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FOURTH EVALUATION ROUND

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FOURTH EVALUATION ROUND

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

EVALUATION REPORT

LIECHTENSTEIN

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Directorate General I
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EXECUTIVE SUMMARY

1. This report evaluates the effectiveness of the systems in place in Liechtenstein to prevent corruption in respect of members of parliament, judges and prosecutors. There are virtually no known instances of corruption-related practices involving persons holding these public offices. However, this report identifies a number of areas where preventive measures should be strengthened in order to tighten the already existing framework and to avoid that any corruption-related misconduct may fall under the radar.

2. The legislative process is globally transparent, including with regular public consultations on proposed legislation. At the same time, if plenary debates in Parliament are public, all meetings of parliamentary commissions are held in camera. Transparency ought therefore to be enhanced in respect of preliminary examinations of draft legislation taking place in parliamentary commissions (e.g. agendas, specifying hearings with experts, and other relevant documents being made public in good time). Moreover, there is currently no code of conduct for MPs, which is an essential tool to ensure that integrity standards are both known and respected by MPs. There should be rules to clarify what is expected of MPs regarding gifts and contacts with third parties that may influence their parliamentary decisions. Furthermore, in parallel to their parliamentary office, MPs have a main professional activity. Legitimate as these activities may be, MPs should be required to fill out regular public declarations of their assets and principal liabilities, in accordance with the levels of transparency expected of parliamentary office in a democracy. Along the same lines, there should be a procedure for managing MPs' possible conflicts of interest as they arise in connection with the topics being debated in Parliament. Finally, efforts should be made to develop training on integrity matters for MPs and measures should be taken to ensure that confidential advice on such issues is available to MPs.

3. The judicial organisation is dependent on the size of the country and some of its features raise particular challenges. The selection of judges is mainly in the hands of the Judges' Selection Board, which does not include any judges as full members by right. The Board's selection is then sent to Parliament who chooses one of the selected candidates to be appointed by the Head of State. In order to conform to international standards, a significant number of judges elected by their peers should compose the Board as a way of guaranteeing the full independence of the judiciary. Integrity criteria should also be laid down for the purpose of selection. One of the peculiarities of the judicial system is the relatively high proportion of part-time judges, many of whom are practicing lawyers. This calls for an in-depth reflection on the possible full professionalisation of judges, that would reduce considerably risks of conflicts of interest, and in any event the adoption of clear rules to avoid any conflict of interest in the specific case of judges being practising lawyers at the same time. Importantly, a judicial code of conduct ought to be adopted, together with practical guidance. Furthermore, judicial training should include specifically corruption prevention, in particular conflicts of interest, tailor-made to the specificities of the country. Finally, confidential advice on integrity matters should be made available to all judges.

4. As to prosecutors, they are on full-time posts, but their selection and professional assessments ought to include clearer and more specific integrity criteria. Furthermore, the possibility for the Government of removing a post and therefore its post-holder for economic and operational reasons should be supplemented by appropriate safeguards so as to avoid any misuse of this power. Moreover, a code of conduct with practical guidance should also be adopted for prosecutors, and this should be accompanied by dedicated training. Finally, confidential advice regarding integrity matters should be made available to them.

I. INTRODUCTION AND METHODOLOGY

5. Liechtenstein joined GRECO on 1 January 2010, i.e. after the close of the First Evaluation Round. Consequently, Liechtenstein was submitted to a joint evaluation procedure covering the themes of the First and Second Evaluation Rounds, followed by the Third Evaluation Round. 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) 22E) by Liechtenstein, 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 Liechtenstein from 24 to 28 June 2019. The GET was composed of Mr Christian MANQUET, Head of Department for Criminal Law, Ministry for Constitution, Deregulation, Reforms & Justice (Austria), Ms Marja TUOKILA, Counsel to the Legal Affairs Committee, Parliament (Finland), Mr Daimar LIIV, Judge, Tallinn Administrative Court (Estonia) and Ms Theodora PIPERI, Law officer, Counsel of the Republic, Office of the Attorney General (Cyprus). The GET was supported by Mr Gerald DUNN and Mr David DOLIDZE from GRECO's Secretariat.

10. The GET met members of the Board of Selection of Judges and its Chairperson, H.S.H. Hereditary Prince Alois VON UND ZU LIECHTENSTEIN. It also met the President of the Parliament (Landtag), Mr Albert FRICK, members of the Parliament as well as representatives of the Parliamentary Service. The GET met the then Minister of Justice, Ms Aurelia FRICK, and officials of the Office of Justice. It held meetings with the Judiciary, in particular the Presidents of the Court of Justice, the Court of Appeal, the Administrative Court and the Constitutional Court, as well as the Vice-President of the Supreme Court. The GET interviewed officials of the General Prosecutor's Office, including the Deputy Prosecutor General. The GET met the Head of Criminal Investigation of the National Police. The GET had a meeting with representatives of the Financial Market Authority and the Chamber of Lawyers. The GET's meetings also included media representatives and researchers from the Liechtenstein Institute.

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

II. CONTEXT

12. Liechtenstein is one of the smaller Member States of GRECO; there are no civil society organisations working specifically on corruption and it is not covered by corruption perception indexes, such as Transparency International's index. The perception within the country appears to be that corruption levels are low, from what was heard from the various interlocutors met during the Evaluation Visit.

13. As evidenced by the Third Evaluation Round compliance procedure, Liechtenstein has made significant efforts to adapt its legislation to international requirements concerning the incrimination of various aspects of corruption, and all recommendations set out in GRECO's Evaluation Report have been fully implemented. Liechtenstein has also tightened its previously rather loose legal framework around the transparency of party funding. This demonstrates a certain resolve from the authorities to improve the country's legal framework towards more efficient corruption prevention and bring it in line with international standards, not least those of GRECO. It should also be noted that Liechtenstein signed the UN Convention against Corruption on 10 December 2003 and ratified it on 16 December 2009.

14. At the same time, a country of the size of Liechtenstein has to face specific challenges that arise in any such close-knit community. This include the tension between the assumption that everyone knows everything about everyone, and the levels of actual transparency expected in democratic societies, especially in respect of those persons entrusted with a public office such as members of parliament, judges and prosecutors.

15. As regards the Parliament and more generally political life in the country, there were until recently only two political parties represented in Parliament. These two parties also shared, and continue to share, ministerial posts in the Government. Whilst they remain the biggest parties, there are now five parties represented in Parliament. This appears to have changed, to a certain extent, the country's political dynamics and the role of Parliament vis-à-vis the action led by the Government.

16. It should be mentioned that one of the characteristics of the Liechtenstein political system is also the role played by the Prince, who is the Head of State. His role has been significantly strengthened following a constitutional reform passed by referendum in 2003. At the time, the Venice Commission expressed some concerns regarding some aspects of the Prince's role notably in respect of the legislative process, such as his effective power of veto on laws passed by Parliament, and the lack of accountability before Parliament, including through ministerial countersignature.[1]

17. Insofar as the judiciary is concerned, as will be dealt with in this report, one of the peculiarities of the Liechtenstein legal system is that a large number of judges are only working part-time in the judiciary, often working as barristers in local law firms and sometimes coming from Austria and Switzerland whose legal systems are comparable to that of Liechtenstein. This is not without raising some concerns regarding real or perceived conflicts of interest when it comes to judges carrying out another profession in the country, as recognised by some interlocutors met during the evaluation visit. By contrast, prosecutors are on full-time positions.

18. As mentioned above, the various interlocutors met during the evaluation visit appeared to share a general perception that there were virtually no corruption-related practices in the country and, from the current data, no cases have been reported in the Parliament, judiciary and prosecution services so far.

[1] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)032-e

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

19. According to the Constitution, the Principality of Liechtenstein is "a constitutional hereditary monarchy based on democratic and parliamentary principles". The Head of State, in the person of the Prince, and the People exercise authority over the State in accordance with the Constitution and domestic laws.

20. The Liechtenstein Parliament (Landtag) is unicameral and consists of 25 members. MPs are elected by direct suffrage with proportional representation. There are two constituencies: Oberland, which provides 15 MPs, and Unterland, which provides 10 MPs. In addition, deputy delegates are also elected in each constituency. For every three MPs in a constituency, each electoral group (political party) is entitled to one deputy delegate. The electoral group is entitled to at least one deputy delegate if it obtained a seat in a constituency. Seats in Parliament are allocated among electoral groups, which have obtained at least 8% of votes. MPs vote in Parliament according to their oath and conviction (Art. 57, Constitution). An MP may lose his/her seat due to death, permanent illness (physical, psychological) and the change of constituency.

Transparency of the legislative process

21. Draft laws generally undergo a public consultation process before their submission to the Landtag. Public consultations take place at a very early stage in the legislative process. During the public consultation process, the Government presents a draft law for comments, which, due to its political, economic, financial, legal or cultural implications, can be examined by interested parties. Those which have or could have a special interest in the proposal are invited to submit their comments on the Landtag's website. In principle, however, any interested person can participate in the consultation process and submit comments. The public consultation process on politically important laws is mandated by the Government and carried out by the ministry responsible for the draft. The comments made during the consultation process are taken into account by the Government in a Government Bill ("Bericht und Antrag") forwarded to the Landtag and are published on the Government's website. The Landtag discusses the proposal presented in this report.

22. Every financial decision of CHF 500 000 (approx. EUR 470 000) or more, and annually recurring expenses of CHF 250 000 (approx. EUR 235 000) as well as every law adopted by Parliament are published and advertised for a possible referendum, as a tool for direct democratic control by the citizens. In addition, any bill submitted by the Government requires the approval of the Landtag and the signature of both the Head of Government and the Reigning Prince or his authorised representative in order to become law.

23. At its first session, the Landtag elects the three standing commissions (Art. 64, Rules of Procedure for the Landtag or RPL) dealing respectively with finance, foreign affairs and audit of public authorities. The primary task of these commissions is to prepare business for the plenary and to formulate recommendations. Decisions on proposed amendments to a bill are taken publicly by the Parliament sitting in plenary during two readings. Between the two readings, interested parties have the possibility of commenting. If draft legislation has no financial impact or foreign affairs component, it is examined directly in a plenary session without being examined in a standing commission beforehand. Standing commissions do not draft legislation but assess their financial or other impact. Meetings of the standing commissions are not public (Art. 73 RPL), but minutes are recorded by the Parliamentary Service, which are subsequently forwarded to the Landtag for information. The content of these minutes may be referred to in the Parliament sitting in plenary, i.e. publicly, unless it has been wholly or partly declared confidential by the commission. In addition, ad hoc commissions may be formed to deal with specific topics,

which can include the preliminary examination of draft legislation. According to the authorities, the use of such ad hoc commissions for legislative purposes is not very frequent in practice. The terms of reference and members of ad hoc commission are announced publicly during a plenary sitting of the Parliament. The report drawn up by an ad hoc commission to fulfil its mandate is sent to the plenary and is made available on the Landtag's website; this report also contains the agenda (including topics discussed) and the names of the people heard by the ad hoc commission.

24. When draft legislation is examined in a standing commission, discussions would be around, for example, the consequences of draft legislation. The examination can result in a recommendation being formulated and brought to the attention of the Landtag. An ad hoc commission can also draft a proposal of draft law if it has been mandated to do so by the Landtag. The draft legislation is then sent for consultation (to the government, municipalities, interested parties, etc.) as per the usual rules for bills. Any comments received are listed in the final report drafted for the attention of the Landtag. The report is then adopted by the commission and submitted for consideration in the Landtag to the Landtag Presidium for inclusion on the agenda. The report for discussion in the Landtag with the comments received during the consultation period, the names of the people who were consulted in the commissions as well as the names of the members of the commission is also made available to the public before the plenary.

25. The debates of the Landtag are generally open to the public and can be followed by those interested in the assembly (Art. 26, RPL). The public can be excluded from attending sessions of the Landtag if so ordered by the President of the Landtag or if it is decided by the Landtag at the request of an MP or the Government (Art. 27 and 28 RPL). However, during in camera meetings no texts, including laws, are adopted. Only information from the Government on issues of interest to the Parliament but not considered ready for an open debate or matters to do with the internal organisation of Parliament would be discussed in camera. Debates in the Landtag are broadcast live on the "Landeskanal" and via a web live stream. Since 2017, previous debates and minutes have also been made available on the Landtag's website.

26. Votes take place by means of an electronic voting system. Votes must be cast in person. How each MP has cast his/her vote is directly visible on the chamber's scoreboard as well as on the live stream. In addition, MPs' individual votes are published on the Landtag's website (Art. 55 and 56, RPL).

27. While the GET is mainly satisfied with the level of transparency surrounding law-making, it considers nonetheless that steps should be taken to increase transparency around the work of parliamentary commissions on draft legislation. It appears that commissions can play a significant role in conducting preliminary examinations of legislative drafts before Parliament, which can include hearing government members, officials and experts (Art. 76 and 77, RPL). Taking account of this and the fact that their meetings are not public, measures to increase transparency should be taken so that the general public and media have ways of easily following their work when they are dealing with legislative drafts – i.e. before commissions deliver their final report to the plenary, for example by providing information on line about meetings held, members present, experts heard as well as proposals and decisions made by the commissions. In addition, documents received by commissions as part of their preliminary examination of draft legislation should as a rule become public, at least after commissions have finalised their reports to the plenary, unless there are justified reasons to keep such material confidential. In light of the foregoing, **GRECO recommends that measures be taken to increase the transparency of the legislative process insofar as the preliminary examination of draft legislation by parliamentary commissions is concerned**.

Remuneration and economic benefits

28. The GDP per capita in Liechtenstein was approximately EUR 126 000 in 2018. According to the Office of Statistics, in 2016 the median gross monthly wage of persons employed in Liechtenstein was CHF 6 603 (approximately EUR 5 800).

29. In Liechtenstein, MPs are not professional politicians: they exercise their mandate in addition to their profession. As compensation, they receive an annual lump sum and daily allowances (depending on the number of meeting days). An MP receives an average annual income of approximately CHF 40 000/50 000 (approx. EUR 35 200/44 000). The amount of this compensation is regulated in the Act on the Remuneration of Members of the Landtag and of contributions to groups of voters represented in the Landtag (LGBI 2013.206 No. 171.20).

30. All correspondence and work documents being paperless, MPs receive a one-off lump sum of CHF 1 000 (approx. EUR 880) in any given legislative period for the purchase of IT equipment and an annual lump sum of CHF 500 (approx. EUR 440) to cover their internet connection.

Ethical principles and rules of conduct

31. A newly elected Landtag is solemnly inaugurated by the Reigning Prince or his authorised representative. All MPs are sworn in with the following oath: "I swear to observe the State Constitution and the existing laws and to promote in Parliament the welfare of the country, without any ulterior motives, to the best of my ability and conscience, so help me God!" (Art. 54, Constitution).

32. There are certain rules relating to conduct in the Landtag's Rules of Procedure, which refer to disorderly conduct, notably speech, during parliamentary work. Information on rules and conduct expected of MPs can be found in legislation. According to Art. 74 of the Criminal Code, MPs are considered as "office holders" (*Amtsträger*). Therefore, they are also subject to the relevant anti-corruption provisions of the Criminal Code. The following elements of an offence apply to parliamentarians: passive bribery (Art. 304), the acceptance of benefits by an office holder (Art. 305), the acceptance of benefits for the purpose of influencing (Art. 306), active bribery (Art. 307), the giving of benefits (Art. 307a), the giving of benefits for the purpose of influencing (Art. 307b), prohibited intervention (Art. 308).

33. The GET notes that certain aspects of corruption prevention, in particular on bribery, are covered by the relevant provisions of the Criminal Code that also apply to MPs. However, the GET underlines the preference expressed consistently by GRECO for parliaments adopting their own standards on ethical principles and on conduct expected of MPs. Such specific standards do not currently exist. Experience shows that the process of developing these standards with the involvement of MPs contributes to raising their awareness of integrity matters, to them knowing how to act proactively in case of ethical dilemma and to demonstrating their commitment *vis-à-vis* the general public. Such standards should deal with integrity issues such as conflicts of interest, gifts and other advantages, contacts with third parties and lobbyists, accessory activities, financial interests and confidential information. Furthermore, standards, laid down in a code of conduct, are not meant to replace existing legislation or regulations, but rather to supplement and clarify them and to provide practical guidance, including through the use of concrete examples. Moreover, a code of conduct is less static than legislation or regulation and, given its practical aim, is meant to evolve over time so as to take into account any relevant development in corruption prevention. Finally, in addition to the guidance provided by the code of conduct itself, complementary measures such as the provision of specific training or confidential counselling on the above issues and on the code as a whole (see recommendation in para. 56). The effectiveness of such a code of

conduct is dependent on its enforcement, which is dealt with later on in the report (see recommendation in para. 52).

34. In view of the above and with reference to Guiding Principle 15 of Resolution (97) 24 of the Committee of Ministers of the Council of Europe on the twenty guiding principles for the fight against corruption, **GRECO recommends that a code of conduct for members of parliament be adopted, covering various relevant integrity matters, containing practical guidance and being made accessible to the public.**

Conflicts of interest

35. There are no explicit rules on conflict of interest for MPs. There are also no rules prohibiting MPs to act in a particular case/matter in which they have a private interest. If the Parliamentary Secretariat has suspicions of a conflict of interest, they would raise the issue with the MP or the President of Parliament. In practice, it has happened that MPs would withdraw from discussions on a matter where they considered there would be a conflict of interest. However, there is no formalised procedure of any sort. The system, as it is, depends on self-discipline of MPs to step aside and not take part in a vote where there is a conflict of interest and on citizens raising the alarm in case of conflict of interest.

36. The GET is mindful that there appears to be a practice for MPs to step aside where there is a risk of conflict of interest with matters discussed as part of parliamentary work. However, in the absence of any written rule and from the discussions held during the visit, there is no way of knowing how systematic this is being followed. Given the situation in Liechtenstein where, in parallel to their parliamentary mandate, MPs can have a main professional activity, it is important that there is a systematic procedure for managing possible conflicts of interest as they arise in connection with a specific topic being examined by Parliament at a given time. **GRECO recommends that a requirement of *ad hoc* disclosure be introduced when a conflict may emerge between specific private interests of a member of parliament and a matter under consideration in parliamentary proceedings (in plenary or commission work).**

Prohibition or restriction of certain activities

Incompatibilities, accessory activities, financial interests, contracts with State authorities, post-employment restrictions

37. Certain functions are incompatible with the mandate of MP. For instance, members of the Government, judges and public prosecutors cannot be MPs. In addition, the persons in charge of the Data Protection Office and the Financial Audit Office cannot become MPs. In addition, MPs may not be members of the strategic or operational management of public companies (Art. 5 para. 1 a, Public Company Control Act or ÖUSG). MPs are free to carry out other professional activities in parallel to their parliamentary office, subject to the above-mentioned rules on incompatibilities, and there are no rules prohibiting MPs holding financial interests during their mandate. There are no specific rules either on contracts with State authorities. No rules restrict their employment in a particular position or sector or their being engaged in paid or non-paid activities after their term of office.

38. The GET is not indifferent to the often-used argument that candidates for parliamentary office should not be deterred from standing. The GET considers nonetheless that the drawing-up of a code of conduct for MPs would be an opportunity to deal with possible conflicts of interest in these areas (incompatibilities, accessory activities, financial interests, contracts with State authorities and post-employment restrictions) (see para. 34).

Gifts

39. There are no rules on the acceptance of gifts by MPs. The authorities indicated that MPs would follow, *mutatis mutandis*, the rules on gifts contained in the Code of Conduct for the Prevention of Corruption of the State Administration, which is applicable to civil servants. According to the said rules, only small complimentary gifts would be accepted. However, this practise is not formalised in any written rules that would apply specifically to MPs.

40. The GET notes that the same rules as those applying to civil servants would in principle have to be followed by MPs. However, the GET does not consider this as sufficient. As lawmakers, MPs are naturally susceptible to be particularly exposed to attempts to influence their positions in sometimes indirect and subtle ways, through presents, hospitality or other benefits. Therefore, the GET considers that the question of gifts should be expressly tackled in rules, for example in the code of conduct (see para. 34), and that guidance should be provided in the shape of examples of concrete situations where MPs may be hesitant as to whether a gift or other benefits should be refused outright or not. In other countries nowadays parliaments regulate gifts, *inter alia*, by placing an upper limit on their value, requiring MPs to declare any invitations and other benefits they are allowed to accept, rules on diplomatic gifts, etc. **GRECO recommends that rules on gifts and other advantages – including advantages in kind – be developed for members of parliament and made easily accessible to the public.**

Third party contacts (lobbying)

41. MPs are not prohibited from entering into contracts with state authorities or have contacts with third parties who may try to influence their decisions. The authorities contend that due to the small size of the country and the fact that people know each other, MPs meet people all the time who will talk to them also about issues of political relevance. There is therefore virtually a constant contact with third parties.

42. According to the GET, it is important that dealings between MPs and third parties likely to influence their work, while legitimate, become more transparent. The GET is mindful that in a country the size of Liechtenstein contacts between MPs and third parties likely to be interested in the legislative process may be higher. It appears no less important that basic rules should be laid down, for instance in the future code of conduct (para. 34), so that MPs are provided with guidance as to what is expected of them in their dealings with third parties. Such rules would ask them to examine whether their contacts with third parties might seek to influence their parliamentary role and whether specific contacts have a direct bearing on their work as legislators. Basic rules appear all the more important that MPs can also have professional activities in parallel to their parliamentary mandate. **GRECO recommends that rules on contacts between members of parliament and third parties seeking to influence parliamentary proceedings be introduced**.

Misuse of public resources

43. With regard to the use of public funds, the authorities state that the Landtag has only limited financial resources (expenditure of only about 0.5% of the total state budget).

Misuse of confidential information

44. The GET considers that this issue should be tackled in the future code of conduct (see para. 34).

Declaration of assets, income, liabilities and interests

45. There are no regulations requiring MPs to declare their assets, sources of income,

financial interests, liabilities, gifts and other information. According to the authorities, bearing in mind the size of the population (approximately 39 000 inhabitants), a deliberate or unwise conduct of an MP is likely to be widely covered in the media. There is also the possibility of calling a popular referendum by citizens if they are unhappy with a decision by parliament. Furthermore, privacy and freedom of ownership are regarded as having constitutional value and disclosure would go against it. Official secrecy and data protection are also given prominence. The authorities also purport that asset declarations would have the detrimental effect of making it difficult to find candidates for a seat in parliament.

46. The GET has taken careful note of the reservations expressed by the authorities regarding the introduction of obligations for MPs to make declarations of assets, income, liabilities and interests. However, as GRECO has emphasised throughout the Fourth Evaluation Round in relation to a diversity of national systems, transparency in the work of elected representatives is an important feature of any democracy. Citizens must know who they are voting for and what interests their representatives are likely to defend once elected. Managing the risk of corruption also means putting deterrents in place today to dissuade people from resorting to prohibited or problematical sources of enrichment in the higher echelons of the state. Criminal law and the judicial authorities cannot be the only weapon to counteract these risks.

47. Furthermore, the status of part-time MPs and their different accessory or main activities, legitimate as they might be, call for particular cautiousness and sufficient transparency in respect of their income, assets and principal liabilities, in the form of mandatory public declarations, which need to be easily accessible and regularly updated. The mere assumption that everybody knows all the assets and interests possessed by everybody, including MPs, cannot be considered as sufficient nor necessarily comprehensive in each case. Therefore, **GRECO recommends (i) introducing a system of public declarations of the members of parliament's financial and economic interests (income, assets and significant liabilities); and (ii) that consideration be given to including in the declarations information on spouses and dependent family members (it being understood that such information would not necessarily be made public).**

Supervision and enforcement

48. MPs enjoy immunity to the extent that they can only be arrested during a parliamentary session with the consent of the Landtag, with the exception of cases where an MP is arrested when caught in the act of committing an offence (Art. 56, Constitution). For statements made during the meetings of the Landtag or its commissions, MPs are responsible only to the Landtag and cannot be prosecuted for them (Art. 57, Constitution). Apart from that, MPs do not enjoy any specific form of immunity outside parliamentary sessions.

49. No particular sanctions or enforcement mechanism exist to deal with violation by MPs of the rules on the prohibition or restrictions of certain activities.

50. On 1 May 2019, amendments to the Law on the Payment of Contributions to Political Parties pertaining to criminalising bribery of MPs, trading in influence and offences connected with political financing entered into force.

51. As for a non-criminal enforcement mechanism, the President of the Landtag in consultation with the Presidium of the Landtag (composed of the President and Vice-President of the Landtag, spokespersons of the parliamentary groups and attended by the Secretary of the Landtag) are responsible for carrying out disciplinary proceedings in respect of MPs. The President may, in consultation with the Presidium of the Landtag, arrange for the Parliamentary Service to carry out investigations (Art. 12 RPL). The content of complaints is verified by the Presidium of the Landtag, which may commission

the Parliamentary Service, or third parties, to clarify the matter. In cases of minor importance, the Presidium decides by itself; in serious cases the corresponding application is submitted to the Landtag, which decides with majority of votes. No sanctions of any kind have been imposed on MPs in recent years.

52. The GET considers that the adoption of a code of conduct for MPs, the introduction of a system for public declarations of MPs' interests and the notification of conflicts of interest as they arise should be accompanied by measures to monitor compliance with those rules by MPs and the application of appropriate sanctions in the event of non-compliance. Such supervision and sanctions will therefore need to be regulated in some form. It appears that currently the system is rather reactive whereas it should also be proactive. Therefore, **GRECO recommends that measures be taken to ensure the appropriate supervision and enforcement of the future obligations concerning disclosure and the standards of conduct of members of parliament.**

Advice, training and awareness

53. Before the opening of a new Parliament, newly elected MPs are provided with relevant laws, leaflets and other communications. Information on rules and conduct expected of members of Parliament is available in the legislation, accessible to the general public. Information events are regularly organised where the topic of integrity is brought up. However, for the time being, the GET was told that this information does not cover corruption prevention and ethical matters. That said, MPs can turn for advice to the Parliamentary Service. The GET was also told that an MP can contact the President of the Parliament who would then discuss the matter with the other members of the Presidium where all parliamentary groups are represented.

54. The GET considers that specific efforts need to be made to ensure that MPs are adequately trained on integrity matters. No training on corruption prevention is currently imparted on them. The introduction of a code of conduct, together with a system for managing and reporting conflicts of interest and periodical declarations, etc., will therefore require the introduction of training and awareness-raising for MPs, not only at the beginning of each legislature but also wherever developments require it, in order to enable them to fully incorporate rules into their working habits.

55. While the GET notes that MPs can currently seek advice from staff of the Parliamentary Service and the President of the Parliament, it considers that a more structured procedure should be in place, preferably with designated advisers, adequately trained on standards contained in the code of conduct as well as formally bound by a duty of confidentiality. Such an advisory role is all the more important in Liechtenstein that MPs are not career politicians; they can have professional activities in parallel and many connections with Liechtenstein society, which can potentially lead to conflicts of interest, either real or perceived.

56. Accordingly, **GRECO recommends that (i) training and awareness-raising measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests; and (ii) MPs be provided with confidential counselling on these issues.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

57. The organisation of the courts in Liechtenstein is governed by the Organisation of Ordinary Courts Act. The ordinary administration of justice is carried out in first instance by the Court of Justice, in second instance by the Court of Appeal, and in third instance by the Supreme Court (Art. 97, Constitution). Administrative matters are dealt with by the Administrative Court. The Constitutional Court may act as final instance in cases where a person claims a violation of constitutional rights.

58. Judges conduct their office and judicial proceedings independently and within the limits of the law (Art. 95(2), Constitution).

59. The Court of Justice is the first instance court of ordinary jurisdiction and decides in civil and criminal matters. Jurisdiction at the Court of Justice is exercised by single judges, the criminal court, the juvenile court, and the judicial officers (Art. 5, the Organisation of Ordinary Courts Act). Since 1 January 2019, the Court of Justice consists of 15 full-time judges. In the criminal chamber, there are 3 lay judges and 3 substitutes, and in the youth chamber 2 lay judges and 2 substitutes. The senate chairpersons and their assessors are full-time judges. The President of the Court of Justice is appointed for five years from amongst the 15 full-time judges.

60. The Court of Appeal is the second instance in criminal and civil matters and decides on remedies and appeals against decisions delivered by the Court of Justice. It is composed of three senates, each consisting of a full-time senate chairperson, a deputy chairperson, a full-time assessor, a chief judge and his/her deputy. The assessors share a deputy assessor. Decisions in the senate are generally taken by two full-time judges (senate chairperson and assessor) and a chief judge. There are in total five full-time judges, assisted by part-time judges. The President of the Court of Appeal, who heads the Court and represents it externally, is appointed from amongst the chairpersons of the senates.

61. The Supreme Court is the final instance of ordinary jurisdiction in Liechtenstein. It is composed of two senates (criminal matters and civil matters). Each of the two senates consists of a senate chairperson, a deputy chairperson, four chief judges (Oberstrichtern) and their deputies. There is a total of 12 judges at the Supreme Court, all of whom work part-time. The President of the Supreme Court, who heads the Supreme Court and represents it externally, is appointed from amongst the senate chairpersons.

62. The Administrative Jurisdiction Orders are usually issued in first instance by the authorities and, in second instance, either by the collegial government or a special complaints commission. Article 78, paragraph 3 of the Constitution provides for a group of special complaints commissions. These commissions thus take the place of the government as an appeal level. The most important commission is the Complaints Commission for Administrative Matters whose competence is explicitly regulated in law (e.g. construction, road traffic, public health, and environmental protection). The government cannot issue instructions with regard to the commission's decision in the substance of the matter. These special commissions act as a quasi "special Administrative Court", without being courts under the Constitution. According to information received during the visit, there appears to be a clear tendency to have more and more matters dealt with by special complaints commissions rather than the government.

63. The Administrative Court is the highest court in all administrative law matters. It is composed of five part-time judges. Decisions and decrees of the Government and of the complaint commissions may be appealed before the Administrative Court. It monitors the legality of individual administrative acts and provides legal protection in the event that an administrative authority fails to comply with its obligation to act in a case. The

Administrative Court also decides on complaints by parties against the provision of administrative assistance. The Administrative Court consists of five judges and five replacement judges. The majority of judges must have Liechtenstein citizenship and be legally qualified. Decisions of the Administrative Court are final. The only possibility of taking action against a decision of the Administrative Court is an individual complaint with the Constitutional Court.

64. The Constitutional Court is the only court where it is possible to appeal against decisions of the Supreme Court or the Administrative Court through individual complaints. In the case of an individual complaint, the complainant claims that one or more constitutionally guaranteed rights or rights guaranteed by international conventions[2] have been infringed by a final decision. The Constitutional Court is independent of all other constitutional bodies. It is responsible, *inter alia*, for the protection of constitutionally guaranteed rights and for deciding on conflicts of jurisdiction between courts and administrative authorities. It is also the disciplinary tribunal for members of the Government (ministerial indictment), the Constitutional Court and the Administrative Court and decides on election complaints. However, the most important competence of the Constitutional Court lies in the decision on individual complaints and in the review of norms.

Categories of judges

65. In Liechtenstein, there are the following types of judges:

- full-time judges; there are 15 full-time judges at the Court of Justice and five full-time judges at the Court of Appeal, including the senate chairpersons of the Court of Justice and the Court of Appeal and their assessors;

- Part-time judges, including judges at the Constitutional Court, the Administrative Court, the Supreme Court and some of the deputies at the Court of Appeal;

- Lay judges, who act in first instance as assessors to the Senate of the Criminal Court, formed by five judges, and consisting of two full-time judges (chairperson and assessor), as well as three lay judges as so-called criminal judges in the criminal court and lay judges who act as youth judges in the juvenile court, consisting of a senate with one full-time judge as the chairperson and two lay judges (youth judges). In second instance, each senate of the Court of Appeal is assigned a lay judge in addition to the full-time chairperson and his/her assessor;

- Ad hoc judges, appointed at the request of the president of the court in cases where the functioning of a court is substantially impaired. The appointment may be made for a limited term or in relation to individual duties and the appointment will be made in accordance with the general provisions of the Judges Appointment Act.

66. All higher instance courts decide in senate configuration. In first instance, this is only the Court of Justice as criminal court and as juvenile court. The remainder of the first instance jurisdiction takes place by a single judge.

67. The GET notes that quite a number of judges in the current judicial system are only temporary part-time judges (some deputy judges in the Court of Appeal, all judges in the Administrative Court, the Supreme Court, and the Constitutional Court). According to the GET, this raises some challenges, which are intertwined with the question of conflict of interest prevention. This will therefore be further expanded on later in the report (see paras. 95-97).

[2] as listed under Art. 15 para. 2 of the Constitution Court Act.

Recruitment, career and conditions of service

Appointment

68. Full-time judges are appointed for an indefinite term, up to the age limit for ordinary retirement defined by the statutory retirement age (Art. 16, para 1, Judicial Service Act). Part-time judges are appointed for a term of office of five years; re-election is possible without restriction – re-election is subject to the same procedure as initial appointment (Art. 16, para. 2, Judicial Service Act). There are several paths to become a full-time judge and the requirements include legal training and different lengths of practical training in a court depending on the background of the candidate.

69. In addition to Article 96 of the Constitution, the procedure for the appointment of all judges is governed by the Appointment of Judges Act. A special Judges' Selection Board selects the candidates eligible for appointment to a vacant judicial post. This Committee is chaired by the Reigning Prince or his deputy, who cast the deciding vote, and is composed of one member of each electoral group represented in the Landtag, the member of the government responsible for the administration of justice and a number of other members corresponding to the representatives of the Landtag, appointed by the Reigning Prince. These include currently a former judge of the European Free Trade Association (EFTA) Court and a former judge of the Austrian Supreme Court.

70. As per Article 14 of the Judicial Service Act, requirements for being appointed as a judge include full legal capacity and personal and professional suitability. The Appointment of Judges Act also refers to the suitability of the candidate. Applicants are also asked to submit an extract of their criminal record. Following an examination of candidates, the Judges' Selection Board submits a proposal for the selection of candidates to the Landtag. The Landtag elects from among the proposed candidates those to be appointed as judges by a simple majority of votes and the Reigning Prince appoints this candidate as judge. Should the Landtag reject the candidate recommended by the Board, and no agreement is reached on a new candidate within four weeks, the Landtag must propose an alternative candidate and call a referendum. In the event of a referendum, voting citizens are also entitled to nominate candidates subject to the conditions of an initiative. The candidate receiving the absolute majority of votes is appointed judge by the Reigning Prince.

71. From a formal point of view, the GET has some concerns about the current selection procedure for judges. The Judges' Selection Board, which manages the selection process for all judges, is chaired by the Head of State or his deputy and is composed, *inter alia*, of representatives of the executive and legislative powers. While two former judges having practised outside the country have been appointed by the Head of State, no representatives of the Liechtenstein judiciary are formally sitting on the board. The GET notes that at the time of the revision of the Constitution, the Venice Commission had expressed concerns about the far-reaching role of the reigning Prince in the selection procedure.[3] The GET was told that in practical terms decisions were taken collectively following a tour-de-table where each member could express their opinion on the candidates. Furthermore, the GET was informed that practice had evolved since the setting-up of the board, which has led to the judiciary being consulted, albeit informally. According to this practice, the president of the court where there is a vacancy to be filled is contacted to give his/her opinion on applicants in order to inform the decision of the Judges' Selection Board. While the GET considers this as a positive development, it considers nonetheless that more is needed not only to formalise but also increase significantly the involvement of the judiciary in the selection of judges.

72. The GET draws particular attention to European standards regarding institutional safeguards for ensuring objective decision-making with regard to the recruitment and

[3] https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)032-e

career of judges, in particular Committee of Ministers Recommendation CM/Rec(2010)12 on judges: independence, efficiency and responsibilities. Namely, they require in cases where such decisions are taken by the head of state, the government or the legislative power that "an independent and competent authority drawn in substantial part from the judiciary (…) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice". Such an authority "should ensure the widest possible representation" of the different levels of courts. While the GET acknowledges that there is no unique European model of judicial governance, it reiterates GRECO's preference for assigning such tasks, notably selection, to an independent body with a substantial number of members being judges selected by their peers, in accordance with the aforementioned CM Recommendation. For this reason, should the Judges' Selection Board's current role be maintained, the GET is of the view that its composition should be significantly altered so that the role of the judiciary be given more prominence, with judges appointed by their peers. The voting procedure should be formalised so that the greater weight of the judiciary be reflected.

73. In addition, the GET notes from the Appointment of Judges Act that not all posts of judges are necessarily publicly advertised and that, in such cases, members of the Judges' Selection Board propose candidates. Only vacancies for full-time posts are necessarily made public. The GET is of the view that more risks of conflicts of interest may precisely arise of part-time posts where the incumbent will continue to carry out other professional activities (see paras. 95-97). The GET learnt that the Judges' Selection Board has initiated the practice of also advertising part-time vacancies, whilst identifying and contacting candidates they would like to see apply. The GET can understand that it might be necessary to actively seek persons who could be interested in a post of judge, especially if they are coming from abroad, as is the case for a number of judges. Whenever a candidate is put forward by a Board member, it should be clear by the rules of procedure that this board member cannot vote for this candidate. The GET notes that in practice this appears to be the case. In any event, according to the GET, the fact that all posts of judges should be publicly advertised should be specified in law as a matter of principle, so that any candidate fulfilling the necessary requirements be given the opportunity to apply, and that the selection procedure in general be made more transparent so that there is no feeling of preferential treatment towards one candidate or the other.

74. Furthermore, the GET notes that currently no predefined integrity criteria are used as part of the selection process of judges apart from the candidates' criminal record, as recognised by the authorities themselves. The Appointment of Judges Act refers merely to the "personal suitability of a candidate for the position of judge". In practice, it appears that, during the hearing of candidates, attention is given to indications of future conflicts of interest. The GET is of the view that predetermined criteria for the purpose of necessary background and integrity checks ought to be laid down, in order to render it an efficient tool to prevent recruitment of unsuitable candidates and be made public. A future judicial code of conduct can help in defining such criteria (see para. 90).

75. In view of the above, **GRECO recommends that (i) the role of the judiciary in the selection process of judges be significantly increased; (ii) all vacancies for posts of judges be made public by law and that the procedure be made more transparent; (iii) integrity requirement for the selection of judges be introduced and guided by precise and objective criteria which are to be checked before appointment and that such criteria be made public.**

76. As per Article 3 of the Constitutional Court Act, the term of office of judges and alternate judges of the Constitutional Court is five years. At the time of the first appointment, the term of office of the five judges and five alternate judges is decided by lot to ensure that each year a judge or alternate judge is replaced. It is possible to be re-elected as judge or alternate judge.

Conditions of service, promotion, transfer, suspension and dismissal

77. There is no procedure for the promotion of judges. A judge may, however, apply for vacant positions at the higher instance, in which case the ordinary procedure for appointing a judge is applied. The GET underlines that the above-mentioned integrity checks should therefore also be applied in the context of promotions in order to prevent and manage any possible conflict of interest that could arise.

78. There are also no transfers of judges or rotations, which is due to the small size of the judiciary system, consisting only of one court in each instance. A change of jurisdiction may take place in the framework of the allocation of jurisdiction carried out by the presidia of courts in accordance with the principles laid down in the Court Organisation Act, whereby the allocation of jurisdiction may also be challenged by a judge by means of a complaint. The dismissal of judges is regulated in Articles 32 to 38 of the Judicial Service Act.

79. There are no specific procedures and criteria in place to assess the integrity of judges, apart from providing an extract of their criminal record. Some disciplinary measures are enshrined in Article 12 of the Constitutional Court Act, which states that a judge will be removed from office by a disciplinary decision in case of a criminal conviction against him/her, resulting in his/her ineligibility to be an MP, or if s/he has showed him/herself unworthy, or has grossly violated the duty of official secrecy by his/her conduct in or outside the courts, and betrayed the respect and trust due to his/her office. Under Article 32ff of the Judicial Service Act, the dismissal from service through the disciplinary tribunal as well as disciplinary sanctions regarding the dismissal from service are regulated. The GET considers that this issue is to be read in conjunction with the current absence of a judicial code of conduct which would set more detailed standards to be respected by judges and could warrant disciplinary proceedings. Therefore, it refers to its recommendation in para. 90.

80. The remuneration of full-time judges is a percentage of the maximum remuneration in accordance with the highest remuneration grade 20 (Art. 31, Remuneration Act); the current maximum remuneration of the president of the Court of Appeal is CHF 256 420. A judge of first instance newly appointed at the lowest grade of this remuneration level receives 71%; the President of the Court of Appeal receives 104% of this remuneration level. The salary depends on the function carried out and the number of years in service. The adjustment of the salary to the maximum salary is carried out step by step as laid down in the law.

81. Part-time and ad hoc judges of the Constitutional Court, the Administrative Court, the Court of Appeal, the Supreme Court, the Criminal Court and the Juvenile Court receive meeting allowances, flat-rate payments per case, etc. The President of the Constitutional Court, the President of the Supreme Court and the President of the Administrative Court are entitled to a presidential flat-rate payment and their deputies are also entitled to a presidential flat rate payment.[4] The lump sums attendance fees and other payments are regulated in the Act on the Remuneration of Members of the Government and of the Commissions as well as of Secondary Judges and Ad Hoc Judges. A judge's annual income therefore depends on the number of sessions s/he attends and the number of cases s/he deals with. The amounts laid down by law are fixed amounts which apply regardless of the function of the judge or how many years s/he has been a judge. No further remuneration supplements or other benefits are given by the State to judges, apart from their regular

[4] CHF 20 000 (approximately EUR 19 000) for the President of the Constitutional Court and CHF 15 000 (approximately EUR 14 0000) for the Presidents of the Supreme Court and the Administrative Court). The deputy of the President of the Constitutional Court receives CHF 7 000 (approximately EUR 6 500) and the two deputies to the Presidents of the Supreme Court and the Administrative Court receive CHF 3 000 (approximately EUR 2 800).

salaries and the compensation expenses. Compared to most countries the salaries of judges are therefore high.

82. In the more general context of the career of judges, the GET notes that there is currently no self-governing judicial body in Liechtenstein. While there are no binding international standards requiring the establishment of such a body, the GET draws attention to the preference expressed by various instances – including of the Council of Europe – for a judicial council or equivalent body, independent from legislative and executive powers, entrusted with broad competence for questions concerning the status of judges (including appointment, promotion and disciplinary matters) as well as the organisation, the functioning and the image of judicial institutions. Such a body should be composed either of judges exclusively or of a substantial majority of judges elected by their peers; its members should not be active politicians, in particular members of government. Therefore, whilst not having heard specific concerns during the on-site visit and therefore stopping short of formulating a recommendation on the matter, the GET nevertheless invites the authorities to reflect on the advisability of setting up such an independent body as a large number of European states, including some of a similar size, have done. Such a body could also take over the role of selecting judges.

Case management and procedure

83. The allocation of new duties is carried out in civil and criminal courts of all instances in accordance with the temporal turn and the ranking of the competent judges, in order to ensure the right to equal legal treatment (Art. 31, para. 1, Constitution), and the right to an ordinary judge (Art. 33, para. 1, Constitution). Allocation of cases depends on the judges' specialty and if there are several specialised judges, a system of rotation as cases come up is applied.

84. Insofar as the reallocation of cases is concerned, only dismissal from office (Art. 35, Judicial Service Act) or the dismissal from service (Art. 42 para. 1 c, Judicial Service Act) may call for a reallocation. However, it is also possible that full-time judges are – with their consent – assigned to carry out administrative tasks at an office of the state administration or tasks of judicial administration (Art. 31). This may indirectly lead to a reallocation of duties. In principle, cases are to be left with the judge of the court of justice who has already started conducting them, unless for instance the burden work calls for a reallocation of a case (Art. 14 para. 4, Organisation of Ordinary Courts Act). The judge can appeal against a decision of reallocation (Art. 15 para. 3, Organisation of Ordinary Courts Act) and a party concerned can appeal against the final judgment if changing the judge, according to them, resulted in procedural shortcomings. For judges of the Constitutional Court, the withdrawal of a case is only possible by reason of the expiration of the five-year term of office, resignation, cessation of office and removal from office under Art. 12 of the Constitutional Court Act.

85. The avoidance of undue delays in proceedings is tackled through the organisational provisions applicable to the court in question together with appropriate supervision. For ordinary courts, in the event of refusal or delay in the administration of justice, an administrative complaint may be lodged (Art. 48, Organisation of Ordinary Courts Act). If a court fails to carry out a procedural act, such as convening or carrying out a meeting or hearing, obtaining an expert opinion or issuing a decision, a party may apply to the court authority responsible for official supervision for a time limit to be set for the defaulting court to carry out the procedural act (Art. 49a, Law on the Organisation of Ordinary Courts). This can give rise to disciplinary proceedings before the Constitutional Court. The Constitutional Court decides on disciplinary complaints against judges of the Administrative Court (Art. 35, Constitutional Court Act). The length of proceedings can also be contested under Art. 239.1 of the Criminal Procedure Code and, in the case of administrative proceedings, under Art. 90 of the State Administration Act.

86. As a general rule, court proceedings are public, but exceptions are possible in criminal proceedings (Art. 181a, Code of Criminal Procedure), in civil proceedings (Art. 171 and following, Code of Civil Procedure) and in non-contentious proceedings, an exception can be made if morality or public order appears to be endangered, if there is reasonable concern that a disturbance of the hearing or aggravation of the facts might result, if it is necessary in the interest of a person under care, and at the request of a party for reasons worth considering, in particular because facts of family life are to be discussed (Art. 19, Non-Contentious Proceedings Act). In administrative proceedings, the publicity applies only amongst the parties (Art. 46, para. 1, State Administration Act). Proceedings of the Constitutional Court are public, but the usual exceptions mentioned above apply (Art. 47, Constitutional Court Act).

Ethical principles, rules of conduct and conflicts of interest

87. All judges must be loyal to the State and observe the legal order of the country (Art. 19, para. 1, Judicial Service Act). They must devote themselves to their office, fulfil their duties conscientiously, impartially and disinterestedly, and settle matters pending before the courts as quickly as possible. Judges, without bias to performing their judicial duties, must "obey the official orders of their superiors and, in carrying them out, shall safeguard the interests of the service entrusted to them to the best of their knowledge"; this would relate to organisational matters (Art. 19, para. 2). They must "behave in and out of office without reproach and refrain from doing anything that could diminish confidence in judicial official acts or respect for the judiciary" (Art. 19, para. 4). Judges are also bound by secrecy, even after the termination of their activities, and are also prohibited from expressing their opinion outside their office on ongoing cases (Art. 20). Judges are prohibited from accepting gifts or other benefits, including for relatives (Art. 22). Finally, judges cannot carry out any activities which would affect the reputation or independence of their office, or which could hinder them in the execution of their duties or endanger other essential interests of their duty (Art. 24).

88. There are no explicit ethical rules for the judges of the Administrative Court. However, it is understood that the Code of Corruption Prevention for State Administration would apply to them. Furthermore, the law stipulates that they are independent in the execution of their duties and that they must apply laws and regulations to the individual case (Art. 3, paras. 1 and 2, State Administration Act).

89. Judges of the Constitutional Court commit themselves to observing strictly the Constitution and all laws (Art. 5, Constitutional Court Act). In addition, the Rules of Procedure of the Constitutional Court set out the principles of conduct, expert opinions, which stipulates that (1) the judges behave within and outside their office in such a way that the reputation of the court, the dignity of the office and the trust in their independence, impartiality, neutrality and integrity are not impaired; and (2) during their term of office, judges may accept commissions to render expert opinions on questions of Liechtenstein constitutional law only with the consent of the senate. The authorities indicate that they would not give opinion as judges but, given that they are not full-time judges, as experts in the field where they have their other professional activity (e.g. university professors, lawyers, etc.).

90. The GET notes that during the visit there was broad agreement within the judiciary that a judicial code of conduct would be a useful document, in particular to assist all judges in resolving ethical dilemmas. The purpose of such a code is not to replace legislation or regulations but to supplement them where more detail is needed and complement them with practical guidance. Rules contained in the code should be illustrated with examples which are representative of the situations in which judges may find themselves. Moreover, the very fact of preparing such an instrument, involving judges coming from all different courts (including judges recruited from abroad to benefit their national experience), will contribute to clarifying certain ethical issues which are specific to the country, such as the

situation of part-time judges having a main professional activity outside their judicial functions, the management of conflict of interest or the particular case of lay judges. In addition, in order to ensure the effectiveness of a judicial code of ethics, other measures should be taken such as some form of supervision, training and advise on integrity matters (see para. 126). Therefore, **GRECO recommends that a judicial code of conduct, accompanied by explanatory comments and practical examples, be adopted by the judiciary, supervised and made public.**

Conflict of interest

91. According to Article 56 of the Law on the Organisation of Ordinary Courts, judges, cannot exercise their office if they:

> (a) have a personal interest in the matter;
> (b) are or have been married to a party to the proceedings, live or have lived in a registered partnership, lead or have led a de facto partnership or are related or related by marriage up to the fourth degree to a party. Electoral, step and guardianship relationships are treated in the same way as natural child relationships;
> (c) are representatives, authorised representatives, employees or organs of a person involved in the proceedings;
> (d) have acted as judge, judicial officer, secretary or clerk at a subordinate court, legal representative of a party or a party to proceedings, investigating judge, public prosecutor, expert or witness or are witnesses in the proceedings.

92. Article 10 of the Constitutional Court Act, entitled "Disqualification" states as follows:

> (1) A judge of the Constitutional Court is to be excluded from the execution of his/her duties: (a) in cases where there is a reason for exclusion from the administrative proceedings; (b) in cases in which he has already exercised his/her official or professional functions.
> (2) The President is to decide on the exclusion before the hearing, otherwise the court is to decide.

93. It is first and foremost for judges themselves to signal whether they are in a situation of conflict of interest, potential or real.

94. The GET takes note of the rules on conflict of interest in place. At the outset, it reiterates the importance of further developing such standards in a judicial code of conduct which would cover the notion of conflict of interest and would give practical examples typical of those encountered by judges. It also considers that training and advice in this area will be crucial (see para. 126). Again, this is all the more relevant in the current judicial system where a not-negligible number of judges only work part-time, including lay judges, and can have other professional activities at the same time.

95. The GET considers that the question of professional activities undertaken by judges outside their judicial functions is a specific challenge in Liechtenstein where many judges are only on part-time posts (this is the case of one third of judges in the Court of Appeal, all judges of the Supreme Court and Administrative Court). The GET is mindful that the composition of Constitutional Courts in a number of States does not follow the same rules as other courts and will therefore focus on the latter. Insofar as the latter courts are concerned, the GET notes that many judges carry out another professional activity at the same time as their judicial functions. The GET was told that this is partly due to the fact that the workload would not justify full-time posts at all levels of the court system as it currently exists. Nevertheless, the GET considers that risks of conflicts of interest, whether

real or perceived, are bound to be higher if judges have another profession at the same time as they are judges.

96. The GET was informed that quite frequently part-time judges are in parallel working as practising lawyers in local law firms. The authorities justify this situation, *inter alia*, by the fact that, owing to the size of the country, it would otherwise be difficult to find local candidates with suitable legal background. Conflict of interest, or appearance of a conflict of interest, can therefore arise in many instances. For example, it can come from the fact that the law firm, where the sitting judge also works, has defended one of the parties in previous proceedings. This also results in judges having to regularly withdraw from cases, and ad hoc judges having to be appointed by Parliament. The GET was given several examples, including one of a former deputy judge to the Court of Appeal who, because he was also a practising lawyer, frequently had to step aside. According to what the GET was told on site, while there are rules on recusal (see paras. 104-107), the system often appears in practice to rely on parties to a trial to identify risks of conflict of interest and ask for a judge to withdraw from a given case.[5]

97. In view of the foregoing, the GET is of the view that the Liechtenstein authorities should examine how to increase and reach full professionalisation of the judiciary, be it by rethinking the number of judges sitting in certain courts or the court system itself. In any event, with the current system that includes part-time judges, the GET considers that the specific situation of part-time judges who work as practising lawyers should be more carefully addressed in order to prevent any conflict of interest, whether real or perceived. While one option could be to extend to them the incompatibility applicable to full-time judges of being in parallel practising lawyers (see para. 98), the GET accepts the fact that, in a country of this size, it would make it harder to find part-time judges with the relevant legal background. It is therefore of the opinion that specific rules on conflicts of interest for part-time judges who work as lawyers should be laid down in order to address the particular risks of this situation. The effectiveness of such rules should be ensured, in particular through adequate training and advise (see para. 126). The GET can but note that the full professionalisation of judges, as advocated above, would put an end to such risks. As a result, **GRECO recommends that (i) the issue of the full professionalisation of all judges and limiting the number of part-time judges be given careful consideration; (ii) rules on conflicts of interest dealing with the specific situation of part-time judges also working as practising lawyer be introduced.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

98. Article 24 of the Organisation of Ordinary Courts Act excludes activities as follows:
(1) Judges must not engage in any outside activity which would undermine the reputation or independence of their office, or which would obstruct the execution of their official duties or otherwise jeopardise the essential interests of the service;
(2) Judges may neither belong to the Landtag, nor to the Government, nor may they exercise the function of a head of a municipality or a municipal council of a Liechtenstein municipality;
(3) Full-time judges may not act as lawyers, patent attorneys, trustees or asset managers;

[5] Of relevance in this context, the judgments in AK v. Liechtenstein (09/07/2015) and AK (No. 2) v. Liechtenstein (18/02/2016) where the European Court of Human Rights found violations of Art. 6(1) of the European Convention on Human Rights in that the examination of the claims of the applicant regarding the alleged bias of the judges of the Constitutional Court dealing with his appeal had not been adequate from a procedural point of view.

(4) Unless otherwise provided by law, there are no restrictions on sitting on courts, commissions and advisory councils appointed by the Judges' Selection Committee, the Landtag or the Government.

99. Judges are required to inform the President of the court about any secondary activity which s/he will either authorise or not, and which are recorded in their human resources files. Information on secondary activities are not public.

100. Judges of the Constitutional Court may not be members of the Landtag, the Government and the courts or the administrative authorities of the State (Art. 4, Constitutional Court Act). At their appointment they must resign from such offices.

101. There are no restrictions on judges as regards of holding financial interests as such. However, the authorities point out that there is a limitation mentioned in Art. 56 under the notion of "personal interest" in a matter as a reason for a judge not deciding on a case. Moreover, economic interests of a judge may potentially lead to a reason for exclusion or rejection of a judge of the Constitutional Court (see above).

102. There are no restrictions regarding judges' employment or engaging in paid or non-paid activities, after exercising a judicial function.

103. Moreover, the GET has heard of former judges working as lawyers in Liechtenstein after judges' retirement age without any particular precautions being taken. The GET is of the view that the authorities should examine how to mitigate any possible risks of conflict of interest in such situations and whether some measures need to be taken to offset them. In any event, the future code of conduct should cover this aspect (see para. 90).

Recusal

104. Judges may themselves demand their exclusion, or be rejected by the parties if: (a) there is a close friendship, personal enmity or a special relationship of duty or dependence with a party or a party to proceedings; (b) they are involved in litigation with a party, the public prosecutor or a party to proceedings, or may otherwise be biased on the merits (Art. 57, Organisation of Ordinary Courts Act).

105. According to Art. 6 of the State Administration Act, judges in the Administrative Court are excluded from decision in matters where they are connected to one of the parties, including through family links, where they have been appointed as agents, administrators or managers in a party, or where they have applied for a position in a party or have been proposed to such a position. Moreover, under Art. 6 of the aforementioned Act, judges can also be excluded if they or persons connected to them are likely to gain or suffer from the outcome of the administrative proceedings, if they are a member of a company or have an interest in the legal persons concerned by the administrative matter at hand, or if there are sufficient grounds to raise doubts as to their impartiality, in particular if a judge is in legal or administrative dispute with one of the parties or is in too close a friendship or enmity with one of the parties.

106. The exclusion or rejection procedure is governed by Article 58 of the Organisation of Ordinary Court Act. In particular, every judge, judicial officer, clerk, executor and non-judicial public certifying officer, as soon as s/he becomes aware of a reason for refusal or exclusion, is obliged to inform the chairperson of the court, and if it concerns the chairperson him/herself, his/her deputy, in good time. At the same time, the person obliged to report must refrain from all judicial acts from the time at which he becomes aware of a reason for exclusion. This is the case with the exception that a hearing which has already begun must be continued if the refusal of a court person is manifestly unfounded and leads to the assumption that the intention is to delay the trial. However, the final decision may not be taken before the final rejection of the refusal. If the rejection

is upheld, the judicial acts of the rejected judge are null and void and, if necessary, set aside.

107. Judges of the Constitutional Court may be revoked by themselves or the parties: (a) in the case of a legal person of which he is a member; (b) if there is either a special friendship or personal enmity or a special relationship of duty or dependence between him and a party; (c) where there are facts which would lead him to believe in the case to be examined to appear biased (Art. 11, Constitutional Court Act). The President will rule on the absence or refusal before the hearing, otherwise it is for the Court to rule.

Gifts

108. As already mentioned, judges are prohibited from accepting gifts or other advantages offered directly or indirectly to them or their dependants for the execution of their duties (Art. 22, Judicial Services Act). They are also prohibited from procuring gifts or other benefits or from having them promised in relation to the execution of their duties. The issue of gifts should be covered by the future code of conduct (see para. 90)

Third Party contacts, confidential information

109. Judges are bound by a strict duty of confidentiality. There are no further provisions applicable to judges regarding communication outside the official procedures with a third party who has approached him/her about a case under his/her purview. However, the general grounds for exclusion and bias, as well as the duties of the judges are to be taken into account. Pursuant to Article 20 of the Judicial Services Act, judges are subject to the duty of confidentiality with regard to all facts of which they become aware exclusively as a result of their official activities. As per Article 39 of the same law, any such breach may be punished under Disciplinary Law. Articles 41 and 42 of the Judicial Services Act establish administrative penalties and disciplinary sanctions, and Article 61 envisages other disciplinary measures. In addition, Article 310 of the Criminal Code establishes criminal liability for the active and former official's violation of official secrecy.

110. With regard to judges of the Administrative Court and the Constitutional Court, Article 22 of the General Administrative Procedure Act applies, according to which (1) they are prohibited, in party matters where there is an official duty, from receiving private visits from parties or from visiting or inviting them in order to report to them on the state of the administrative case, its prospects, advice or information; (2) This prohibition will be without bias to the efforts of any member to bring about a peaceful settlement in an administrative case pending between conflicting parties.

111. The GET considers that the future judicial code of conduct should set out restrictions on such communications illustrated by concrete examples (see para. 90).

<u>Declaration of assets, income, liabilities and interests</u>

112. Currently, part-time judges are to declare their main professional activity. However, there are no provisions in Liechtenstein requiring judges to declare assets and financial interests; sources of income (earned income, income from investments, etc.); liabilities (loans, debts, etc.); gifts; accessory activities, whether in the private or public sector; offers of remunerated or non-remunerated activities (including employment, consultancies, etc.) and agreements for future such activities; any other interest or relationship that may or does create a conflict of interest.

<u>Supervision and enforcement</u>

113. Judges in Liechtenstein do not have immunity against criminal proceedings. Criminal proceedings must be conducted in accordance with general principles.

114. Regarding non-criminal proceedings against judges, the competent authorities, procedures and modalities of their implementation are mainly set out in the Judicial Service Act. In particular, Article 43 defines the jurisdiction of the Disciplinary Tribunal as follows:

(a) the President of the Court of Appeal as single judge for the President and the judges of the Court of Justice;

(b) the President of the Supreme Court as single judge for the President of the Court of Appeal, judges of the Court of Appeal and the chief judges;

(c) a disciplinary tribunal of the Supreme Court for the President of the Supreme Court, consisting of three legally qualified senior judges.

115. Any person may submit a complaint to the competent disciplinary tribunal against a judge concerning possible violation, or criminal offence. A disciplinary investigation (Article 48) can only be initiated by a decision of the Disciplinary Tribunal. Prior to such a decision, the accused must be heard by the chairperson. The decision to initiate proceedings must specify the accusation. During disciplinary investigation, the accusation of a breach of duty made against the judge must be examined, and the facts of the case clarified to the extent necessary to allow the disciplinary proceedings to be discontinued, or the case to be referred to oral proceedings. If the facts of the case have been sufficiently clarified, the Disciplinary Tribunal may refuse initiating the disciplinary investigation or, after having heard the accused, may decide to refer the case to oral proceedings without initiating disciplinary investigation. The disciplinary proceedings are considered instituted by a decision to open a disciplinary investigation, or to refer the case immediately to the oral hearing.

116. The Disciplinary Tribunal is not bound by instructions and is not subject to any other authority. Members of the disciplinary senate are appointed within the framework of the allocation of cases of the Supreme Court, and may not act as lawyers, patent attorneys, trustees or asset managers in Liechtenstein. Decisions of the disciplinary senate are taken by an absolute majority of votes.

117. Since 1 January 2015 there have been six disciplinary sanctions against full-time judges at the Court of Justice - one case is still pending. There have been no disciplinary acts against judges of the Court of Appeal and of the Supreme Court. Out of the six cases two cases led to convictions: a reprimand (*Verweis*) and an admonition (*Ermahnung*). None of these cases concerned integrity related matters.

118. Before taking a decision to open or refuse a disciplinary inquiry, the Disciplinary Tribunal may entrust the investigating judge with the conduct of preliminary investigations. An investigating judge is appointed from among the legally qualified judges on a proposal from the disciplinary tribunal by the Judges' Selection Board. The Board may appoint an *ad hoc* investigating judge upon the proposal of the Disciplinary Tribunal. The investigating judge is to hear the accused and, if necessary, witnesses and experts, and investigate *ex officio* all the circumstances necessary to clarify the facts of the case in full. The provisions of the Code of Criminal Procedure apply to the hearing of the accused, witnesses and experts. The investigating judge must grant the accused and his/her defence counsel access to the files

119. The Disciplinary Tribunal may impose an administrative penalty by order without an oral hearing if there is only one breach of duty which is to be punished as an administrative offence. The decision must be motivated. The accused may lodge an appeal with the disciplinary senate of the Supreme Court against a decision of the Disciplinary Court of first instance. If the appeal is directed against the imposition of an administrative penalty by the Disciplinary Tribunal of the Supreme Court in the first instance, the Judges' Selection Board will appoint three ad hoc judges as appeal instance. Article 55 gives the right to the defendant to appeal against the decision of the Disciplinary Tribunal of first instance to the Disciplinary Tribunal of the Supreme Court regarding the guilt, sanction, reimbursement of costs and publication.

120. As regards judges of the Constitutional Court, the Constitutional Court decides on disciplinary appeals against its own judges and against the judges of the Administrative Court. Disciplinary proceedings are instituted by the president, or the judge appointed by him/her. If the Constitutional Court finds the person concerned guilty of a disciplinary offence, s/he is to be removed from office. The Constitutional Court sends a copy of the disciplinary decision to Parliament and the Government.

121. As far as the area of responsibility of the President of the Court of Appeal is concerned, no service and/or disciplinary proceedings have been initiated or carried out since 1 January 2015 regarding conflicts of interest and declarations of assets, income, liabilities and interests.

122. Insofar as breaches to standards contained in the judicial code of ethics to be prepared, the GET refers to its above-mentioned and the supervision of this code to be devised (see para. 90), which can be linked to the existing disciplinary procedure.

Training and awareness

123. At present, no specific training is provided to judges on ethics, expected conduct, prevention of corruption and conflicts of interest and related matters. According to the authorities, in the event of ambiguities, consultation can be held with the respective organisational and/or disciplinary superior.

124. As to training, the GET considers that integrity matters - such as preventing and managing conflict of interest, gifts, and the handling of confidential information - should become part and parcel of the training of judges but also any further training required in case of new legislation or practice. The GET realises that many judges will follow initial and practical training mostly abroad, generally in Austria, but considers nonetheless that it is important that training on integrity matters which is tailor-made to the particular situation and challenges in Liechtenstein be organised. This training should in particular deal with the issue of conflicts of interest of part-time judges (see para. 97). A future judicial code of ethics would be the natural foundation for such training. It would also be important to ensure that adequate training on integrity matters be organised for all types of judges, be they full-time judges, part-time judges or lay judges.

125. Concerning advice, the GET would like to recall the consistent position expressed in GRECO evaluation reports that confidential advice should be available to judges. This appears particularly important in the court system as it currently exists in Liechtenstein since part-time judges can have another profession at the same as they are judges. The current situation appears to be based on rather informal contacts. While this will be sufficient in most cases, the need for confidentiality should nonetheless be embedded in the system.

126. In view of the foregoing, **GRECO recommends that (i) training on integrity matters based on the future judicial code of conduct be set up; (ii) confidential advice be made available to all judges.**

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

127. The Office of the Public Prosecutor in Liechtenstein is a judicial authority. Article 2 of the Office of the Public Prosecutor Act (Public Prosecutor Act) regulates the tasks of the Public Prosecutor's Office. The Office of the Public Prosecutor is appointed to ensure the interests of the State in the administration of justice, in particular in the administration of criminal justice. There are currently eight prosecutors.

128. The Office of the Public Prosecutor carries out its duties through public prosecutors. Public prosecutors work independently and under their own responsibility within the framework of the tasks assigned to them by the allocation of duties or, in individual cases, by the Prosecutor General (Art. 4, para. 3).

129. The Office of the Public Prosecutor is headed by a Prosecutor General. The Prosecutor General, his/her deputy and every other public prosecutor each head a department. The competence of the departments is defined in the distribution of business. The Prosecutor General audits the proceedings of public prosecutors. Waiver of prosecution of a punishable act referred to the Criminal Court is always to be subject to audit. The prosecutor who believes an instruction s/he has received to act in a certain case is unlawful has to notify the Prosecutor General or, if it pertains to the Prosecutor General, the Government. The Government cannot give instructions to drop a case or an out-of-court settlement, but only to indict. The Office of the Public Prosecutor must inform the Government of important cases. The GET was told that in practice neither the Prosecutor General nor a prosecutor received instructions from the Government. In order to preserve the independence of prosecution, the GET invites the authorities to consider removing the possibility for the Government to give instructions to prosecute in any individual case.

Recruitment, career and conditions of service

Recruitment and career

130. The main decision-making body regarding appointment, promotion, mobility (transfer, rotation) and dismissal of prosecutors is the Government. In particular, vacancies for prosecutor positions are to be announced by the Government. Requirements for employment as a public prosecutor include, *inter alia*, full legal capacity and unrestricted personal and professional suitability. In addition, public prosecutors must have successfully completed a preparatory service before they can be appointed. Throughout the preparatory service, candidates can prove their integrity and suitability (Art. 33, Public Prosecutor Act).

131. The GET notes that requirements pertaining to integrity are not explicitly part of recruitment criteria which only refer to the notion of "personal and professional suitability". It is therefore of the view that this notion should be further detailed in order to provide concrete requirements such as the absence of conflict of interest. Such criteria should also be used for the purpose of enhancing clarity and transparency all along the career of prosecutors (evaluation and/or promotion procedures). Therefore, **GRECO recommends that the notion of "personal and professional suitability" be further refined with criteria for assessing a prosecutor's integrity.**

132. The Prosecutor General makes observations on the suitability of the applicants for the attention of the Government and, where there are several applicants, makes a justified recommendation for appointment. The Government, without being bound by the Prosecutor General's recommendation, appoints prosecutors. The Prosecutor General and his/her Deputy are appointed by the Government from amongst the prosecutors. Public

prosecutors are employed until the age limit for ordinary retirement is reached. Temporary employment is permissible for a maximum period of three years. In justified cases, it may be extended for a maximum of two years.

133. Article 49 of the Public Prosecutor Act regulates the basic principles of the end of service of prosecutors, and states that the relevant provisions[6] of the Judicial Service Act apply, *mutatis mutandis*, to the end of service of prosecutors, provided that the powers of the presidents of courts are exercised by the Prosecutor General in the case of prosecutors and by the Government in the case of the Prosecutor General. Article 51 of the Public Prosecutor Act regulates the basic principles of disciplinary procedure of prosecutors, and states that the relevant provisions of the Judicial Service Act apply, *mutatis mutandis*, to the disciplinary procedure for prosecutors. Disciplinary sanctions may be imposed for violations of professional and official duties. The most severe disciplinary sanction is dismissal from service, which leads to the end of service. The President of the Supreme Court serves as disciplinary tribunal. There is also the possibility of suspension.[7]

134. The Government may terminate the service of a prosecutor on essential operational or economic grounds (Art. 50, Public Prosecutors Act). In this case, the position of the prosecutor is to be removed from the employment plan. Before such termination, the prosecutor concerned and the Prosecutor General are to be heard. According to the authorities, the rationale behind this provision is that, if there is significantly less workload, the Government has the possibility of dismissing prosecutors. In such cases, the post would be scrapped altogether, so that such decision is not based on the person occupying the post. The GET nonetheless felt some discomfort with this provision during the visit amongst certain interlocutors and shares this concern. While this provision is interpreted by the authorities as being an exceptional measure that would only be linked to an objective assessment, i.e. a significantly lesser workload, the GET has concerns about the general wording; it runs the risk of being misused by the government of the day in order to remove any prosecutor that it would not be satisfied with for subjective reasons. It notes in this respect that the provision in question refers to economic as well as operational reasons, making it rather broad. Therefore, the GET would be in favour of scrapping this provision or at least adjoining safeguards to guarantee that it cannot be abused with a view to removing a prosecutor with ulterior motives. Therefore, **GRECO recommends that adequate safeguards be added to Article 50 of the Public Prosecutors Act against it being used to dismiss a particular prosecutor as a retaliation measure.**

Conditions of service

135. The financial entitlements of public prosecutors arising from their employment are governed by the Remuneration Act. The ordinary maximum salary for the Prosecutor General amounts to 97% and for the public prosecutors in the first year of service to 71%, in the second year of service to 76%, in the third year of service to 80%, in the fourth year of service to 85%, in the fifth year of service to 90% and from the sixth year of service to 95% of the maximum fixed annual salary (CHF 240 720 plus inflation allowances). In addition, a compensation for on-call duty of approximately CHF 550 per month is provided to each public prosecutor.

[6] Article 32 paragraph 1 (end of service), Article 33 (resignation), Article 34 (age limit), Article 35 (removal from service), Article 36 (temporary removal), Article 37 paragraph 2 (service tribunal), and Article 38 paragraphs 1 and 2 (proceedings before the service tribunal) of the Judicial Service Act.

[7] Article 51 of the Public Prosecutor Act and Article 39 paragraph 1 (imposition of disciplinary and regulatory sanctions), Article 42 (disciplinary sanctions) and Article 61 (suspension) of the Judicial Service Act.

Case management and procedure

136. Every year, the Prosecutor General distributes the duties to the individual departments. In doing so, s/he must ensure that the workload is evenly distributed amongst departments and provide for substitution arrangements. The allocation of responsibilities is to be simple and clear and to include the names of the departments and the respective names of the prosecutors. The allocation of responsibilities is to be brought to the attention of the Member of the Government responsible for the Office of the Public Prosecutor and made known to the public (Art. 10, Public Prosecutor Act). In the distribution of duties, the incoming complaints are ranked according to the time of their receipt and assigned to the departments once a day.

137. Insofar as it is necessary for the proper business management, e.g. in case of conflict of interest, the Prosecutor General may temporarily assume the duties of another public prosecutor him/herself or delegate certain generally described duties to a public prosecutor for independent processing (Art. 10, para. 2, Public Prosecutor Act). According to the distribution of business, the Prosecutor General reserves the right to take on individual criminal cases or to assign them to a public prosecutor.

138. The Prosecutor General arranges for the presence of the public prosecutors in such a way that they can properly fulfil their official duties. The supervision of public prosecutors is exercised by the Head of the Public Prosecutor's Office, and that of the Prosecutor General by the Government. In particular, the control of deadlines for completion and the monitoring of prolonged procedural standstills form part of the supervision duties (Art. 20, Public Prosecutor Act).

Ethical principles, rules of conduct and conflicts of interest

139. Prosecutors are sworn in and required to observe the Liechtenstein legal order (Art. 36, Public Prosecutor Act). They dedicate themselves fully to service, perform the duties of their office conscientiously, impartially, and disinterestedly, and carry out the matters pending with the Office of the Public Prosecutor as quickly as possible.

140. Both on and off duty, prosecutors are required to conduct themselves irreproachably and must refrain from doing anything which might diminish trust in the prosecutorial function. Compliance with these obligations is controlled within the framework of supervision (Art. 20, Public Prosecutor Act).

141. Articles 22 (Exclusion) and 23 (Rejection) of the Public Prosecutor Act define situations where due to a possible conflict of interest prosecutors may not exercise their office. These include, in particular, situations where prosecutors:

- have a personal interest in the case;
- are or were married to an accused, cohabit or cohabited with an accused, or are related by blood or marriage to an accused up to the 4th degree. Adoptive, step, and foster relationships are deemed equivalent to natural parent-child relationships;
- are a representative, authorized person, employee, or organ of an accused person;
- are a witness in the case.

142. During the visit, the GET was informed that the drawing-up of a code of conduct for prosecutors was being considered by the authorities. The GET can only encourage the development of such a code with the involvement of prosecutors. A code of conduct is meant to bring together core rules applying to all prosecutors in matters of integrity and ethics, it is therefore meant to become the main reference document. For it to be truly meaningful and effective, such a code needs to be complemented by guidance and examples specific to prosecutors with regard, *inter alia*, to conflicts of interest, gifts,

confidential documents and third-party contacts. Therefore, **GRECO recommends that a code of conduct, accompanied by explanatory comments and practical examples, be developed for prosecutors and made accessible to the public.**

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

143. Certain activities are prohibited for prosecutors during their service. In particular, prosecutors may not carry out any activities which might adversely affect the reputation or independence of their office or might interfere with the performance of their official duties or might endanger other essential interests relating to service. Prosecutors may not belong to Parliament or the Government, nor may they perform the office of mayor or member of municipal councillor of a Liechtenstein municipality. Further, prosecutors may not work as lawyers, patent lawyers, professional trustees, or asset managers. There are no restrictions as regards prosecutors' membership in commissions and advisory councils appointed by Parliament or the Government (Art. 41, Public Prosecutor Act).

144. Employment pursued by prosecutors outside prosecutorial activities are to be considered secondary employment. The assumption, type, and scope of secondary employment are to be subject to approval by the authority responsible for administrative supervision. The competent authority may prohibit secondary employment of prosecutors, where it interferes with the performance of official duties (Art. 42, Public Prosecutor Act).

145. The authorities report no restrictions for prosecutors regarding holding of financial interests, including shares in a company, bonds, notes or other financial instruments, and neither on being employed in certain posts/functions, or engage in other paid or non-paid activities, after exercising a prosecutorial function. The GET is of the view that the future code of conduct should cover the issues of external activities and financial interests (see para. 142).

Recusal

146. A mechanism for preventing conflicts of interests has been set out (Art. 24, Public Prosecutor Act). Unless there is imminent danger, every prosecutor must refrain from all prosecutorial acts from the time where a ground for exclusion is known. As soon as a ground for exclusion is known, every prosecutor is required to notify that ground to the Prosecutor General and, if the ground concerns the Prosecutor General him/herself, the Deputy Prosecutor General. The Prosecutor General and, if it concerns the Prosecutor General him/herself, the Deputy Prosecutor General is required to exclude the prosecutor concerned if there is a ground for rejection or exclusion, and to entrust that prosecutor's deputy with the execution of these tasks in accordance with the allocation of duties.

147. Further, prosecutors may themselves request to be excluded, or may be recused by the accused and the parties to the proceedings if:
- there is a close friendship, personal enmity, or a special relationship of obligation or dependency with the accused or a party to the proceedings;
- they have a legal dispute with the accused or a party to the proceedings or might be biased in the case on other grounds.

148. The rejection of a prosecutor must be notified within five days of knowledge of the ground for rejection.

Gifts

149. Prosecutors are prohibited from accepting gifts or other advantages offered to them or their relatives directly or indirectly in relation to the discharge of their office (Art. 40,

Public Prosecutor Act). They are also prohibited from soliciting gifts, or other advantages in relation to the discharge of their office or from having such gifts, or advantages promised to them.

Third party contacts, confidential information

150. Prosecutors must respect secrecy regarding all facts coming to their knowledge exclusively through their official activity vis-à-vis everyone to whom they do not owe the duty of official notification regarding such facts (Art. 38, Public Prosecutor Act). The obligation of secrecy persists when they are off duty and retired as well as after the end of service. When off duty, the prosecutors may not express their views regarding the criminal cases for which they are responsible.

151. If prosecutors must testify before a court or administrative authority, they must notify the authority responsible for administrative supervision and communicate the subject matter of the requested statement to that authority (Art. 39). If the interest in the statement outweighs the interest in secrecy, the prosecutors may be released from the obligation of secrecy. The following will be responsible for releasing prosecutors from the obligation of secrecy: (i) in the case of the Prosecutor General, the Government; (ii) in the case of other prosecutors, the Prosecutor General.

Declaration of assets, income, liabilities and interests

152. Apart from the provisions relating to prohibition of acceptance of gifts (Art. 40, Public Prosecutor Act) and regulation of secondary employment (Art. 42, Public Prosecutor Act), Liechtenstein legislation contains no provisions regarding the prosecutors' obligation to declare assets, the holding of financial interests, sources of income, liabilities, offers of remunerated or non-remunerated activities and agreements for future such activities, or any other interest or relationship that may or does create a conflict of interest.

Supervision

153. In addition, the President of the Supreme Court acts as the service tribunal for the Prosecutor General and other prosecutors. A service senate of the Supreme Court, consisting of three judges, acts as an appellate body. This means that disciplinary proceedings against prosecutors would be dealt with by the Supreme Court. There have been no disciplinary sanctions against prosecutors in the last 20 years. The GET considers that the development of a code of conduct of prosecutors will need to be taken into account and breaches of the standards included in this code be linked to the existing disciplinary procedure.

Advice, training and awareness

154. Candidates wishing to apply for prosecutorial vacancies must first undergo a three-year practical training. From the information obtained by the GET during the visit, integrity matters are not specifically addressed as part of training. In this respect, the GET refers to its earlier recommendation on a code of conduct and underlines the need for training on the standards laid down in it. As to advice on integrity matters, in the absence of specific focus on integrity matters, prosecutors would informally seek advice from within their own ranks. The authorities should therefore ensure that prosecutors can obtain confidential advice on integrity matters. **GRECO recommends that (i) training on various topics relating to ethics and integrity be provided on a regular basis for prosecutors, and (ii) the possibility be given to prosecutors of obtaining confidential advice on these subjects.**

VI. RECOMMENDATIONS AND FOLLOW-UP

154. In view of the findings of the present report, GRECO addresses the following recommendations:

Regarding members of parliament

i. **that measures be taken to increase the transparency of the legislative process insofar as the preliminary examination of draft legislation by parliamentary commissions is concerned** (paragraph 27);

ii. **that a code of conduct for members of parliament be adopted, covering various relevant integrity matters, containing practical guidance and being made accessible to the public** (paragraph 34);

iii. **that a requirement of *ad hoc* disclosure be introduced when a conflict may emerge between specific private interests of a member of parliament and a matter under consideration in parliamentary proceedings (in plenary or commission work)** (paragraph 36);

iv. **that rules on gifts and other advantages – including advantages in kind – be developed for members of parliament and made easily accessible to the public** (paragraph 40);

v. **that rules on contacts between members of parliament and third parties seeking to influence parliamentary proceedings be introduced** (paragraph 42);

vi. **(i) introducing a system of public declarations of the members of parliament's financial and economic interests (income, assets and significant liabilities); and (ii) that consideration be given to including in the declarations information on spouses and dependent family members (it being understood that such information would not necessarily be made public)** (paragraph 47);

vii. **that measures be taken to ensure the appropriate supervision and enforcement of the future obligations concerning disclosure and the standards of conduct of members of parliament** (paragraph 52);

viii. **that (i) training and awareness-raising measures be taken in respect of members of parliament concerning the conduct expected of them under the rules on integrity and the declaration of interests; and (ii) MPs be provided with confidential counselling on these issues** (paragraph 56).

Regarding judges

ix. **that (i) the role of the judiciary in the selection process of judges be significantly increased; (ii) all vacancies for posts of judges be made public by law and that the procedure be made more transparent; (iii) integrity requirement for the selection of judges be introduced and guided by precise and objective criteria which are to be checked before appointment and that such criteria be made public** (paragraph 75);

x. **that a judicial code of conduct, accompanied by explanatory comments and practical examples, be adopted by the judiciary, supervised and made public** (paragraph 90);

xi. **that (i) the issue of the full professionalisation of all judges and limiting the number of part-time judges be given careful consideration; (ii) rules on conflicts of interest dealing with the specific situation of part-time judges also working as practising lawyer be introduced** (paragraph 97);

xii. **that (i) training on integrity matters based on the future judicial code of conduct be set up; (ii) confidential advice be made available to all judges** (paragraph 126).

Regarding prosecutors

xiii. **that the notion of "personal and professional suitability" be further refined with criteria for assessing a prosecutor's integrity** (paragraph 131);

xiv. **that adequate safeguards be added to Article 50 of the Public Prosecutors Act against it being used to dismiss a particular prosecutor as a retaliation measure** (paragraph 134);

xv. **that a code of conduct, accompanied by explanatory comments and practical examples, be developed for prosecutors and made accessible to the public** (paragraph 142);

xvi. **that (i) training on various topics relating to ethics and integrity be provided on a regular basis for prosecutors, and (ii) the possibility be given to prosecutors of obtaining confidential advice on these subjects** (paragraph 154).

155. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Liechtenstein to submit a report on the measures taken to implement the above-mentioned recommendations by 31 March 2022. These measures will be assessed by GRECO through its specific compliance procedure.

156. GRECO invites the authorities of Liechtenstein to authorise, at their earliest convenience, the publication of this report, to translate the report into the 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 anticorruption 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 anticorruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

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