to tackle political corruption" (Doc. 14344), 16 June 2017 (<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23790&lang=en>, paragraph 101).