GRECO

Group of States against Corruption

Groupe d'États contre la corruption

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

FOURTH EVALUATION ROUND

Adoption: 12 December 2014
Publication: 23 June 2015

Public
Greco Eval IV Rep (2014) 4E

FOURTH EVALUATION ROUND

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

EVALUATION REPORT

MALTA

Adopted by GRECO at its 66th Plenary Meeting
(Strasbourg, 8-12 December 2014)

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Directorate General I
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EXECUTIVE SUMMARY

1. The geographical situation and population size of Malta has a significant effect on personal and professional relationship networks and in shaping domestic policies. This can, on the one hand, help ensure transparency and act as a restraint on power and wrongdoing in its community, but, on the other hand, also involves risk factors which can increase vulnerability to corruptive practices. To mitigate the risk, openness and accountability, not only at central, but also at local level, are essential at all times. For all three of the professional functions which are the focus of this Fourth Round Evaluation of Malta (i.e. parliamentarians, judges and prosecutors) the handling of interpersonal relationships and addressing real or potential conflicts of interest are clearly critical challenges.

2. In recent years, Malta has carefully considered corruption prevention policies and has significantly improved disclosure practices in the work of its public institutions, thereby making them more open to public scrutiny. Two reforms are currently ongoing in the areas under evaluation in the present report, notably aimed at strengthening answerability of members of parliament in the performance of their duties and at increasing efficiency in the justice system. If adopted, and ultimately implemented, with pace and determination, these reforms have the potential to instil greater transparency, accountability and integrity in the legislative and judicial branches.

3. Parliamentarians, in Malta are generally part-time legislators who also maintain their private practices. The potential for a conflict of interest due to the personal and professional networks and business links built across Malta, make maintaining decision-making independence, and being able to publically demonstrate this independence, a live issue. A number of good disclosure rules and practices have been introduced in recent years and the House of Representatives does now have a notable level of transparency in its formal legislative processes. While the House of Representatives must be commended for instituting a Code of Ethics for its members almost 20 years ago, that code is now due for thorough revision and update: it does not sufficiently cover some topics that one might expect to see in such a code (e.g. third party contacts, misuse of confidential information, misuse of public resources – money, offices, equipment, facilities, staff, etc.) and several of its provisions raise substantial questions and ambiguities with regard to their application (e.g. acceptance of gifts, honoraria, disclosure of personal interests at the outset of parliamentary debates, etc.). There is no designated source of counselling or training with regard to the code, and it also lacks an adequate supervision and enforcement mechanism. A Standing Committee is currently working to address ethical issues in Parliament; draft legislation is now underway to reinforce ethical conduct and accountability in public life. This legislation is a step forward that, if adopted, will apply not only to members of parliament in general, but also to ministers, parliamentary secretaries, parliamentary assistants, as well as employees in a position of trust and persons engaged as advisors or consultants to government and any statutory body.

4. In general, the Maltese justice system experiences rather long delays. Moreover, there have been some scandals in recent years involving judges which have somewhat tarnished the traditionally acknowledged sound reputation of the Maltese judicial system and have triggered a debate on integrity and accountability matters within the judiciary. As a result, popular satisfaction with justice as a whole has never been so low. There are certainly some shortcomings in the current system which could constitute problems in the future, and opportunities which have not been fully exploited for anti-corruption purposes. More particularly, the system governing the appointment and discipline of judges is due for an overhaul with the overall aim of instilling greater transparency and independence in such processes; this would additionally help to clarify public expectations about the qualities and standards of behaviour expected from those in judicial office. Likewise, the development of training and dedicated channels of support on judicial ethics and behaviour can only prove to be an asset for the professionals

concerned. A holistic reform of the judicial system is underway, concrete measures have been proposed to increase the efficiency and effectiveness of the justice system and thereby increase public trust as a result; these measures currently await implementation action.

5. Prosecutorial activity is shared between the police and the Attorney General (AG). The AG has freedom of choice about how to handle cases and is not subject to directives or policy guidelines laid down by the executive. In this connection, the AG Office has secured a track record of independence in its action, and is a trusted institution among Maltese citizens. In the course of justice reform, key attention must be attached to formalising conditions of service (including appointment, promotion and dismissal mechanisms, as well as working protocols) and to further refining the ethical and accountability frameworks for prosecutors.

I. INTRODUCTION AND METHODOLOGY

6. Malta joined GRECO in 2001. Since its accession, the country has been subject to evaluation in the framework of GRECO's First (in December 2002), Second (in July 2005) and Third (in October 2009) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's homepage (www.coe.int/greco).

7. 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.

8. 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.

9. 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.

10. In preparation of the present report, GRECO used the responses to the Evaluation Questionnaire (Greco Eval IV Rep (2014) 3 REPQUEST) by Malta, 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 Malta from 23 to 27 June 2014. The GET was composed of Mr Kazimir ÅBERG, Senior Judge, Svea Court of Appeal (Sweden); Mr Benjamin FLANDER, Senior Lecturer, Faculty of Criminal Justice and Security, University of Maribor (Slovenia); Ms. Sheridan GREENLAND, Executive Director, Judicial College, Judicial Office (United Kingdom) and Ms. Jane LEY, Senior Anti-Corruption Advisor, US State Department, former Deputy Director, US Office of Government Ethics (USA). The GET was supported by Ms Laura SANZ-LEVIA from GRECO's Secretariat.

11. The GET held interviews with representatives of the Ministry of Justice, Culture and Local Government (including those in charge of the ongoing "Justice Reform"), and the Office of the Ombudsman. The GET held interviews with the Chief Justice, as well as with other representatives of the responsible prosecutorial (Office of the Attorney General and Police) and adjudication authorities (judges of different jurisdictions in Malta), the Commission for the Administration of Justice, and the Judicial Studies Committee. The GET also held meetings with representatives from the Chamber of Advocates and the Association of Judges and Magistrates. In addition, the GET spoke with members of Parliament (from both parties in government and the opposition) and

representatives of the Secretariat of the Parliament. Finally, the GET met with journalists and academia.

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

II. CONTEXT

13. Malta's population is 425,384[1]. For Maltese citizens the issue of corruption ranks high in the scale of their pressing concerns. According to Transparency International 2014 Corruption Perceptions Index, Malta ranks 43rd out of 177 countries (where 1 = least corrupt). The latest Eurobarometer shows that, while only 2% of Maltese citizens have ever been asked or expected to pay a bribe and 58% of the population believes that the Government is effectively fighting corruption, about 83% consider corruption to be a widespread problem in Malta (the EU average being 76%), in particular, in connection with the management of public funds by local councils and the issuing of building and land development permits.

14. Malta has placed key importance on the prevention of corruption and on the value of instilling transparency in the system. The adoption of the Freedom of Information Act in 2009, pursuant *inter alia* to a recommendation made by GRECO, has been an important development in this respect. In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy; the Ministry of Finance is currently updating the strategy. The Permanent Commission against Corruption (PCAC), a specialised body dealing exclusively with the investigation of alleged or suspected corrupt practices within public administration, was established in 1988; however, its track record has not been as successful as hoped for to date. According to a national report released in July 2013, none of the 425 investigations conducted by the PCAC since its creation had resulted in criminal proceedings in court[2]. GRECO has repeatedly noted that, for the PCAC to be a meaningful instrument in the fight against corruption, its role needed to be strengthened in terms of both powers and resources. The existence and continuation of the PCAC, in its current form, is at present under review.

15. GRECO concluded in its First Evaluation Round Report on Malta, adopted in 2002, that there were few prosecuted and adjudicated cases of corruption. Since then, there have been a number of different amendments to criminal legislation. Measures have been put in place by the authorities to make institutions, such as the Police, more effective. At the time of the Third Evaluation Round visit to Malta, in 2009, the officials interviewed on-site considered the existing criminal laws sufficient and the enforcement framework satisfactory, explaining the limited case law available by the small size of the country. Having said that, Malta was shaken by a corruption scandal in 2002, when the then Chief Justice (the highest judge in Malta) and another judge were found to have accepted bribes for lowering a prison sentence. More recently, there have been a large number of convictions for trading in influence, relating to systemic wrongful issuing of navigation certificates. These proceedings resulted from the recent introduction of trading in influence provisions under Maltese criminal law.

16. As for the categories of persons under review in the present report, while Malta is one of the countries within the EU where citizens are less likely to think that corruption is rampant among its politicians, about 42% of the respondents to a 2014 EU survey on corruption have expressed certain mistrust regarding this matter[3] (EU average is 56%). There is an ongoing reflection on further developing the ethical and integrity structure within the Parliament; draft legislation is now underway to this effect. Likewise, the adoption of the Financing of the Political Parties Act can represent a decisive step in the setting up – for the first time in Malta – of a national legal framework regulating political financing, and providing for greater transparency and accountability in this area.

17. Whilst the Maltese judiciary has traditionally enjoyed high levels of trust, opinions are now divided: 45% of the Maltese trust the judiciary while 47% tend not to trust it[4]

[1] National Statistics Office. Data as of 1 January 2014.
[2] First Justice Reform Commission Report (http://www.judiciarymalta.gov.mt/newsdetails?id=87).
[3] Special Eurobarometer No. 397 - 2014 (http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf).
[4] Special Eurobarometer No. 397 - 2014 (http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf).

(EU average is 32%). Maltese citizens face the longest delays of any justice system within the 28 EU Member States. The recent EU Justice Scoreboard Report (2014) puts Malta in a comparatively poor position relative to other countries[5]. In criminal cases, the average length of time to resolution is over 800 days. In April 2013, the justice system became the focus of discussion with a reform being launched to restore public confidence. The proposed reform of the justice system now awaits concrete implementation action.

[5] EU Justice Scoreboard (http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf) and Council of Europe CEPEJ Study on the functioning of judicial system in the EU Member States (http://ec.europa.eu/justice/effective-justice/files/cepj_study_scoreboard_2014_en.pdf).

III. CORRUPTION PREVENTION IN RESPECT OF MEMBERS OF PARLIAMENT

Overview of the parliamentary system

18. Malta is a parliamentary republic with legislative power vested in the House of Representatives, a unicameral parliament elected for a five year term. The House of Representatives is composed of 65-69 seats; the number of seats may vary in order to reflect the election results as much as possible. The most recent national elections were held on 9 March 2013. The House of Representatives is currently composed of 69 members: 59 men and 10 women (85.71% and 14.29% ratio, respectively); 39 seats are taken by the Labour Party (LP) and 30 seats by the Nationalist Party (PN). The main functions of Parliament are the enactment of laws and the oversight of the executive. MPs (apart from the ministers and parliamentary secretaries, the Speaker, the leader of the opposition and certain MPs holding key positions in their respective political parties) work on a part-time basis[6]. Parliament meets just three times a week. The internal organisation and conduct of work of Parliament is set out in its Standing Orders[7].

19. The mandate of an MP ceases: if disqualification occurs (an exhaustive list of grounds for disqualification is included in Article 54 of the Constitution, e.g. non-citizen of Malta, if holding another public office, if declared bankrupt, etc.); if considered mentally unfit by a court; if convicted and sentenced to imprisonment exceeding 12 months; if disqualified from registration as a voter for parliamentary elections; or in case of resignation, dissolution of the Parliament and death (Article 55, Constitution).

20. Parliament oversees the activity of the executive branch of power. For example, the Public Accounts Committee is now carrying out an inquiry into the so-called Enemalta case and the level of responsibility of the ministers in charge of public procurement and energy sector portfolios[8]. Measures are currently on the pipeline to increase parliamentary autonomy, including by enhancing its administrative self-governance (i.e. budget, recruitment and management of personnel, and parliamentary broadcasting)[9].

Transparency of the legislative process

21. Bills are published in the Official Gazette prior to their consideration by Parliament. When a Bill goes through all its stages and becomes an act of Parliament, it is again published in the Official Gazette. On this date its provisions are brought into force unless otherwise stated in the same law. There are some instances when public consultations are organised throughout the drafting process of the law taking the form of a white paper whereby civil society is invited to provide feedback (for example, a White Paper on Party Financing was published in February 2014). Public participation may also occur if so decided by the Consideration of Bills Committee, i.e. through feedback of civil society during the aforementioned Committee sessions.

22. Legislative provisions are in place to assure transparency of parliamentary work. In Malta, all the parliamentary stages of the legislative process are open to the public. In particular, parliamentary debates and Committee meetings can be attended by the public and are in any event broadcast live on a local broadcasting station. Sessions are streamed live in audio format and the stream is also available on-demand on the Parliament's website immediately after the sitting is adjourned. Since 2013, all

[6] In the present legislature (12th Legislature, 2013-2018), the Speaker of the House is serving, for the first time, on a full-time basis.
[7] Standing Orders of the House of Representatives: http://www.parlament.mt/standing-orders?l=1.
[8] The GET was informed that a July 2013 report by the Auditor General raised concerns regarding oil contracts extended by the state utility corporation Enemalta during the period 2008-2011. Performance Audit Report: An analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement. 16 July 2013. http://www.nao.gov.mt/loadfile.ashx?id=e5b06974-1496-4414-8304-cc66f270aaed.
[9] Report of the Commission on Administrative Autonomy. 21 May 2014. www.parlament.mt/file.aspx?f=47418.

parliamentary committees are audio visual live-streamed. Likewise, agendas, minutes and transcripts of the parliamentary debates held in Parliament are published online. Parliamentary questions submitted by MPs along with the Minister's reply, documents relating to the day-to-day running of Parliament, papers laid on the Table of the House by MPs during the parliamentary sittings held in plenary, etc. are also public. Voting is recorded and registered in the House minutes. The GET was also informed of a number of initiatives introduced in the present legislature (12th legislature) to strengthen accessibility to Parliament's work (e.g. publication of rulings in *Is-Sedja Titkellem*- Volumes I and II, magazine *mill-Parlament*, a proposed publication on parliamentary diplomacy, etc.). Finally, arrangements are being discussed to ensure that, in addition to video audio lived streaming of parliamentary work, Parliament would also have its own independent parliamentary channel.

23. The composition of parliamentary committees is a matter of public record. The Maltese Parliament currently has twelve Standing Committees (permanent legislative panels) and two Select Committees (appointed to perform a special function). There is currently a Select Committee on the appointment of a commissioner and a standing committee on standards, ethics and proper behaviour in public life[10]. In addition to the electronic transparency noted above, agendas, minutes and transcripts of all debates held by the relevant Standing and Select committees, together with documents presented during their meetings, are a matter of public record. The Office of the Clerk is responsible for facilitating public access to parliamentary documents and activity.

24. As illustrated above, the GET considers that Malta has many positive rules and practices designed to enable public access to proposed and then adopted legislation, and to allow for follow-up to committee and plenary work of Parliament. There is a commendable level of electronic transparency of the formal legislative processes.

Remuneration and economic benefits

25. The average gross annual salary in 2013 in Malta was 15 772€[11].

26. MPs receive a salary of 20 604€ per year[12] and have the right to receive benefits and compensation for expenditures in connection with their duties; they do not enjoy any tax exemption. In addition to salary they also receive allowances, including (i) fixed line telephony at own residence (unlimited); (ii) internet service at own residence (30€/month); (iii) postage paid envelopes to local addresses (100 envelopes per week). MPs are also covered by a pension scheme. The offices supporting individual MPs are not entitled to a budgetary allocation by the State. Cabinet members do not get honoraria or benefits from the House of Representatives in this legislature. The GET was told that the level of pay and benefits referred to above reflects the mentality of a part-time Parliament where MPs are expected to make money in their private practice rather than from their public position.

27. Control over parliamentary allowances is undertaken by the Auditor General. Information on MPs' salaries and additional benefits is public and supplied upon request by virtue of the Act on the Right of Access to Information.

[10] Standing Committees: House Business Committee, Privileges Committee, Public Accounts Committee, Foreign and European Affairs Committee, Social Affairs Committee, Consideration of Bills Committee, Family Affairs Committee, Economic and Financial Affairs Committee, National Audit Office Accounts Committee, Environment and Development Planning Committee, Health Committee, Parliamentary Group of European Capital of Culture. Select Committees: Select Committee on the appointment of a commissioner and a standing committee on standards, ethics and proper behaviour in public life, Select Committees Archive.
[11] Source: National Statistics Office (http://nso.gov.mt/docs/sdds.html).
[12] This amount is equivalent to 50% of the civil service Salary Scale 1.

Ethical principles and rules of conduct

28. MPs must swear an oath of allegiance before taking office (Article 68, Constitution; Article 5, Standing Orders of the House of Representatives). Rules on order and decorum during parliamentary sessions are contained in the Standing Orders of the House of Representatives (Chapter IV); the non-observance of these rules may result in suspension.

29. A Code of Ethics was adopted in 1995; it sets standards of correct behaviour for MPs. This codification was reportedly made to provide a further tool for public scrutiny and to enhance accountability. Parliament is currently working on additional measures to strengthen its integrity policy. To this aim, a Select Committee on the appointment of a commissioner and a standing committee on standards, ethics and proper behaviour in public life was established in October 2013. On 16 December 2013, the said Select Committee released an interim report on its work[13]. The final recommendations regarding the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life were presented on 24 March 2014. The aforementioned draft expands on conflicts of interest situations, supervision, advice and enforcement measures on ethical and integrity rules. The draft, if adopted, would apply to MPs (including ministers, parliamentary secretaries and parliamentary assistants), as well as employees in a position of trust and persons engaged as advisors or consultants to Government and any statutory body.

30. While an MP is in duty bound to relay the complaints of his/her constituents and to make representations in their name to Government authorities, the member is expected not to use any improper influence, threats or undue pressure in the course of his/her duties (Code of Ethics, Article 4). An MP is expected to report to the Speaker and to the competent authorities any attempt at corruption, pressure or undue influence by third persons, aimed at influencing his/her conduct as a member (Code of Ethics, Article 5, paragraph 9).

31. The Parliament should be commended for instituting a code almost 20 years ago; other than adding provisions for parliamentary secretaries, the Code has not been significantly revised since[14]. It is being appended, as it stands, to the proposed legislation that is intended to enhance the integrity system of the Parliament. In the GET's view, the present Code of Ethics can well benefit from further development. More particularly, the Code does not cover some topics that one might expect to see in such a code (see paragraphs 39-41 regarding the absence of specific rules on misuse of confidential information and third party contacts, as well as paragraph 42 on the lack of provisions addressing the misuse of publicly provided resources). Further, it includes provisions that can easily be read as inconsistent or can actually mislead (e.g. concerning gifts and honoraria, see paragraphs 36 and 37). Moreover, there is no adequate supervision or enforcement mechanisms, relying heavily instead on the discretion of each member. Further, the Code lays out a financial/activity declaration system that appears not to be able to function fully as a tool to help prevent conflicts of interest and corruption. (details of the particular limitations in the financial/activity declaration system appear below in paragraphs 43 and 44). And finally, the GET believes that more can be done to further embed this Code in parliamentary culture as a guiding instrument for helping to prevent

[13] The interim report of the Committee is available online and has been subject to public consultation (http://www.parlament.mt/selectcomm?l=1).

[14] Paper Laid 4270, 24 March 2010 was presented in the House as an amendment to the Code of Ethics of Ethics for Ministers and Parliamentary Secretaries. The amendment added Section H (articles 61 – 66) to the Code thereby making it applicable to Parliamentary Assistants. Following the 1995 amendment (Act XI of 1995) by means of which the Code of Ethics applicable to Members of Parliament was added to the House of Representatives (Privileges and Powers) Ordinance, the Ordinance was amended by Legal Notice 409 of 2007. However this amendment did not have any effect on the Code of Ethics because it was only related to the currency conversion (following Malta entry into the eurozone) of the fine that can be applied under this Ordinance.

corruption and promote integrity and public trust. The ongoing debate launched with the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life appears to be a timely opportunity to set in motion the steps necessary to address these issues. The authorities confirmed that these are all matters which are indeed being considered at present by Parliament. Therefore, **GRECO recommends that a thorough review of the current provisions of the Code of Ethics for members of parliament and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest be undertaken with a view to adopting improvements that will provide more subject matter coverage, consistency and clarity, as well as guidance.** The examples referenced earlier in this paragraph and the topics in later discussions referencing this recommendation (paragraphs 31, 36, 37, 41, 42 and 44) are expected to be considered for possible inclusion in improvements made as a result of this review. Supervision and enforcement of the Code of Ethics for MPs is dealt with in a separate recommendation (see paragraph 46). GRECO further trusts that the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life, if adopted, can help in addressing the above-raised concerns; it is certainly crucial that the law's provisions on paper follow also in practice.

32. The GET notes that there is also a Code of Ethics for ministers and parliamentary secretaries that includes, among other matters, a section on the private interests of the minister and a financial declaration system. Its enforcement is also a matter which will fall, according to the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life, under the responsibility of the Office of the Commissioner. This Code raises many of the same concerns as does the Code of Ethics for MPs. However, the Code for Ministers, its enforcement and implementation is not at issue in this review because it covers the minister in his or her executive role, not in a legislative role.

Conflicts of interest

33. An MP, who has professional interest, including work interest consultancy, management or any form of connection, pecuniary or otherwise, with persons, groups or companies, that have a direct interest in legislation before the House, must declare his/her interest in the House, at the first opportunity, before a vote is taken on the second reading of a bill (Code of Ethics, Article 5, paragraph 5).

34. In terms of recusal, as opposed to declaring an interest before the House, Order No. 89 of the Standing Orders of the House of Representatives, states that no member is entitled to vote in the House, or appointed by the House upon a question, in which s/he has a "direct pecuniary interest" (a different test than that triggering oral declarations noted above). The House is entitled to suspend a member who has breached the aforementioned rule from attending the sittings for the rest of the session; this sanction is applied upon motion of the House, moved by any member, adopted by simple majority. Every member, however, is entitled to vote upon any question relating to personal emoluments or parliamentary allowances to which s/he may be entitled. There is no definition of "direct pecuniary interest" nor has there been any written and circulated interpretations that would provide guidance to MPs, and the GET was told that, generally, anyone with a question would normally go to the whip of his/her political party for advice on the application of the provision. The GET notes, however, that a whip is placed in an organisational conflict of interest between the role as the source of advice on whether or not a member should recuse, and the role of ensuring that all party members do vote. Whenever one party holds only a slight majority (although currently not the case in Malta), the number of votes cast is crucial for both. In the GET's view, this issue merits further attention and should be a part of the evaluation referred to in recommendation (i), paragraph 31.

Prohibition or restriction of certain activities

Incompatibilities, accessory activities and post-employment restrictions

35. There are no outside employment, ownership or leading person restrictions save a narrow provision in the Constitution relating to positions with entities with Government contracts (see paragraph 38). Rather, there are some requirements to declare annually certain information about outside employment/business interests, i.e. on any directorships or other official positions in commercial companies, associations, boards, co-operatives and other forms of pecuniary interests. On site, the GET was told that most MPs either work in another public service position or are self-employed. A few work for the financial services industry. There are no post-employment restrictions either.

36. MPs cannot receive any remuneration or compensation, under whatever form, for his/her work as a member of the House of Representatives, other than the official remuneration to which an MP is entitled (Code of Ethics, Article 3). There is no corresponding requirement, however, to disclose outside sources and amounts of income received by them, only a requirement that the member report his/her profession, or if employed, the name of the employer. However, an MP can accept an honorarium for a speech, writing or publication, or other similar activity, from any person, organisation or company so long as the amount is not in excess of the usual and customary value for such services (Code of Ethics, Article 5, paragraph 7). In the GET's view in practice, these two provisions can be difficult to reconcile when particularly a speech, but also an article or publication specifically about ongoing activities of Parliament could be considered a part of one's expected parliamentary duties, but the rules allow a member to accept an honorarium in relation to these activities. The GET notes that there is no guidance regarding topics that might be so closely connected to parliamentary duties as to raise questions about the purpose of the payment. Further, an honorarium can be paid by a party that has a direct pecuniary interest in a legislative matter. Finally, the current financial declaration system does not require the member to report the source and amount of an individual honorarium as a separate entry, so there is no potential for parliamentary or public oversight of who is paying which member for what and how much. A review of these issues should be a part of the analysis undertaken in response to recommendation (i), paragraph 31.

Gifts

37. The GET notes that the Code has a broad gift restriction: members are prohibited by the Code of Ethics from accepting gifts from any person or persons, groups or companies that have or had any direct or indirect interest in legislation before the House. (Article 5(f), Code of Ethics)[15]. However, the Code contains no definition of a gift. That lack or some level of consistent and publicly understood interpretation of what constitutes a gift could easily raise reasonable questions in context with other provisions, specifically provisions that still allow those with direct interests in legislation to pay honoraria and to pay for foreign travel of the member (both voluntary payments). These apparent anomalies exist in the context that a member can also be employed by persons or companies that have direct interests in legislation. Gifts are not required to be reported. Foreign travel is required to be reported to the Speaker and there is a separate section on the annual financial/activity declaration form for that purpose, but, in context,

[15] As noted in GRECO's Third Evaluation Round Report, however, the campaigns of candidates for election to Parliament (which would include those seeking re-election) are primarily funded by private contributions. While sources of contributions to and expenditures of candidates are required to be reported, the spending limit for a campaign is so low that the GET at the time heard that candidates only report income and expenses up to that limit and that very often did not reflect reality. This issue, as well as limitations on the sources of contributions, was the subject of a specific recommendation made by GRECO (http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)2_Malta_Two_EN.pdf). While there have been two draft bills on campaign finance, neither has been enacted, so the issue of full transparency of and limitations on contributions to candidates has yet to be addressed by Malta.

both the treatment of honoraria and foreign travel raise the issue of what really is meant by the gift restriction. Again a review of the treatment of this topic would be expected to be a part of the activities undertaken in response to recommendation (i), paragraph 31.

Financial interests, contracts with State authorities

38. An MP cannot be a party to, or a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, a contract with the Government of Malta – being a contract of works or a contract for the supply of merchandise to be used in the service of the public. An MP may be exempt from the application of this provision by the full House if these circumstances arise during current service (Article 54 c), Constitution).

Misuse of confidential information and third party contacts

39. There are no provisions in the Code of Ethics or the Standing Orders that address the misuse of confidential information by MPs or how MP's should appropriately deal with third parties attempting to affect Parliamentary actions before those attempts reach the level of corruption or undue influence. With regard to the latter, there is a provision that requires a member to report to the Speaker and other competent authorities any attempt at corruption, pressure or undue influence by a person aimed at influencing the member's conduct. Further, Malta still lacks an adequate legislative framework regarding the transparency of candidates' campaign contributions—a recommendation made as a part of the GRECO Third Round Evaluation.

40. The GET was told on site that, in Malta, lobbying was not a prominent activity, but that there is some lobbying, for example, in the area of environment. While not a topic under review but informative as to transparency, there is no separate system for lobbyists to register or report their activities with regard to Parliament. The draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life remains silent as to the issue of third party contacts and lobbying. In the GET's view, this issue is a challenging one in the Maltese context where most members of parliament carry out their functions on a part-time basis. Although there is nothing wrong in MPs having other occupations, there are, however, inherent risks of MPs' private interests creating conflicts of interest with the full exercise of their public duties and a danger for decision-makers to cross the line into becoming advocates of private interests.

41. The GET believes that guidance or regulation in these areas could significantly assist with ensuring MPs understand what is expected of them when dealing with third parties and provide the public with information regarding the potential links of those third parties to the members' election and subsequent actions. This is therefore another area to be covered when implementing recommendation (i), paragraph 31.

Misuse of public resources

42. There is no restriction that addresses the misuse by a member of public resources (i.e. funds, staff time, equipment, facilities). This again is a matter that should be tackled when implementing recommendation (i), paragraph 31.

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

43. The Code of Ethics requires all MPs to submit an annual declaration (each April) listing details about their work or profession, the identity of any employers, immovable properties (but not values) owned by themselves or their spouses and underage children, and shares in commercial enterprises, investments and money deposited in banks. The Code also requires MPs to declare any directorships or other official positions in commercial companies, associations, boards, co-operatives or other forms of pecuniary

interests. They must also declare any paid travel abroad (Code of Ethics, Article 5, paragraphs 1-4 and 8). There is no requirement to declare such items as liabilities, gifts and honoraria. The GET was told that, in the current legislature, all MPs had filed their annual declarations. This has not been the case in the past; for example, the GET was informed of a case in which an MP had failed to file the asset return for four consecutive years, and some other cases when forms were even filed in blank.

44. The annual declarations, as well as the foreign travel declarations, are held by the Speaker but they are not reviewed by anyone in the Parliament to determine if they appear to be facially correct or disclose any potential violation of any rule, regulation or law. The authorities noted, however, that the declarations are open for public viewing upon request, are followed keenly by the media, and can trigger extensive public debate. There are no penalties in the Code of Ethics for late filing, failure to file or false filing. The Speaker indicated to the GET that he felt he had no authority to review them; to the extent that supervision over the declarations occurred, it was left to the public through the media. The GET heard that questions raised about these declarations had occasionally resulted in a member amending the information contained on the declaration form, but little else. Examples of the lack of useful correlation between conduct restrictions in the Code of Ethics and the financial/activity declaration system established by that same code have been discussed earlier in the context of gifts, honoraria and outside employment. The GET notes that whilst containing provisions on supervision and enforcement, the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life, does not amend any other aspect of the current system of declaration. Both a re-evaluation of what information is required by the system itself, the provision of advice and training for members with regard to the system's requirements, and adequate supervision and enforcement of the requirements are a part of the actions expected under recommendations i, ii and iii (paragraphs 31, 46 and 49) of this report.

Supervision and enforcement

45. The Code of Ethics itself contains no enforcement mechanism for the standards to which MPs are expected to adhere nor for the financial declaration system that the Code establishes. Under the current system, the only sanctions available basically refer to non-respect of rules of order and decorum (e.g. offensive words against the House or a member, disorderly conduct in House, etc.), as contained in Chapter 4 of the Standing Orders of the House of Representatives, and mainly consist of suspension, admonition and "name and shame" procedures to be imposed by the Speaker of the House. These sanctions have never been applied to date. The GET was told of one matter regarding "breach of privilege", regarding the use of offensive words against a member of the House (Article 60, Standing Orders of the House of Representatives), that was being investigated under those procedures. Additionally, Standing Order No. 89 provides that, upon motion of the House, a member who has voted upon any question in which s/he has a direct pecuniary interest can be suspended, but the mechanisms for knowing whether that pecuniary interest exists are weak or non-existent. The GET was not surprised to hear that this provision had never been invoked.

46. With regard to the financial/activity declarations that are filed with the Speaker, as noted above, there is no penalty for failure to file, late filing or false/incomplete filing. More importantly, there is no system to review the declarations once filed, nor does the type of information currently required to be filed provide any clear indication of the purpose of the system. The Speaker's Office simply collects the declarations and makes them publicly available for review upon request. This lack of supervision and enforcement of both the established conduct sections of the Code of Ethics and the financial/activity declaration requirements represent important lacunae in any effective program for the prevention of corruption and for the promotion of public trust. The authorities indicated that many of these concerns are addressed in the draft Bill on the Setting up of the Office

of Commissioner and a Standing Committee on Standards in Public Life (see paragraph below for details on how the system is intended to be improved and operate more effectively in the future). GRECO notes that full supervision and enforcement of the requirements of the financial/asset disclosure system and the provisions on conflicts of interest and other parliamentary standards of conduct will require authority and procedures for both the Commissioner and the Standing Committee in their areas of jurisdiction. **GRECO recommends that measures be taken to ensure there is appropriate supervision and enforcement of (i) the rules on the declaration of assets, financial interests and outside activities, and (ii) the standards of ethics and conflicts of interest provisions applicable to members of parliament. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available.**

47. As mentioned before, there is an ongoing reflection on further developing the ethical and integrity structure within the Parliament. This discussion also concerns the potential establishment of a Commissioner for Standards in Public Life and lays out detailed rules to safeguard his/her impartiality and independence. For example, the Draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life states that the Commissioner cannot be an MP, a member of a local council or a public officer. According to the draft, the office of Commissioner should be incompatible with the exercise of any professional, banking, commercial or trade union activity, or any other activity for profit or reward. It is proposed that the Commissioner be competent to (i) examine and if necessary verify asset declarations, (ii) investigate on his/her own initiative or on the written allegation of any person any matter allegedly in breach of any statutory or ethical duties; (iii) give advice on the implementation of the Code of Ethics. The draft also establishes a clear obligation for the House to cooperate with the Commissioner's inquiries. Under the said draft, sanctions then fall under the responsibility of the Committee for Standards in Public Life composed of the Speaker, two members nominated by the Prime Minister and two members nominated by the leader of the opposition. The envisaged sanctions include: admonition, rectification of the breach and repayment of resources improperly used, apology to the House, suspension (entailing loss of remuneration and any pension rights for the period of suspension), loss of salary for a specified period without suspension, and expulsion from the House. While the draft Bill, may, if enacted, meet some of the concerns expressed in this report, it may not meet others, particularly in the area of sanctions for such conduct as failure to file, late filing or making false statements on a financial/activity declaration. In the GET´s view, the Commissioner should be able to provide substantial help with the evaluation that is required under recommendation (i), paragraph 31.

48. MPs enjoy some limited form of immunity (Article 2, House of Representatives (Privilege and Powers) Ordinance). In particular, no civil or criminal proceedings may be instituted against a member for words spoken before, or written in a report to the House (including its committees) or by reason of any matter or thing brought by him/her therein by, for example, petition, bill, resolution, motion or otherwise. According to the common-law system, there is no lifting of immunity strictly speaking, if the Speaker determines that there has been a case of "breach of privilege" or contempt committed "prima facie" against Parliament, s/he refers the matter to the Standing Committee of Privileges. The latter is empowered to investigate the case by summoning or calling experts, witnesses, etc. After conducting such examination, the Committee has only a duty to report back to the House and it is then for the House whether or not to authorise the Speaker to order the police to bring the person who allegedly has committed the illegal act to be summoned/charged before court. The Committee of Privileges does not and has not the power to decide whether a person is guilty or not of an offence. Both committee proceedings and the final decision of the House are matters of public record. It is the court that decides whether the case merits prosecution or whether it only necessitates an admonition by the Speaker. Pursuant to a recent amendment of the

Criminal Code (Act IV of 2013 Criminal Code Amendment Act), bribery offences are not time barred if the public officer at issue was at the time of the offence a minister, a parliamentary secretary, a member of parliament, a mayor or a local councillor and the offence involved the abuse of office. No MP has ever been convicted for a corruption offence, nor has there ever been a case referred to prosecution. The GET takes the view that the scope of immunity afforded to MPs in Malta is generally acceptable. The GET particularly welcomes the recent step taken by the authorities to review the statute of limitations regarding cases involving political representatives in order to ensure a more efficient prosecution and subsequent adjudication of corruption offences.

Advice, training and awareness

49. All MPs are handed a copy of the Standing Orders of the House, as well as the Constitution. These documents are also available on-line at the Parliament's website. For the first time, in the current legislature, a seminar was held for newly-elected MPs providing information on parliamentary practice and procedure. The GET was told that, as a matter of general practice, MPs could, if they chose, seek advice from the whip of their respective political group and that other ways of mentoring/counselling were currently being sought by Parliament. The organisational conflicts inherent for a whip in this role are noted earlier. MPs' questions may also be put to or referred to the Office of the Clerk, under supervision of the Speaker. However, there is no dedicated source for advice and training for all members, nor are there any handbooks for members. Ensuring that MPs are initially made aware of and are periodically reminded of the ethical, conflict of interest and financial/activity declaration obligations expected of them, is an important way of helping prevent both actual and apparent conflicts of interest, as well as to help support a culture of integrity within the institution. To be most effective this introduction to and reinforcement of the standards expected of MPs also requires the active and personal support of the leadership. The authorities indicated that the draft Bill on the Setting up of the Office of Commissioner and a Standing Committee on Standards in Public Life foresees that the Office of the Commissioner would be a source of advice when so requested by parliamentarians in doubt of potential conflicts of interest and other ethical matters. Taking into account the present situation and the weaknesses of the advisory system on integrity matters which is currently available to parliamentarians, as described above, **GRECO recommends (i) establishing a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest in relation to their legislative duties, as well as financial declaration obligations; and (ii) providing regular awareness raising activities for members of parliament covering issues, such as ethics, conflicts of interest, acceptance of gifts, honoraria, hospitality and other advantages, outside employment and activities, declarations of financial/activity interests, as well as other activities related to the prevention of corruption and the promotion of the integrity within the Parliament.**

IV. CORRUPTION PREVENTION IN RESPECT OF JUDGES

Overview of the judicial system

50. According to Chapter VIII of the Constitution of Malta, the judiciary is composed of judges and magistrates who sit either in the superior (judges) or in the inferior (magistrates) Courts. The Maltese judicial system is a two-tier system comprising a court of first instance presided over by a judge or magistrate, and a court of appeal. There is a complex system of courts, boards and tribunals (for a short description of each of those see Annex). The GET was told that a restructuring of the system took place some years ago, in 2007 with the adoption of the Administrative Justice Act and the establishment of the Administrative Review Tribunal, which have meant *de facto* the abolishment of over 30 different tribunals. Furthermore, the law provides for the possibility that specific matters which at present fall within the competence of special tribunals would gradually and progressively be assigned to the Administrative Review Tribunal with the consequent abolition of the former type of special tribunals.

51. There are 20 judges (15 male and 5 female) and 21 magistrates (10 male and 11 female). There are seven (2 male and 5 female) part-time adjudicators who sit in the Small Claims Tribunal which hears cases concerning money claims of a value up to 3 500€. The GET was told that appointments, in the last 10 to 15 years, have been predominantly female; the authorities explained that, although judges and magistrates are appointed on the basis of suitability, there was also a trend to appoint more females to these positions.

52. The Chief Justice is *ex officio* President of the Court of Appeal (in its superior jurisdiction, that is when that court is composed of three judges), of the Constitutional Court and of the Court of Criminal Appeal (in its superior jurisdiction, that is when composed of three judges). S/he is also *ex officio* Deputy Chairman of the Commission for the Administration of Justice and presides over the Rule-Making Boards set up under the Code of Organisation and Civil Procedure and the Criminal Code. The Constitution further provides that whenever the office of President of Malta is temporarily vacant, and until a new President is appointed, and whenever the holder of the office of President of Malta is absent from Malta or on vacation or is for any reason unable to perform the functions conferred upon him/her by the said Constitution, those functions shall be performed by such person as the Prime Minister, after consultations with the leader of the opposition, may appoint or, if there is no person in Malta so appointed and able to perform those functions, by the Chief Justice.

53. The Chief Justice recommends to the Minister of Justice how judges and magistrates are to be allocated between the different courts, and the Minister, in advising the President of Malta as to the assignment of duties of Judges and Magistrates who "shall act in accordance with any recommendation on the matter by the Chief Justice" (Article 101A(13) of the Constitution). If, however, the Chief Justice fails to recommend as aforesaid, or where the Minister deems it appropriate to advise the President of Malta not in accordance with the recommendation of the Chief Justice, then the Minister "shall immediately publish in the Gazette a notice of that fact together with the reasons therefore, and s/he shall make a statement of such fact in the House of Representatives not later than the second sitting immediately after he has so advised the President". Since the introduction of this provision in the Constitution in 1994, the Chief Justice has never failed to make the necessary recommendations, and the Minister of Justice has never refused to advise the President in accordance with the recommendation of the Chief Justice.

54. The Chief Justice may from time to time convene meetings of judges and magistrates, either separately or collectively, and shall regularly consult with the same, individually or collectively, regarding matters concerning the conduct and trial of cases,

the application and conduct of court procedures and proceedings, the implementation of administrative procedures connected with the trial of causes and the conduct of proceedings, the relationship between the judiciary and the Commission for the Administration of Justice, the making of rules of court and such other matters as the Chief Justice may deem appropriate to discuss.

55. Every member of the judiciary has a team as part of his/her "regular" staff (so-called judiciary team). Each judge or magistrate is responsible for his/her own team in so far as related to the work assigned to that judge or magistrate, with the Registrar and the Director General (Courts Division) retaining only remote control over the members of the team in connection with matters of discipline and, in case of emergency, temporary transfer to assist another member of the judiciary.

56. A Commission for the Administration of Justice was established in 1994 in order to supervise the work of the Judiciary (Article 101A of the Constitution). It is composed of the President of the Republic and nine other members: the Chief Justice, the Attorney General, two members elected for four years by the judges, two members elected by the magistrates for four years, one member appointed by the Prime Minister, one member appointed by the leader of the Opposition and one by the President of the Chamber of Advocates. The members of the Commission can be removed by the President only for inability to discharge their functions or for misbehaviour. The Commission appoints its Secretary.

57. The members of the Commission are independent in the exercise of their function, namely: (a) supervise the work of the courts and issue recommendations to the Minister of Justice to increase their efficient functioning or draw the attention of judges and magistrates to any matter that may not lead to an efficient and proper functioning of the court, any conduct that could affect the trust conferred to their functions, or any failure to abide by a code of ethics; (b) advise the Minister of Justice on the organisation of the administration of justice and transmission to him of an annual report on the Commission's activities; (c) advise the Prime Minister (at his/her request) on appointments in the judiciary; (d) elaborate codes of ethics for the judiciary; (e) draws up, on the advice of the Committee for Advocates and Legal Procurators (established by Act No XI of 1994 and composed of practising lawyers, including a representative of the Attorney General), a code of ethics for Advocates and Legal Procurators and exercise discipline over them. The Commission does not have full time staff and the GET was told that their members themselves would carry out their ordinary daily functions and the particular tasks emanating from their membership in the Commission. This was proving to be a challenging situation given the increased level of responsibility the Commission has acquired over time.

58. The applicable rules governing the judiciary are enshrined in the Constitution (Chapter VIII), the Code of Organisation and Civil Procedure and the Criminal Code. In addition, "Rule Making Boards" can be set up for the making of rules of court (a form of subsidiary legislation intended to regulate matters affecting the conduct of court proceedings and which the legislator believes should be regulated by members of the judiciary and the legal profession directly rather than by Parliament, e.g. on leave of absence, on securing and maintaining order and decorum within the buildings of the courts, on case management procedures, etc.). The main rules of court (as amended) currently in force are, under the Criminal Code, the Court Practice and Procedure and Good Order (Criminal Code) Rules of Court – Legal Notice 280/2008; and, under the Code of Organisation and Civil Procedure, the Court Practice and Procedure and Good Order Rules – Legal Notice 279/2008.

59. Confidence in the judicial system has been affected in recent years by some damaging instances of judges, including a former Chief Justice, having been convicted before Malta's own judicial courts of unethical behaviour, including accepting bribes to

reduce a criminal sentence. An effective justice system relies upon public trust and where that trust has been found to be misplaced, the rule of law's foundations and efficacy crumble. In the intervening years, following a further three GRECO rounds of evaluation and compliance, Parliament has introduced a number of legislative measures designed to reduce the potential for corrupt practices and with the aim of rectifying any mistrust in Malta's institutions, which include the judiciary. The pace given to these changes and their reactive nature has not always provided proactive reassurance to the public that unethical practices are unacceptable and that effective sanctions for corrupt practices will be swiftly implemented.

60. In April 2013, the Government established a Justice System Reform Commission (hereinafter Justice Reform Commission). A Final Report including 450 proposals and 34 recommendations for reform, aimed at increasing the efficiency and effectiveness of the justice system and thereby increasing public trust as a result, was published in December 2013[16]. These proposals range from changes to the procedure in summary criminal proceedings in the absence of the accused up to changes to the procedures of appointment, discipline and removal of judges and magistrates. The judiciary initially expressed its concern, during the consultation process that was launched in relation to the reform in the second half of 2013, about some of the proposed institutional reforms and emphasised the need to ensure a robust role for the Commission for the Administration of Justice, which is vested with a constitutional role in the appointment, discipline and removal of members of the judiciary[17]. In this connection, the GET recalls Recommendation CM/Rec(2010)12 of the Committee of Ministers on judges: independence, efficiency and responsibility, which underlines the necessary independence of councils of the judiciary and recommends that not less than half the members of such councils be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary. This has also been reiterated by the Council of Europe's European Commission for Democracy through Law (Venice Commission)[18]. Any future reform in the system would need to ensure that the Commission for the Administration of Justice works under the best possible conditions (including means and powers) to safeguard the independence and impartiality of the judiciary, both in appearance and in reality.

61. The GET was impressed with the assurances given to it that swift legislative action is possible due to Malta's size and parliamentary processes; the GET was told that the Government was planning to implement its ambitious envisaged reform of the judiciary in a timeframe of three years. This advantage would enable Malta to modernise its own system of justice at pace; additional benefits could also be triggered by looking into good practices already developed and tested elsewhere. The GET is appreciative of the background comparative research that the authorities generally carry out when formulating domestic policy, several examples were presented to the GET in this respect.

Recruitment, career and conditions of service

62. Judges in Malta enjoy life-tenure until the age of retirement which is fixed at 65 years old. Judges and magistrates are appointed by the President upon the advice of the Prime Minister (Article 96, Constitution). When so requested by the Prime Minister, the Commission for the Administration of Justice advises on appointments of judges and magistrates. This advisory role of the Commission followed a recommendation issued by

[16] https://opm.gov.mt/en/krhq/Pages/Commission-Reform.aspx.
[17] http://www.judiciarymalta.gov.mt/newsdetails?id=93; http://www.judiciarymalta.gov.mt/newsdetails?id=90.
[18] Report on European Standards as regards the Independence of the Judicial System, Part I – the Independence of Judges, European Commission for Democracy through Law (Venice Commission), CDL-AD (2010)004.
Report on Judicial Appointments, European Commission for Democracy through Law (Venice Commission), CDL-AD (2007)028.

GRECO, in 2002, in its First Evaluation Round[19]. This measure was recommended as an instrument to contribute to the objectivity of judicial appointments; in its compliance phase, in 2005, GRECO was hopeful that Malta would resort to the advisory function of the Commission on a regular basis[20]. Since the Commission was set up in 1994, such advice has been sought only once in connection with the appointment of two judges.

63. To qualify as a magistrate the person must have served for 7 years as an advocate in Malta. To qualify as a judge, 12 years as an advocate or as a magistrate, or partly as a magistrate and partly as an advocate, are required. A Chief Justice may be appointed either from among practising advocates or magistrates having the qualifications required by law to be appointed as judges, or from among serving judges. The authorities are of the view that the fact that, under the current system, persons who are appointed to the judiciary are already experienced lawyers, works as a way to prevent the abuse of judicial power since the appointee would not be new to the judicial system and its requirements of independence and impartiality.

64. Judges and magistrates may be supported by judicial assistants, who are practicing lawyers and can assist the courts on either a part-time or a full-time basis. The GET was told that, in practice, most judicial assistants are part-timers. Judicial assistants are appointed by the President of Malta after selection by a panel consisting of judges and one member appointed by the Public Service Commission. The GET was told that the proposed justice reform has looked into the position of judicial assistant and has proposed abolishing it and establishing a pool of jurists instead. In this connection, the authorities explained that the way in which the system of judicial assistants has been operating since its establishment has given limited results; the new proposal introduces a number of positive changes to assure better working conditions for jurists (e.g. full-time contracts, better remuneration packages, clarification of tasks) thereby increasing the efficiency of their work. The GET also discussed on-site, with the relevant authorities, the benefits that such a system could trigger if then jurists would also be able to opt for a position of magistrate or judge after some years in service. The GET was pleased to note that the authorities are moving into full-time contracts given the inherent risk of a conflict of interest arising between a part-time judicial assistant who, at the same time, may be exercising the profession of advocacy privately. These concerns are equally applicable to boards and tribunals where practicing lawyers act as judges. Several interlocutors also expressed their misgivings as to tribunals and boards having lower levels of independence and autonomy than those required by law for the courts. Such risks are all the more important in a small community such as Malta.

65. Furthermore, in the GET's view, a particular manifestation of the potential for inappropriate influence is the current process for judicial appointment. In particular, there appears to be no formal appointment process, with no invitation to apply and no interviews. The Minister for Justice makes the recommendation based on knowledge of the capabilities of the relatively small numbers qualified and practising. Following the implementation of an advisory function as recommended in GRECO's First Round Evaluation Report in 2002[21], the only time the Commission for the Administration of Justice was consulted prior to an appointment, it had challenges to make about a potential candidate's practical court experience, notwithstanding his evident academic qualifications and professional track record in the international business law field.

66. Public confidence in those entrusted to make important decisions in their lives, needs to be high, particularly following the damage caused by a few appointees amongst a small judicial number who have not met the high ethical standards expected. In the GET's opinion, public confidence in the Maltese judiciary would improve if Malta adopts transparent processes for judicial appointment, demonstrably independent of political

[19] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)8_Malta_EN.pdf.
[20] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoRC1(2005)3_Malta_EN.pdf.
[21] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)8_Malta_EN.pdf.

influence. Setting clear published expectations about the qualities and standards of behaviour expected from those wishing to take judicial office will help to rebuild the confidence lost and provide the benchmark and standards against which recruitment and subsequent behaviour can be judged. Moreover, the process by which applicants are judged to fit the currently unarticulated requirements for these important roles is at present unclear. The GET heard conflicting views about the size and quality of the potential pool of lawyers/magistrates who are qualified for judicial office, since many would not be willing to abandon their private practice to accept judicial office because that office is much less remunerated than that of an established private legal practice. The current parliamentary appointment process was said to be having difficulties finding suitable candidates willing to take the terms and conditions offered. Those appointed were either unaware why they had been asked to become a judge, or had made it known to a politician that they were interested.

67. The GET is therefore concerned about the potential for appointments to be made, or to be perceived as having been made, for reasons of influence rather than suitability for judicial appointment. The Justice Reform Commission has proposed that the Commission for the Administration of Justice nominates judges and submits its recommendations to Government. In the GET's view this would already constitute an important step forward. Therefore, **GRECO recommends that formalised, objective criteria and evaluation procedures be introduced for judicial appointments with guarantees of due independence, impartiality and transparency. The same guarantees of independence, impartiality and transparency are to apply in the appointment of boards and tribunals exercising judicial functions.**

68. The GET further considers that whilst individual applicants names, where not appointed, should not be disclosed, statistical data about numbers of applicants and diversity information, could be publically available and used to inform decisions about whether terms and conditions are sufficiently attractive to enable a quality judiciary to be appointed.

69. Another issue which caught the attention of the GET refers to the use of experts in court, and, more specifically, the way in which they are called to work. The GET heard that the nomination of such experts is at the entire discretion of the responsible judge/magistrate. Although the experts are not part of the bench, and therefore do not take part in the court's decision, their assessment can well play a decisive role in the final judgement. Moreover, the GET was told that expert reports could deal not only with technical subjects, but also with points of law if legal experts are involved. The GET was informed that the justice reform includes a proposal to abolish the use of legal experts in the future and states that expert reports would only be relevant to technical points and not on points of law. In the GET's view, for the sake of transparency and impartiality, the appointment process of experts in court merits further reflection and regulation, in the ongoing reform process (for example, through a pool of approved experts who have undergone prior scrutiny to ensure they meet relevant competence and ethical standards, with due regard to transparency requirements).

70. Judges and magistrates may not be removed from office, except by the President upon request by the House of Representatives supported by a two-third majority of its members on the grounds of proved disability or proven misbehaviour (Article 97, Constitution).

71. No performance or quality indicators have been developed to assess the efficiency of activity of individual judges (rather than their necessarily independent judgement decisions). Judges are considered equal in status, they are the highest members of the judiciary and, as such, there exists no promotion among them. Even the Chief Justice is considered as *primus inter pares* and the higher remuneration s/he receives (see

paragraph below) is merely by virtue of the additional administrative tasks s/he is required to perform according to the law.

72. The Chief Justice has a gross annual salary of 47 597€, judges receive a gross annual salary amounting to 41 209€ and magistrates have a gross annual salary of 35 028€. Judges and magistrates have an additional allowance of 12 000€ which is non pensionable for self-development, holding of court sessions in the afternoon and for supporting the diary system. A further allowance of 6 100€ (7 200€ for the Chief Justice) is provided to cover office expenses. Further allowances of 15% of the salary and a fixed allowance of 8 152.81€ are also payable to all members of the judiciary. They are also provided with a chauffeur driven car (two in the case of the Chief Justice) and a fuel allowance of around 1 900 litres per annum (the fuel allowance increases to 2 100 litres per car for the Chief Justice). Members of the judiciary are not entitled to the aforementioned benefits once they leave office.

73. The current financial package results from an agreement reached with the Association of Judges and Magistrates of Malta on 1 January 2012 which was made public. A judge/magistrate's salary is a charge on the Consolidated Fund and may not be reduced; this represents a safeguard to judicial independence since it means in practice that it eliminates the need to have judicial salaries authorised by the votes of the House of Representatives each and every financial year (this only applies to salaries as expressly mentioned in the Constitution, but not to allowances). Salaries are published every year in the Official Gazette. The Auditor General regularly inspects the income and expenditure of the judicial system. The GET heard that there are around 2,000 practising lawyers in Malta, and over 100 new recruits join the profession every year; however, very few of them enter a judicial career. This was said to be partly due to the fact that only a small number of judiciary placements are available, but more importantly, and as mentioned before, that the conditions of employment offered in the justice system (a combination of low pay and pension, and high workload) do not appeal to law graduates.

Case management and procedure

74. In so far as the assignment of the court is concerned, this is done by the President, on the advice of the Minister of Justice, acting in accordance with any recommendation on the matter by the Chief Justice. Where more than one judge or magistrate is assigned to sit ordinarily in a court, or in chamber or section of a court, the distribution of duties in general between the said judges and magistrates is made by the Chief Justice. Likewise, when a judge or a magistrate is challenged or otherwise lawfully impeded from hearing a case, it is the Chief Justice who assigns another judge or magistrate, as the case may be, to take cognisance of that case.

75. If any dispute arises as to whether a case or other judicial act is to be assigned to one judge or to another judge sitting in the same court, or in the same chamber or section of a court, or where a dispute arises as to which chamber or section of a court is to deal with a particular case or judicial act, the matter is referred to the Chief Justice who determines, *in camera*, the judge or chamber or section to which the case or judicial act is to be assigned. Where the Chief Justice is precluded according to law from hearing a particular case, the assignment of that case is made in the superior courts by the Senior Administrative Judge and in the inferior courts by the Senior Magistrate. Both the Senior Administrative Judge and the Senior Magistrate are so designated by the Chief Justice. The Chief Justice also designates the presidents of chambers or sections of a court.

76. The day-to-day assignment of cases to individual judges/magistrates generally takes place according to a roster. In particular, as specific cases get filed, they are then assigned by the Registrar in line with the general policy directions given previously by the Chief Justice and in chronological order according to a roster worked out by the

Registrar. The GET was informed that, in recent years, practice reveals that specialisation criteria play an increasingly important role in case allocation.

77. As a general rule, a judge cannot be removed from a case assigned to him/her. That said, the law allows the Chief Justice to transfer any case from one court to another, but before doing so he must discuss the matter with the judges or magistrates concerned, either during a general meeting or an *ad hoc* meeting. This is generally done when such a transfer is deemed to be conducive to the proper administration of justice. A reassignment of a case can also occur if requested by the plaintiff on grounds of undue delay (a case pending in a given court for more than three years; a judgment pending for 18 months or more). In the latter case, the decision of the Chief Justice is taken *in camera* and is final and conclusive.

78. The President of Malta is empowered to appoint judges to particular courts and to subrogate another judge in lieu of a judge who has abstained or has been challenged (Article 11, Code of Organisation and Civil Procedure). The Constitution establishes the way in which this power is to be exercised; notably, the President has to act according to the advice of the Minister of Justice, who, in turn, has to act in accordance with any recommendation of the Chief Justice (Constitution, Article 101A, subsection 13).

79. Malta ranks high, as compared to other countries of the European Union, in its use of electronic tools for case-management and tracking of cases. In particular, there exists an in-house database and management system of all the acts and proceedings taking place in court, which is maintained by the court administration together with the Malta Information Technology Agency (MITA). It allows the monitoring of court activities as to the number of incoming cases, the number of decisions delivered and the number of postponed cases. The possibility to follow up on a case online, access to court electronic registers, e-filing, etc., are available in all courts[22]. This technical capacity is being used to monitor the speed of judicial proceedings, although the authorities concede that, even if corrective measures have been taken as a result, they may not have proved very effective.

80. The main problem encumbering the judiciary in Malta relates to the efficiency of court proceedings and the need to ensure that these are carried out within reasonable time. The GET was told that there have been around 40 cases brought before the European Court of Human Rights (ECHR) against Malta concerning violations of Article 6 of the European Convention on Human Rights (right to a fair trial), in particular on account of the excessive length of proceedings, and Article 1 of Protocol 1 of the European Convention on Human Rights (right to property); around 81% of such cases have condemned the Maltese State. The GET heard of judges taking up to seven years to issue a judgement. As already mentioned, the recent EU Justice Scoreboard Report (2014) ranks Malta at the bottom of the EU-28 when it comes to court expediency: in criminal cases, the average length of time to resolution is over 800 days[23]. Several attempts have been made in recent years to cope with this problem; for example, amendments to the Code of Organisation and Civil Procedure were carried out in order to facilitate the enforcement of executive titles as well as to introduce a pre-trial stage so as to accelerate the judicial process. The ongoing reform of the judiciary is looking again into this issue which is certainly a significant challenge ahead in the Maltese judicial system.

81. The public does not seem to think judges are particularly corrupt, but their image is tarnished by the slow pace at which justice is dispensed. There was not enough time to

[22] Council of Europe CEPEJ Study on the functioning of judicial system in the EU Member States (http://ec.europa.eu/justice/effective-justice/files/cepj_study_scoreboard_2014_en.pdf).
[23] EU Justice Scoreboard (http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2014_en.pdf) and Council of Europe CEPEJ Study on the functioning of judicial system in the EU Member States (http://ec.europa.eu/justice/effective-justice/files/cepj_study_scoreboard_2014_en.pdf).

look exhaustively into the problem of the dilatory and cumbersome workings of the justice system, much less to fully identify the causes. That said, the GET notes that the judicial system of Malta has evolved from influences from a number of sources, reflecting the country's particular geographical and historical context. Systems in these originating influencing sources have themselves evolved over time whilst remaining unaltered from the original concepts within Malta. The GET thinks that Malta could usefully explore which developments in the originating systems had been effective in reducing delay in particular. Addressing delay and adopting processes improved through experience would no doubt assist Malta in ensuring confidence in the rule of law is maintained. A degree of revolution rather than evolution, following research focussed on developing systems that eliminate outmoded duplicitous court processes, supported by swift legislative changes, could assist in reducing backlogs and regaining public confidence in judicial systems. The GET welcomes that the authorities are taking this issue as a matter of priority and targeted measures are included in the proposed justice reform to address this area of concern and need to be introduced swiftly.

82. Every presiding judge/magistrate has a duty to make a report, on an annual basis, to the Commission for the Administration of Justice giving a list of cases pending before the court over which s/he presides and which have been so pending for a period of five years or more, indicating in the report the reasons why each case is still pending and the time within which the case is expected to be disposed of by the responsible court. The Commission for the Administration of Justice may "draw the attention" of the relevant judge/magistrate to cases of undue delay (Article 101A, paragraph f, subsection 11, Constitution). The effectiveness of the available disciplining mechanisms is discussed further in detail in paragraphs 116 and 117 and a recommendation is made thereafter.

83. As regards the publicity of judicial work, causes must be tried in public; a cause may only be heard behind closed doors should decency or good morals so require (Article 21, Code of Organisation and Civil Procedure). The judgement is, in all cases, to be delivered in public (Article 22, Code of Organisation and Civil Procedure). It must contain the reasons on which the decision of the court is based, as well as a reference to the proceedings, the claims of the plaintiff and the pleas of the defendant (Article 218, Code of Organisation and Civil Procedure). Court reporters have an office in the court building and copies of court judgements are made available to them as soon as they are delivered. The website of the judiciary of Malta (http://www.judiciarymalta.gov.mt/the-courts) has a wealth of information on the functioning of the system. So does a dedicated internet site (http://www.justiceservices.gov.mt) offering a wide range of court services (e.g. judgements online, civil cases, hall usage).

Ethical principles, rules of conduct and conflicts of interest

84. Before commencing to exercise his/her judicial functions, a judge/magistrate must take before the President of Malta the oath of allegiance set out in the Third Schedule to the Constitution, and the oath of office set out in Article 10(1) of the Code of Organisation and Civil Procedure. The oath of allegiance binds a judge/magistrate to uphold the Constitution, whilst the oath of office binds him/her to perform official duties "without favour or partiality".

85. A Code of Ethics for the judiciary has been in place since 2001. Amended in 2004, and more recently in 2010, this Code is largely based upon the universally accepted Bangalore Principles of Judicial Conduct. The Commission for the Administration of Justice has the authority to enforce the Code. In this connection, one of the statutory functions of the Commission is to draw the attention of any judge/magistrate to any matter, in any court in which s/he sits, which may not be conducive to an efficient and proper functioning of such court, and to draw the attention of any judge/magistrate to any conduct which could affect the trust conferred by his/her appointment, or to any failure

of his/her part to abide by the Code of Ethics (Article 101A, paragraph f, subsection 11, Constitution).

86. The Code of Ethics includes provisions explicitly aimed at safeguarding independence, impartiality and integrity of members of the judiciary. The Code of Ethics is accompanied by a set of Guidelines (2004, as amended in 2010) aimed at clarifying the rules of the Code in relation to concrete cases (i.e. types of interests and activities which are most likely to occur when carrying out the judicial function), as well as at providing uniformity in the implementation of the said rules. Individual complaints against a judge/magistrate may be lodged with the Commission for the Administration of Justice. Breaches of deontological rules can trigger disciplinary action.

87. During GRECO's First Evaluation Round, the authorities reiterated that reliance on compliance with deontological rules was placed on the protection offered by a small judicial community where it was felt that it was difficult for corruption offences to go undetected for long as everyone knew each other[24]. Similar sentiments have been expressed to the GET during this Fourth Evaluation Round; the shame factor being often quoted in this regard. However, the GET was informed of several instances of misconduct in recent years, even for very petty bribes, which have been uncovered during criminal investigations, rather than whistleblowing, that reached to the most senior judiciary ranks, including a former Chief Justice.

88. Some interlocutors expressed their discomfort about judges being too approachable. Judges themselves reflected during the interviews carried on-site on the vulnerability of their position; many felt that more could be done to support them, not only upon entry to the judiciary, but also throughout the judicial career. Concerns were also expressed to the GET about the impression given by some current judicial conduct which continued close association with former defence or prosecuting colleagues and the damage this might cause to perceptions of justice. The GET can well understand these concerns since, as evidenced later on in this report, the Code lacks particular guidance on its provisions and their practical effect in professional life. The GET is further concerned that the Code has no meaningful and effective enforcement machinery. GRECO issues two specific recommendations addressing these gaps (see recommendations v and vi, paragraphs 117 and 123, respectively).

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

89. Judges/magistrates are subject to a strict regime of incompatibilities; in particular, the Code of Organisation and Civil Procedure (Article 9) stipulates that judges cannot act as arbitrators, they cannot accept any tutorship or other administration except activities within the Judicial Studies Committee or such as may be assigned to him/her by law (Article 9, Code of Organisation and Civil Procedure).

90. Moreover, judges/magistrates cannot carry out any other profession, business or trade, or hold any other office of profit whatsoever, even though of a temporary nature, with the exception of any judicial office on any international court or tribunal or any international adjudicating body, the office of examiner at the University of Malta (Article 16, Code of Organisation and Civil Procedure).

91. Any allowed secondary activity, as determined by law, must be communicated to the Chief Justice, be the post in Malta or overseas, be it remunerated or otherwise (Article 10, Code of Ethics).

[24] GRECO First Round Evaluation Report on Malta: http://www.coe.int/t/dghl/monitoring/greco/evaluations/round1/GrecoEval1(2002)8_Malta_EN.pdf.

92. If a judge (or magistrate) in Malta wants to work for the prosecution or be a member of the legislature or of the executive, s/he must resign from the office of judge (or magistrate) and can only return to the bench if reappointed as a judge or magistrate.

93. There is normally no objection to a judge/magistrate holding shares in commercial companies. However, they should not hold a commercial directorship, whether in a private or a public company, and whether or not that directorship is remunerated. This applies even if the company is solely owned by the judge/magistrate and his/her family (Guidelines to the Code of Ethics).

94. Members of the judiciary have the right to form their own professional association in order to safeguard their rights and interests. The Association of Judges and Magistrates of Malta was formed in 2001, it is aimed at (i) promoting the interest of its members in their professional capacity; (ii) promoting the independence of the judiciary; (iii) promoting the highest standards of judicial conduct among its members; (iv) promoting the general interests of its members, including those interests arising upon retirement from the bench; (v) promoting the exchange of ideas of the administration of justice; (vi) furthering the cultural, intellectual and legal proficiency of its members; and (vii) promoting and maintaining contacts with judges and magistrates abroad, with national and international associations, and in particular national and international associations of judges and magistrates.

95. The Guidelines to the Code of Ethics include several examples of types of interests and activities which judges/magistrates may come across and provide advice on how to manage these (i.e. regarding financial interests; social, cultural and other activities; termination of professional and business contacts; boards of inquiry; lecturing and writing; and membership in associations).

96. There are no post-employment limitations. The authorities explained that cases where a retired judge/magistrate engages in private practice after retirement are exceptional since most retired members of the judiciary normally feel uncomfortable going back to or taking up regular private practice at that stage.

Recusal and routine withdrawal

97. The general rule is that a judge/magistrate assesses his/her own qualification to hear a case but that a party may also call for his/her disqualification. Members of the judiciary cannot preside over a case in which they know there exists any of the reasons for being challenged as provided for in the Code of Organisation and Civil Procedure (see below) or where there exists a manifest danger or prejudice to fair hearing. In all other cases they are bound not to abstain from their duty (Article 23, Code of Ethics). These provisions must be read in conjunction with the provisions of Article 6 of the European Convention on Human Rights (which is incorporated into Maltese law by virtue of the European Convention Act) and Article 39 of the Constitution, and also balanced against any potential abuse of the right of an individual to challenge for the purpose of unduly prolonging judicial proceedings.

98. Article 734 of the Code of Organisation and Civil Procedure provides a list of the grounds when a judge can be challenged or is entitled to abstain from sitting in any case brought before the court in which s/he is appointed to sit, e.g. when the judge has been a spouse or partner of the party or is related to him/her, has provided legal advice or guidance to a party, has testified or been requested to testify, has previously taken cognisance of the cause as a judge or an arbitrator, is the tutor, curator or presumptive heir of any of the parties, as well as in any other circumstance which can reasonably give rise to suspicion of a direct or indirect interest of the judge that may influence the outcome of the case. The law was amended to provide a broader catalogue of the reasons that could potentially raise not only actual, but also apparent bias, following the

decision of the European Court of Human Rights (ECHR) in the case of *Micallef v. Malta*[25]. The authorities made reference to cases where recusal took place not only on grounds based on family relationships, but also on financial interests (e.g. stock ownership). Moreover, the ground of challenge on the basis that the judge had given advice, written or pleaded on the case or on any other mater connected therewith or dependent thereon is wide enough to exclude situations of perceived subjective bias.

99. Article 738 of the Code of Organisation and Civil Procedure, establishes who has to decide questions regarding the grounds of challenge or abstention. Where the court consists only of one judge and such judge is objected to, s/he herself/himself is to decide on the alleged ground of challenge. Where the court consists of several judges, all the judges, including the judge objected to, are to decide on the ground of challenge. No appeal mechanisms lie against such decisions.

100. The challenge of a judge is not admissible where the party raising the objection, if the plaintiff, has already submitted his/her claim at the trial, or, if the defendant, has already set up his/her pleas in defence, unless the ground of challenge shall have arisen subsequently, or unless the party raising the objection, or his/her advocate, shall declare upon oath that s/he was not aware of such ground, or that it did not occur to him/her at the time (Article 739, Code of Organisation and Civil Procedure).

Gifts

101. There is a general ban on gifts, favours or benefits which might possibly influence a judge/magistrate in the proper fulfilment of the judicial duties or which might give an impression of improper conduct (Article 24, Code of Ethics).

102. Members of the judiciary cannot individually accept any advantage or benefit from the executive except when such advantages or benefits are addressed to the judiciary collectively (Article 26, Code of Ethics).

Misuse of confidential information and third party contacts

103. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in the case, as well as that of classified data according to Chapter 50 Official Secrets Act. Breach of professional confidentiality is punishable Article 257 CC; sanctions consist of fines up to 46 587.47€ or/and imprisonment of up to two years.

104. Further professional requirements concerning the disclosure of information acquired in office are contained in The Code of Ethics. In particular, members of the judiciary must not discuss out of court cases that are pending in court. Whilst respecting freedom of expression, members of the judiciary should discourage persons from discussing, in their presence cases that are *sub-judice* (Article 13, Code of Ethics).

105. In preparing their decisions, they may, should they deem it necessary, consult another member or members of the judiciary, provided that this be done strictly on the academic point at issue seeking clarification on a point of law. However, they should do so without making reference to the specific case (Article 14, Code of Ethics).

106. They cannot communicate, directly or indirectly, with any of the parties involved in a case, their advocates or legal procurators regarding a case that has not yet been decided upon or one that is about to commence or proceed, except in the manner prescribed by law (Article 19, Code of Ethics).

[25] Grand Chamber *Case of Micallef v. Malta*. Application No. 17056/06. 15 October 2009.

107. Although it may be useful and proper to maintain a dialogue between the bench and other organs of the State, members of the judiciary must not however communicate in private with members of the executive on any matter connected with their duties or functions except through or after express consultation with the Senior Magistrate and/or with the Chief Justice (Article 26, code of Ethics).

108. Members of the judiciary cannot comment or grant interviews to the media, or speak in public on matters which are *sub judice*. They must avoid communicating with the media and pronouncing themselves in public on matters which constitute a public controversy. In general, they should not seek publicity or the approval of the public or the media (Article 28, Code of Ethics).

109. When members of the judiciary sit on a collegial court and the law provides for one decision, they must not, directly or indirectly, disclose their votes or opinions nor those of one or more members of that court who had a dissenting view (Article 18, Code of Ethics).

Declaration of assets, income, liabilities and interests

110. There are no specific requirements, duties or regulations in place for judges to submit financial declarations, other than those applying for taxation purposes. Nevertheless, whenever a potential or real conflict of interest may arise, provided that the judge is not challenged or requested to abstain, s/he is to make a declaration to that effect, in which event such a declaration will be entered in the acts of the proceedings. If the declaration is made in writing it has to be recorded at the court registry (Article 735, Code of Organisation and Civil Procedure). The GET was told that some have been advocating for the development of a register of assets of the judiciary to be held by the Auditor General and kept confidential. This was seen as a potential tool to prevent corruption instances like the bribery cases occurring in recent years. The GET welcomes the ongoing reflection on the matter and encourages the authorities to pay close attention as to how a disclosure regime, with the required privacy assurances which would also take account of the need not to render the judiciary unattractive to established practicing lawyers, could help with preventing corruption and conflicts of interest.

Supervision and enforcement

111. Judges do not benefit from any sort of immunity under the law; nor are there special courts or tribunals to deal with cases involving judges/magistrates and so, the ordinary courts would handle them. The GET was, for example, made aware of a 2002 high-profile bribery case where the two concerned judges (the then of Chief Justice and another judge sitting in the court of appeal) were sentenced to prison and resigned from their respective positions. Any citizen can file a report with the police against a member of the judiciary.

112. The Constitution of Malta provides for two types of disciplinary sanctions for judges': either "drawing the attention" of the judge/magistrate to some impropriety committed (Article 101A, paragraph f, subsection 11, Constitution), or, in cases of proved inability or misbehaviour, the ultimate sanction is the removal of the judge/magistrate from his/her office (Article 97, Constitution). In all cases there is due respect to the right of hearing the accused judge/magistrate. Concerning the first type of sanction, in practice, the Commission for the Administration of Justice would inform the judge that the complaint is justified and would then ask the judge to refrain from the contested act. The GET was told that this warning system would of course work for those judges acting in good faith. However, the system is toothless for more recalcitrant members: those who would be the least likely to cooperate and had the most serious accusations against them. Virtually all interlocutors met agreed that the current

disciplining process is ineffectual and that a more robust mechanism needs to be set in place for it to be truly credible, but that appropriate new arrangements had to ensure full adherence to the constitutional principles of judicial independence and freedom from undue pressure.

113. Removal is effected by the President of Malta upon a motion by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and asking for such removal. Before any motion for removal is brought before the House, it must be sent to the Commission for the Administration of Justice for investigation. The motion must contain definite charges against the judge or magistrate, as the case may be, on the basis of which the investigations are to be held by the Commission, as well as a statement showing the grounds on which any charge is based. If the Commission, after investigating, reports that there is no misbehaviour or no inability to perform the functions of office, then no further action can be taken upon the proposed motion. If, on the other hand, the Commission finds that there is a *prima facie* case of misbehaviour or incapacity, then it will be up to the House of Representatives to discuss the motion and vote upon it. However, the Commission is not empowered to make a recommendation of impeachment to the House. A motion for removal by Parliament is a separate and independent procedure from a criminal prosecution, which is carried out in the ordinary manner and does not need to be authorised by anybody. The process is regulated in detail in the Commission for the Constitution (Article 97) and the Administration of Justice Act (Article 9).

114. All proceedings before the Commission are private and, as such, details on its decisions are not made publicly available. That said, records of complaints are kept and an annual report is delivered to the Ministry of Justice, Culture and Local Government including figures on the number of complaints received with respect to judges, magistrates, lawyers and legal procurator. Other than general statements expressed by the Chairman of the Commission (for example, in the context of a public speech), the outcome of the relevant disciplining processes is not published. The only type of public information available would be in the event of the removal of warrants of legal procurators (i.e. such information will be published in the Official Gazette), as well as information on an impeachment motion which will be published in newspapers. When discussing the result of the disciplining procedures carried out by the Commission, the GET was told that in seven out of 10 cases the complaint would refer to court delays. Generally, minor issues (e.g. a complaint made by a party to a case about delays in its hearing, an occasional lack of punctuality, the use of inappropriate language, etc.) are handled by the Chief Justice; more serious issues (e.g. an alleged infringement of the Code of Ethics, failure to abstain or be recused in conflict of interest situations, abuse of judicial powers, etc.) are dealt with the Commission in its full composition. The Commission indicated that, in the last three years, it had dealt with an average of five serious complaints per year. In the GET's view, this represents a rather high percentage, given that the judicial community in Malta is rather small (i.e. these more serious cases would represent 10% of the judicial community).

115. The Justice Reform Commission has proposed enhancing the applicable accountability regime of the judiciary. Under such proposals, with regard to discipline, the Chief Justice would be empowered to draw the attention of judges/magistrates to behaviour which is not in keeping with their office. Disciplinary cases would be referred to a disciplinary authority presided over by a judge elected by the judges, a magistrate elected by the magistrates and a representative of the people selected by the President of Malta. The Commission for the Administration of Justice would hear appeals. Further proposals for change refer to applicable penalties to match the seriousness of the misbehaviour concerned, so that minor misbehaviour would not mean impeachment. There should be a warning for a first offence and a fine for a second or other cases, up to a total fine of 1 000€. Major cases would still mean removal from office. The warnings and fines would not be made public. However, a final recommendation of impeachment

would be communicated to the Speaker of Parliament. A judge undergoing disciplinary proceedings would be suspended if the case involves dereliction of duties. The GET acknowledges the changes proposed in the justice reform in this area that, if implemented with pace and determination, have the potential to make far reaching changes to the judicial system and its efficiency and accountability. The GET heard that the disciplining system which will govern the judiciary is still an area open to debate between the Government and the judiciary; the GET was informed that both parties were aiming to reach an agreement on the issue by the second half of 2014. The GET is trustful that any final compromise solution reached will ensure the independence and impartiality of the justice system as a whole, and complies with the standards included in paragraph 60. More precisely, the GET recalls the reiterated opinions of the Consultative Council of European Judges of the Council of Europe (Opinion No. 1 (2001) and Opinion No. 3 (2003[26]) stressing that disciplinary proceedings against judges should only be determined by an independent authority (or "tribunal") operating procedures which guarantee full rights of defence, and that are subject to appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court.

116. The GET notes that, at present, there are few disciplinary measures available to the Chief Justice where the Commission for the Administration of Justice determines that an ethical breach has occurred. The two extremes currently available are the Chief Justice "having a word" or removal from office which is subject to a vote in Parliament. The risk of political considerations permeating the disciplining process is inevitable. Moreover, the current system has been subject to civil society complaints about its alleged corporatism and opacity. In the GET's view, improvements in this field are required as a matter of priority; greater transparency of disciplinary action would demonstrate the authorities' determination to repair past damage. This is an area where public trust needs to be rebuilt following past and recent serious breaches from a few members of the judiciary. In this connection, the GET is of the firm view that a greater culture of openness within the judiciary can constitute a key tool to recapture citizens' trust in the functioning of the judicial system and is a guarantee against any public perception of self-interest or self-protection within the profession. The judiciary is uniquely placed to lead a cultural change by showing that within its own ranks corruption is unacceptable and demonstrate that timely action is taken to enforce its Code of Ethics. The current polarised extremes of possible disciplinary action will hinder this. Judges in leadership positions, principally the Chief Justice, need to be seen to take proportionate action if there are any instances where the acceptable judicial standards, as articulated in the Bangalore Principles and replicated in the Maltese Code of Ethics, are not met. The GET again evokes the principle laid out in the European Charter for the Statue of Judges (Article 5(1)) as to the proportionality of sanctions, both in principle and in application.

117. In the GET's view, there needs to be a graduated range of disciplinary sanctions that could be imposed following a set process from the Commission for the Administration of Justice to the Chief Justice. Sanctions might, for example, range from a formal warning, to reprimand, suspension, and ultimately removal, but the latter not influenced by political considerations. Moreover, it is important to be open and transparent about the outcomes reached in disciplinary processes as a way to reassure the public that ethical standards are indeed being enforced, obviously with due respect to the required guarantees of privacy of the individuals concerned. The circulation of information in matters of discipline can also be a valuable tool for judicial practice. The publication of information on complaints received, types of breaches and sanctions would therefore serve a double purpose, i.e. helping identify and further promote corruption prevention within the judiciary and raise public awareness of the action that is taken. In light of the foregoing considerations, **GRECO recommends that the system of judicial**

[26] Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges.
Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.

accountability be significantly strengthened, notably by extending the range of disciplinary sanctions to ensure better proportionality and by improving the transparency of complaints processes.

Advice, training and awareness

118. The Judicial Studies Committee (JSC) is the body responsible for the ongoing training of the members of the judiciary. The JSC is composed of four members, two appointed by the Chief Justice and two members appointed by the Minister of Justice, and acts under the general direction of the Chief Justice. In practice, the GET was told on-site that the Chairman of the JSC is the only person working for the institution. After the on-site visit, the GET was informed that the training administrator post which had been vacant for over a year had been filled.

119. The JSC assists judges and magistrates in skills training and continued professional development mainly through seminars conducted by both local and foreign experts and speakers. The GET was provided with an example of a training seminar organised on 7-8 February 2013, led by trainers from the Judicial College of England and Wales, which included a component on judicial ethics and credibility of judicial work; the course was attended by 29 judges and magistrates. In June 2014, the CEPEJ carried out a training session on judicial time management.

120. The Code of Ethics imposes a duty on judges/magistrates always to be well trained professionally. Moreover, within the limits of the means and resources that the State is in duty bound to place at their disposal, judges are to keep themselves informed regarding developments in legal and judicial matters (Article 3, Code of Ethics). That said, while this is a responsibility and obligation of judges themselves, there is no specific induction training scheme for judges at the start of their careers. The GET was told that judges who are at the beginning of their careers would consult senior members of the bench when they encounter difficulties; the Chief Justice is usually the one who is consulted on these matters. In-service training activities organised by the JSC are compulsory; however, the authorities indicated that no enforcement measures are in place to ensure that this obligation set under the Code of Ethics is actually met in practice. Moreover, the total budget allocated to training is low: 9 000€ are available for training activities in 2014 and 12 000€ have been earmarked for 2015, respectively. Within the EU, Malta ranks at the very bottom for judicial training[27].

121. The GET notes the efforts made to arrange seminars on a variety of topics, including on ethics. However, although judges are under an obligation to be trained and kept informed of legislative/judicial development, in the absence of sanctions, training is not viewed at present as compulsory by some members of the judiciary and it was reported to the GET that some members of the judiciary still hold the view that it is entirely unnecessary, despite some appointments being from advocates who have only experienced court from a prosecutor's perspective and others from only a defending perspective. Upon entry into office, the Chief Justice presents every new magistrate or judge at the end of the swearing in ceremony with a copy of the Code of Ethics, which is also available on the judiciary website. No induction training at all is currently organised. The GET is concerned that, particularly in the light of experience of unethical behaviour in some senior members of the judiciary, that at least some key elements such as ethical conduct are not considered as compulsory induction training issues, including practical guidance on the articulation of the ethical standards expected from appointees and the impact of judicial appointment on the behaviour and expectations from that individual immediately following appointment.

[27] Council of Europe CEPEJ Study on the functioning of judicial system in the EU Member States (http://ec.europa.eu/justice/effective-justice/files/cepj_study_scoreboard_2014_en.pdf).

122. The absence of induction and support for new and existing members of the judiciary, may not only make unethical behaviour more likely to take place, but also makes the transition from court advocate to the bench more stressful than it needs to be. The judge's focus may be consumed by surviving in this new environment, focussing on new procedures, rather than in considering how the new role will affect behaviour towards his or her former professional colleagues, or behaviour out of court. Recently some judges have taken it upon themselves to try to fill the gap and alleviate the stress of unsupported appointment, by organising mentoring amongst themselves. The GET was additionally told that mentoring is also secured through the services of the Chairman of the JSC. This, whilst a positive development, will not ensure that consistent consideration is given to judicial ethics and behaviour. Judicial leadership in the form of clear articulation of the agreed common behaviour standards set by the Chief Justice and other judiciary in leadership positions, reinforced through induction training would assist in emphasising the importance of ethical behaviour from the outset of a judicial career.

123. The GET further remarks that the sound basis for ethical judicial behaviour is currently left to the conscience of the individual appointee. This lack of initial direction is, at present, unlikely to be remedied through later continuous judicial education. The GET was told that European training programmes such as those offered through the European Judicial Training Network (EJTN), or the Academy of European Law (ERA) are occasionally accessed. These seem to be subject specific on the whole, rather than dealing with issues about expected judicial behaviour. The GET notes that there is now a newly established EJTN Working Group that will be developing modules on judicial ethics and deontology that might further assist in this regard. More might be made of such training as it becomes available: the GET was told that judges who attend training activities abroad often make presentations on the activity attended by them to their colleagues as part of the training programme of the JSC. The GET was also told that the additional travel time to attend events in other countries, currently adversely impacts on the already significant court delays and that this occasionally leads to the most obvious judicial attendee being unable to attend these specialist events. Local training events are organised but attendance is viewed as optional. In the absence of a core overall programme of continuous education, events are offered to meet immediate needs and therefore are unlikely to regularly cover anticorruption messages. Due account should be taken in all training to emphasise the Maltese social context and ethical challenges that may result from this, including issues of recusal. The GET is concerned that opportunities to discuss practical ways to avoid the impression or reality of bias, particularly for newly appointed judges, were not formalised. These issues should become regular discussion points during mentor arrangements for new judges, backed up by regular discussion of points of principle with experienced judges, so that issues arising in practice are appropriately addressed. Consequently, **GRECO recommends that (i) a compulsory induction training programme, including consideration of judicial ethics, be developed; (ii) that mentoring arrangements for new judges, exploring the ethical implications of appointment, be formalised; and (iii) that a regular programme of in-service training be provided along with targeted guidance and counselling on corruption prevention topics and judicial ethics for the various persons required to sit in court (judges, magistrates, and adjudicators of boards and tribunals).**

124. Recognising the constraints and opportunities provided in a relatively small jurisdiction where judges are based at only a few locations, this programme should focus on pragmatic opportunities to share knowledge. For example, short events, at times and using methods that enable judges to attend or enhance their knowledge without adversely affecting court proceedings could be considered - short after-court sessions led by members of the judiciary for example, accompanied by e-learning that can be completed at times convenient to the judge or magistrate. Involving current members of the judiciary in organising training sessions in their own areas of expertise, or creating a small pool of judicial trainers who could receive training in presentation skills might make

the most of available expertise. Purchasing existing e-learning developed in other jurisdictions might enable members of the judiciary to take advantage of the comprehensive IT available in Malta and to view short training at convenient times. These considerations can prove to be of value as implementation of the justice reform progresses, the GET is pleased to note that such reform already includes concrete proposals on how to improve judicial training.

V. CORRUPTION PREVENTION IN RESPECT OF PROSECUTORS

Overview of the prosecution service

125. The Attorney General (AG) is the chief prosecuting officer in Malta. S/he also acts as the principal law officer and the legal adviser of the Government (Article 2, Chapter 90 Attorney General Ordinance). In carrying out prosecutions, the AG has to be free from the direction or control of any person or authority, when exercising the criminal action or when deciding to discontinue criminal proceedings (Article 91(3), Constitution). The AG is to report only to the executive (to the President of Malta, with a copy to the Minister of Justice) whenever a *nolle prosequi* decision is issued[28].

126. The AG Office is a government agency with distinct legal personality and capable of entering into contracts, of employing personnel, or acquiring, holding and disposing of any kind of property for the purposes of its operations and of suing and of being sued. The advisory and prosecution functions mentioned above are carried out by separate units within the AG Office dealing with criminal, civil, constitutional and administrative law. A person acting as a prosecutor would in practice not be giving advice to Government on civil or constitutional matters at the same time. At present, the AG Office has 28 employees, out of which 12 (8 women and 4 men) are employed in the Criminal Law Unit.

127. Prosecutorial activity is shared between the police and the AG. In this report, GRECO's recommendations for the prosecutors refer to both the AG and the police prosecutorial role. In practice, most criminal cases (around 80%) are sent to the court of magistrates and are therefore prosecuted by the police. In such cases, the AG Office acts as legal advisor to the Malta police force and sometimes appears in court as legal counsel to the police when they are prosecuting certain serious cases in the court of magistrates (i.e. cases raising public alarm or outcry related either to the persons who allegedly have committed the offences or due to the nature of the alleged offence or both). The AG retains considerable powers such as decision where a person is to be tried in drug cases (now subject to judicial review)[29], authorising the police to institute the criminal action under certain laws, deciding which cases are to be discontinued, which are to be tried by the criminal court, what new evidence is to be compiled by the court of magistrates and inquiry magistrates, etc. As to the police resources devoted to prosecution, the GET was told that, most of the time, investigating officers are in court prosecuting their respective investigations; there are around 130 police prosecutors.

128. The GET notes since the EU accession process started, the size of the AG Office has progressively increased. It has secured a track record of independence in its action, and is a trusted institution among Maltese citizens. Having said that, it was clear to the GET that many of the current working practices (i.e. internal orders, see paragraph 136) and different matters shaping the conditions of service of prosecutors (i.e. appointment, discipline and dismissal procedures, see paragraphs 131, 132 and 150) have not been formalised in law. Consequently, **GRECO recommends that measures be taken to further strengthen the role of prosecutors in written law, notably by (i) ensuring appropriate formalised arrangements for impartial, objective and transparent systems of appointment, discipline and dismissal of prosecutors; (ii) developing clear mechanisms and working procedures in order to ensure that hierarchical decisions/instructions are made with adequate guarantees of transparency and equity; and (iii) introducing measures to help guarantee greater independence and impartiality of prosecutorial decisions.**

[28] The power granted to the AG under criminal law to decide whether a prosecution would be discontinued (*nolle prosequi*) has been rarely exerted in Malta: since 2004, it has only be decided in six occasions. *Nolle prosequi* decisions are public documents subject to the provisions of the Freedom of Information Act.

[29] Under Act XXIV of 2014, which came into force on 14 August 2014, the right to seek judicial review of the AG's decisions in drug cases was introduced.

Recruitment, career and conditions of service

129. The Attorney General (AG) is appointed by the President upon advice of the Prime Minister. For a person to qualify as AG, s/he must fulfil the requirements prescribed for judges of a superior court, i.e. s/he must have 12 years of experience as an advocate or as a magistrate, or partly as a magistrate and partly as an advocate. The GET was told that, although in principle the Prime Minister could choose anyone who meets the professional criteria for the post, in practice, the seniority principle in the prosecution service has been followed and it has always been a career appointment. The GET found consensus among the interlocutors met of the professionalism and dedication of all AGs serving to date. However, the GET has the same misgivings it formerly expressed with respect to judges as to "perceived independence". The manner in which the AG is appointed plays an important role in the perception of the way the prosecutor's office is managed (e.g. distribution of tasks, case management). It is crucial to gain the confidence of the public and to dispel any possible doubt of improper political influence in the prosecution service. The Council of Europe has repeatedly stressed that appointment procedures must be objective and transparent; professional, non-political expertise should be involved in the selection process[30]. These considerations are essential when implementing recommendation vii, paragraph 128. The authorities indicated that this issue is being under review in the context of the justice reform; it has been proposed that it would be for the Commission for the Administration of Justice to make recommendations on the appointment of the AG and the members of the AG Office.

130. The AG has the same guarantees of security of tenure and irrevocability as are granted to the judiciary. In this connection, the AG may not be removed from his/her office except by the President, upon request of the House of Representatives supported by a two-thirds majority of its members, on the ground of proven inability to perform his/her functions or proved misbehaviour (Article 91, Constitution).

131. The advocates employed by the AG Office must first be in possession of a warrant allowing them to serve as advocates as well as a proof of clean criminal records. New recruits in junior positions undergo a selection process, following an open call for application, which includes an interview by an ad-hoc Selection Board set up by the AG (generally composed of three members: two with legal background and one with administrative background). A final report is drafted by this Selection Board and forwarded to the Public Service Commission (the responsible body for recruitment within the public service) for vetting. The position of a prosecutor is based on a three-year term contract (probationary period); when the fourth year of service is completed the employment becomes indefinite. At present, of the 28 lawyers working in the AG Office, only two of them are under a probationary contract.

132. When an advocate is eventually posted with the AG Office, it is solely at the discretion of the AG to decide who from among his/her legal staff is to be delegated as a public prosecutor acting on his/her behalf. The AG Office advocates are employed on contract, as a result of which their promotions are regulated therein (based on a combined criteria taking into account the level of experience, the results of the performance assessments as carried out by the AG on an annual basis, and obviously, the existence of a vacancy) and so is the termination of their contract. Generally, the same conditions, rights and obligations applicable to any public employee, as contained in the Public Service Management Code, would therefore be pertinent for a prosecutor working in the AG Office. The appointment of a prosecutor working in the AG Office may be terminated for the following reasons: in the public interest; pursuant to a disciplinary sanction (Article 10.9.1.1, Public Service Management Code).

[30] Report on European Standards as regards the Independence of the Judicial System, Part II – the Prosecution Service, European Commission for Democracy Through Law (Venice Commission), CDL-AD (2010)040.

133. A prosecutor at the beginning of his/her career (trainee) receives 24 000€ per year (salary plus allowances); the emoluments received by the AG amounts to 78 000€ per year (salary plus allowances). The salary package varies according to the post holder occupied and the post is in turn determined by experience, seniority and performance. Performance bonus of up to 15% of the salary may be given at the end of the year for exceptional performance in the post. The accounts of the AG Office are certified by an auditor appointed for the purpose by the AG with the concurrence of the Minister of Finance; they are subsequently audited by the Auditor General.

Case management and procedure

134. There are two units within the AG Office: the Civil, Constitutional and Administrative Unit, and the Criminal Unit, respectively. Each unit has a Head who is responsible for distributing work amongst the rest of the team and for overseeing the administrative structure of the unit. The advice of the AG may be sought at any time, whenever necessary.

135. In the Criminal Unit, each prosecutor is responsible for his/her workload and the decisions taken which regard such cases. The assignment of cases to individual prosecutors within the AG Office generally takes place according to a roster. The Head of Unit may nevertheless decide on the assignment of a particularly serious or sensitive case to a specific prosecutor with either more seniority or expertise when dealing with offence(s) in question; likewise, a small team (senior and junior prosecutors working together) may be pulled together when a case is particularly demanding. It is not uncommon for a junior lawyer to be assigned cases of certain gravity as supervised by a more senior colleague. Trials by jury of offences of particular seriousness or complexity are normally assigned to two prosecutors with the senior in rank acting as "first chair". There are no obstacles to removing a prosecutor from a particular case if so warranted in the interests of justice. This prerogative stems from the principle that prosecutors working in the AG Office act in the name of the AG, work under his/her direction and can be substituted by any other prosecutor at any time if so decided by the AG (e.g. if a conflict of interest arises, on grounds of specialisation, etc.). The GET was told that there had never been a situation where an individual prosecutor has objected to a redistribution of tasks.

136. The GET believes that additional rules and safeguards need to be developed in this area in order to ensure a proper balance between, on the one hand, the hierarchical structure of the prosecution service aimed at preserving consistency of prosecution policy, and on the other, the risk of inappropriate considerations being introduced into individual cases. Clear and formalised mechanisms and procedures are required in order to ensure that any hierarchical decision/instruction is made with adequate guarantees of transparency and equity (e.g. regarding the transfer of a case or the receipt of a possibly illegitimate order). Any instruction to reverse the view of an inferior prosecutor should be reasoned and in case of an allegation that an instruction is illegal a court or an independent body should decide on the legality of the instruction[31]. These are all issues that must be taken into account and safeguard mechanisms clearly articulated when implementing recommendation vii, paragraph 128.

Ethical principles, rules of conduct and conflicts of interest

137. The AG and the employees of his/her Office are to abide by the Code of Ethics applicable to public officers (hereinafter Code of Ethics for Employees in the Public Sector); breaches of the deontological rules can trigger disciplinary action. The law

[31] Opinion No. 12 (2009) of the Consultative Council of European Judges (CCJE). Opinion No. 4 (2009) of the Consultative Council of European Prosecutors (CCPE) on "Judges and prosecutors in a democratic society".

provides for the AG to draw up service values and Codes of Ethics in respect of the AG Office to supplement the Code of Ethics for Employees in the Public Sector (Article, 6, Attorney General Ordinance), but the drafting of such a specific code has not occurred to date. The staff working in the AG Office recognised that having their own code, adapted to the specificities of their work, could be beneficial. Additionally, the Code of Ethics and Conduct for Advocates applies; breaches of this code come under the jurisdiction of the Commission for the Administration of Justice and may entail debarment. Lastly, the general principles of law need to be abided by (e.g. prosecutor cannot hide evidence to the court). The GET was told that, whenever confronted with an ethical dilemma, the members of the AG Office would turn to the superior; in practice, it would be the Head of Unit giving advice on the matter at stake.

138. The notion of conflict of interest is defined in Chapter 497 of the Public Administration Act, as well as in the Code of Ethics for Employees in the Public Sector. A conflict of interest is defined as a situation in which a public officer has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her official duties. Public officials are meant to avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties. They must also disclose to their Head of Department any potential or actual conflict of interests, in writing, within a week of assuming office or upon a change in duties or change in circumstances. In addition, the model contract for the engagement of employees in the AG Office contains a conflict of interest prevention clause (no. 4) banning any additional activity which could raise actual or apparent conflicts of interest.

139. The GET fully acknowledges the value of both the Code of Ethics for Employees in the Public Sector and Code of Ethics and Conduct for Advocates which are of application to the members of the AG Office. The GET also welcomes the provision made in the Attorney General Ordinance envisaging the possibility of supplementing the aforementioned codes with service values and a code of ethics in respect of the AG Office. The GET considers that in the course of the justice reform, it can be very useful to elaborate a tailor-made code of conduct for prosecutors which would not only guide new recruits and more senior prosecutors in ethical questions more specifically, but would also inform the general public about the existing ethical standards in the profession. For this code to be meaningful and effective, it will need to be complemented by specific guidance and examples for prosecutors with regard, *inter alia*, to conflicts of interest and related matters. Moreover, the provision of induction and in-service training of a practice-oriented nature on the above issues would be a further asset. **GRECO recommends that (i) a code of ethics, accompanied by explanatory comments and/or practical examples, be developed for prosecutors and properly enforced; and (ii) that training on ethics and integrity matters be offered on induction and at regular intervals thereafter.** Synergies could be found in common training for prosecutors and judges.

Prohibition or restriction of certain activities

Incompatibilities and accessory activities, post-employment restrictions

140. The principle of exclusive dedication applies and prosecutors are not allowed to engage in any other work or employment whether full-time, part-time or casual, except as authorised by the AG (model contract for the engagement of employees in the AG Office, clause no. 4). The GET was told on-site that the only functions which prosecutors could accept, in addition to their work in the AG Office, were those of lecturing in the University of Malta or a similar institution (e.g. the Police Academy). Clearance from the AG is needed in such cases, not in so much as the activities *per se* could generate a conflict of interest, but rather to ensure that they are performed as subordinate to the prosecutorial role.

141. The GET was concerned to learn that, under the provisions of the Code of Ethics for Employees in the Public Sector, it was possible for a member of the AG Office to engage in political activity at varying levels. The GET was nevertheless reassured on-site that the model contract for the engagement of employees in the AG Office contained a specific clause (no. 6.10) on "political restraint" according to which employees are precluded from engaging in any political activity of any nature. The employee is therefore bound to maintain reserve in political matters and abstain from any public manifestation which could associate him/her prominently with any political party or politically active group. The employee is also precluded, during the duration of the contract, from engaging in any public debate, including making public comments on political, administrative and social issues unless a written authorisation is issued by the AG.

142. Former prosecutors cannot engage in any post-employment activity which may cast doubts on their own integrity or that of the prosecutorial service (Code of Ethics for Employees in the Public Sector, Section H, Article 29). When discussing this matter during the on-site visit with the GET, the authorities admitted that it was not uncommon for former members of the AG Office to join law firms later on. They themselves were of the view that this is an issue they would like to see covered in a code of ethics for the prosecution service.

Recusal and routine withdrawal

143. There are no explicit rules on recusal. The GET was told that, in practice, the staff of the AG Office would withdraw from a case whenever, from an ethical point of view rather than a strict legal obligation, a conflict of interest may arise. The authorities then added that clause no. 4 of the model contract for the engagement of employees in the AG Office would provide general guidance as to when an employee of the AG Office would need to step out of a case. This provision establishes that, during the term of the their respective contracts, employees of the AG Office must not exercise the legal profession in a private capacity and must not engage in any activity which is incompatible with the exercise of the functions of the AG Office or which may reasonably present the appearance of conflict of interest. Moreover, the authorities stressed that the rules of Code of Ethics and Conduct for Advocates would also be applicable in this respect. Accordingly, advocates must withdraw from a case because of familial interests or because they have dealt with the case in private practice.

144. While having no reason to doubt that, in practice, whenever a conflict of interest may arise the staff in the AG Office would step out, as necessary, the GET strongly notes that the reasons for recusal do not seem to focus on financial conflicts of interest, but concentrate instead on who is a party to the case or whether the person handled the case in some other capacity. The GET believes there is scope for further development of the rules on grounds for recusal, including by providing for an explicit obligation for a prosecutor to withdraw in cases where impartiality can be an issue, as well as by defining measures to address a prosecutor's failure to recuse. The AG Office conceded that, although unwritten ethical principles already dictate that a prosecutor should not take a case in which s/he might appear to have a personal interest or in which the independence of his/her position may be compromised, it could prove to be valuable to formalise such principles. These are all crucial matters that need to be further defined and clearly specified in law. In light of the foregoing, **GRECO recommends that formalised rules on recusal be developed, including (i) by providing for an explicit obligation for a prosecutor to withdraw in cases where impartiality can be an issue, (ii) adequately defining the grounds for withdrawal, and, finally, (iii) setting in place appropriate measures to address a prosecutor's failure to adhere to these standards.**

Gifts

145. Prosecutors cannot accept gifts or benefits or promises of gifts connected to their duties; only token gifts may be accepted (Article 17, Code of Ethics for Employees in the Public Sector). The authorities further specified that this was a minimum standard for all public officials which needed to be understood in the prosecutorial function as a strict ban on even token gifts, when such gifts were made by the accused person or his/her defence lawyer. The AG Office stressed its policy of "zero tolerance" to gifts for its employees.

Misuse of confidential information and third party contacts

146. While court proceedings are, as a general rule, public, confidentiality obligations apply concerning the handling of information in the case, as well as that of classified data according to Chapter 50 of the Official Secrets Act. Breach of professional confidentiality is punishable pursuant to Article 257, CC; sanctions consist of fines up to 46 587.47€ or/and imprisonment of up to two years. False declarations are punishable according to Article 188, CC; sanctions consist of fines up to 46 587.47€ or/and imprisonment of up to one year. Increased penalties may apply in the event of concurrent offences (Article 31, CC). Further professional requirements concerning the disclosure of information acquired in office are contained in the Code of Ethics for Employees in the Public Sector (Part F regarding the Use of Official Information) and in the Code of Ethics and Conduct for Advocates (Chapter III). The disclosure of confidential information may also entail disciplinary consequences.

Declaration of assets, income, liabilities and interests

147. There are no rules obliging prosecutors to file declarations to disclose information regarding financial interests, sources of income, liabilities or any other remunerated activities (other than those required for tax filing purposes). Nonetheless, whenever a potential or real conflict of interest may arise, prosecutors (as any other public official) must notify to their superior in rank all relevant personal, financial, business and other interests, in particular: (i) any directorship, partnership, agency or any shareholding; (ii) any interest in any activity or business in which or with which the organisation is engaged; (iii) any interest in goods or services recommended or supplied to the organisation (Code of Ethics for Employees in the Public Sector, Article 11). The public official is personally responsible for making the determination of what might create a real or apparent conflict of interest.

Supervision and enforcement

148. The AG and the members of his/her Office are liable to administrative, civil and penal responsibility depending on the nature of the fault. Not only can they incur criminal liability, but also they may be subject to an aggravation of punishment due to their particular public functions (i.e. Article 141, CC provided for a one-degree increase in the applicable penalty). No member of the AG Office has ever been investigated for a corruption offence.

149. Disciplinary liability of the Attorney General (AG) is regulated in the same manner, and with the same constitutional guarantees, as that of judges (Article 91, Constitution). When a disciplinary case arises against an employee of the AG Office, the GET was told that the AG would first seek to solve the case having a word with the person concerned. An ad-hoc disciplinary board may be established in cases of more serious misconduct. The rules on disciplinary proceedings contained in the Public Service Management Code would apply in such cases, and so would its sanctions (warning, fine, withholding or deferment of salary increments, reprimand, temporary suspension and, ultimately,

dismissal). If dismissed, the AG Office employee can go to the industrial tribunal. Any other disciplinary sanction may be challenged before the administrative court (in the event of a disproportionate decision). The Commission for the Administration of Justice is responsible for the exercise of discipline over advocates and legal procurators. It would appear that the Commission would exert this responsibility if a citizen complaint regarding misconduct of an advocate working in the AG Office occurs is directly addressed to it. However, no such a situation has ever emerged.

150. The GET notes that the current disciplining system of the AG Office appears more a matter of ad-hoc practice, rather than a fully regulated process; moreover, there are no specifications on discipline contained in the model contract for the engagement of employees in the AG Office. The interviewees considered disciplinary matters of the AG Office to be an "internal affair". This raises important concerns for the GET, all the more if taken together with the deficiencies already identified as to the conditions of tenure of AG's employees. While no specific irregularity in the functioning of the Office was highlighted by any of the interlocutors met on-site, the GET believes that, the current disciplining system in the AG's Office is rather opaque. The GET was further told that, although the AG Office publishes an annual report on its functioning, this report does not include any detail on discipline, its causes and the outcome of the relevant disciplinary processes. Much attention has been devoted by international standards to the question of discipline in the prosecution service, and the dangers of interference and arbitrariness that may arise when disciplinary procedures are not carried out with adequate safeguards for the parties concerned. The issue of discipline is of key importance in the prosecution service given its hierarchical organisation. For the GET, it is essential that the accountability framework be further developed and adapted to the features of the prosecution service, this is a specific point in recommendation vii, paragraph 128.

Advice, training and awareness

151. The Chamber of Advocates has conducted, in recent years, several seminars discussing *inter alia* ethics and professional conduct. Moreover, lawyers who sit for the bar examination are now required to be well-versed in matters related to professional deontology and corruption prevention. In-service training remains optional albeit recommended. There is no dedicated service to provide advice to prosecutors on deontological/integrity matters; as explained before, they usually turn to a senior colleague or the Head of Unit whenever faced with an ethical dilemma. The GET is of the firm opinion that much more needs to be done in this field. It is important that tailored programmes on the prevention of conflicts of interest and other integrity matters, with concrete references to the challenges that prosecutors may find when carrying out their daily functions, be developed. This is a specific component of recommendation viii, paragraph 139.

VI. RECOMMENDATIONS AND FOLLOW-UP

152. In view of the findings of the present report, GRECO addresses the following recommendations to Malta:

Regarding members of parliament

i. **that a thorough review of the current provisions of the Code of Ethics for members of parliament and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest be undertaken with a view to adopting improvements that will provide more subject matter coverage, consistency and clarity, as well as guidance** (paragraph 31);

ii. **that measures be taken to ensure there is appropriate supervision and enforcement of (i) the rules on the declaration of assets, financial interests and outside activities, and (ii) the standards of ethics and conflicts of interest provisions applicable to members of parliament. This clearly presupposes that a range of effective, proportionate and dissuasive sanctions be available** (paragraph 46);

iii. **(i) establishing a dedicated source of confidential counselling to provide parliamentarians with advice on ethical questions, conflicts of interest in relation to their legislative duties, as well as financial declaration obligations; and (ii) providing regular awareness raising activities for members of parliament covering issues, such as ethics, conflicts of interest, acceptance of gifts, honoraria, hospitality and other advantages, outside employment and activities, declarations of financial/activity interests, as well as other activities related to the prevention of corruption and the promotion of the integrity within the Parliament** (paragraph 49);

Regarding judges

iv. **that formalised, objective criteria and evaluation procedures be introduced for judicial appointments with guarantees of due independence, impartiality and transparency. The same guarantees of independence, impartiality and transparency are to apply in the appointment of boards and tribunals exercising judicial functions** (paragraph 67);

v. **that the system of judicial accountability be significantly strengthened, notably by extending the range of disciplinary sanctions to ensure better proportionality and by improving the transparency of complaints processes** (paragraph 117);

vi. **that (i) a compulsory induction training programme, including consideration of judicial ethics, be developed; (ii) that mentoring arrangements for new judges, exploring the ethical implications of appointment, be formalised; and (iii) that a regular programme of in-service training be provided along with targeted guidance and counselling on corruption prevention topics and judicial ethics for the various persons required to sit in court (judges, magistrates, and adjudicators of boards and tribunals)** (paragraph 123);

Regarding prosecutors

vii. **that measures be taken to further strengthen the role of prosecutors in written law, notably by (i) ensuring appropriate formalised arrangements for impartial, objective and transparent systems of appointment, discipline and dismissal of prosecutors; (ii) developing clear mechanisms and working procedures in order to ensure that hierarchical decisions/instructions are made with adequate guarantees of transparency and equity; and (iii) introducing measures to help guarantee greater independence and impartiality of prosecutorial decisions** (paragraph 128);

viii. **that (i) a code of ethics, accompanied by explanatory comments and/or practical examples, be developed for prosecutors and properly enforced; and (ii) that training on ethics and integrity matters be offered on induction and at regular intervals thereafter** (paragraph 139);

ix. **that formalised rules on recusal be developed, including (i) by providing for an explicit obligation for a prosecutor to withdraw in cases where impartiality can be an issue, (ii) adequately defining the grounds for withdrawal, and, finally, (iii) setting in place appropriate measures to address a prosecutor's failure to adhere to these standards** (paragraph 144).

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

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

ANNEX

ORGANISATION OF THE MALTESE JUDICIAL SYSTEM

The Court of Appeal	Second instance Appellate	The Court of Appeal hears appeals from the civil courts in both their superior and inferior jurisdiction. (i) This court hears appeals from the First Hall of the Civil Court and the Civil Court (Family Section). (ii) Appeals from the Court of Magistrates in its civil jurisdiction, the Small Claims Tribunal and the administrative tribunals are also heard by this court.	(i) Composed of three judges. (ii) Composed of one judge.
The Court of Criminal Appeal	Second instance Appellate	This Court in its Superior Jurisdiction hears appeals by persons convicted by the Criminal Court. This Court in its Inferior Jurisdiction hears appeals in respect of cases decided by the Court of Magistrates sitting as a Court of Criminal Judicature.	Composed of three judges Composed of one judge
The Criminal Court	First instance	This court sits as a criminal court and hears criminal cases exceeding the competence of the Court of Magistrates.	Presided over by a judge who sits with a jury of nine persons
The Civil Court: The First Hall of the Civil Court Civil Court (Voluntary Jurisdiction Section) The Civil Court (Family Section)	First instance	The First Hall of the Civil Court hears all cases of a civil and/or a commercial nature exceeding the jurisdiction the Court of Magistrates. In its constitutional jurisdiction, it also hears cases relating to violations of the constitutionally protected human rights and fundamental freedoms protected by the European Convention of Human Rights and Fundamental Freedoms. The Civil Court (Voluntary Jurisdiction Section) is a voluntary jurisdiction court and is responsible for the interdiction or incapacitation of persons of unsound mind, the nomination of tutors for same persons, the opening of successions and the confirmation of testamentary executors. It is also a repository for secret wills. This court hears all cases relating to family matters such as marriage annulment, personal separation, divorce, maintenance and custody of children.	Presided over by a judge Presided over by a judge Presided over by a judge
The Court of Magistrates	First instance	In the civil field, the Court of Magistrates only has an inferior jurisdiction of first instance, in general limited to claims not exceeding €11,646.87. In the criminal field, the Court has a twofold jurisdiction: as a court of criminal judicature in respect of cases falling within its jurisdiction, and as a court of criminal inquiry in respect of offences falling within the jurisdiction of the Criminal Court. (i) Court of Criminal Judicature – this Court is competent to try all offences punishable by a term of up to 6 months imprisonment. (ii) Court of Inquiry – this Court conducts the preliminary inquiry in respect of indictable offences and transmits the relevant records to the Attorney General. If there is no objection from the accused, the Attorney General may refer cases punishable with a sentence of up to ten years imprisonment back to the Court of Magistrates as a Court of Criminal Judicature to hear and decide the case.	Presided over by a magistrate

The Court of Magistrates	First instance	In the civil field, the Court of Magistrates only has an inferior jurisdiction of first instance, in general limited to claims not exceeding €11,646.87. In the criminal field, the Court has a twofold jurisdiction: as a court of criminal judicature in respect of cases falling within its jurisdiction, and as a court of criminal inquiry in respect of offences falling within the jurisdiction of the Criminal Court. (i) Court of Criminal Judicature – this Court is competent to try all offences punishable by a term of up to 6 months imprisonment. (ii) Court of Inquiry – this Court conducts the preliminary inquiry in respect of indictable offences and transmits the relevant records to the Attorney General. If there is no objection from the accused, the Attorney General may refer cases punishable with a sentence of up to ten years imprisonment back to the Court of Magistrates as a Court of Criminal Judicature to hear and decide the case.	Presided over by a magistrate
The Court of Magistrates for Gozo	First instance	In the civil field, the Court of Magistrates for Gozo has a two-fold jurisdiction: an inferior jurisdiction comparable to that exercised by its counterpart court in Malta; and a superior jurisdiction, with the same competence as the First Hall of the Civil Court, excluding its constitutional jurisdiction, and the Civil Court (Voluntary Jurisdiction Section) in Malta. In the criminal field, the Court of Magistrates for Gozo has the same competence as the Court of Magistrates as a Court of Criminal Inquiry and as a Court of Criminal Judicature in Malta.	Presided over by a magistrate
The Juvenile Court	First instance	The Juvenile Court hears charges against, and holds other proceedings relating to, minors under the age of 16 years and may issue care orders.	Presided over by a magistrate and two members
Small Claims Tribunal	First instance	The Tribunal summarily decides, on principles of equity and law, money claims of less than €3494.06.	Presided over by an adjudicator
Rent Regulation Board	First instance	The Rent Regulation Board hears cases relating to changes in the conditions of leases, including increases in rent and termination of the lease. These cases must relate to lease agreements entered into prior to 1st June 1995.	Presided over by a magistrate
Land Arbitration Board	First instance	The Land Arbitration Board hears cases dealing with the classification of expropriated land, the public purpose of the expropriation and the amount of compensation due to the owner.	Presided over by a magistrate
Rural Lease Control Board	First instance	This board hears cases dealing with rural leases and claims made by owners regarding termination of such leases	Presided over by a magistrate
Administrative Review Tribunal	First instance	This tribunal has the power to review administrative acts	Presided over by a magistrate
Partition of Inheritances Tribunal	First instance	This tribunal decides cases regarding the partition of property held in common by the successors of a deceased person.	Presided over by an arbitrator
The Competition and Consumer Appeals Tribunal	Appellate	This Tribunal hears and determines appeals from decisions, orders or measures of the Director General (Competition) and the Director General (Consumer Affairs). The decisions of the Tribunal are final barring some exceptions where an appeal from a decision of this Tribunal is allowed but limitedly to a question of law.	Presided over by a Judge and two members
Court of Revision of Notarial Acts	First Instance	This is a special court with supervises over all notaries, the Notarial Archives and the Public Registry. It has the authority to visit and inspect the Notarial Archives, the Public Registry and the offices of notaries as well as to apply disciplinary punishments. This court also has the power to order corrections of erroneous indications in registrations at the Public Registry.	Composed of members called Visitors

* *Note*: Information provided by Justice Service website: http://www.justiceservices.gov.mt/courtservices/

About GRECO

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

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

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